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Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2021-00747

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

01/10/2022

Time

11:00 AM

Location

Virtual Hearing

Subjects and issues involved

The purpose of this Hearing according to the new law is to develop the disability symbol by rule.
The purpose of this rule is to set forth regulations for placement of a disability identifier symbol on a driver license, identification card or Identification document, issuance of a driver license, identification card or identification document with the disability identifier symbol and requesting removal of the symbol.

Statutory authority

12-240-107; 12-240-113; 12-245-101 et seq.; and 12-255-111; 24-4-103; 24-72.1-102(5); 42-1-204; 42-2-107; 42-2-113; 42-2-114; 42-2-302; 42-2-303 C.R.S. This regulation applies to documents issued under Title 42, Article 2, Parts 1, 3, and 5.

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RULE 4 RULES FOR A DISABILITY SYMBOL TO BE PLACED ON A DRIVER LICENSE, IDENTIFICATION CARD OR IDENTIFICATION DOCUMENTS

Purpose

The purpose of this rule is to set forth regulations for placement of a disability identifier symbol on a driver license, identification card or Identification document, issuance of a driver license, identification card or identification document with the disability identifier symbol and requesting removal of the symbol.

Statutory Authority

The statutory bases for this regulation are sections 12-240-107; 12-240-113; 12-245-101 et seq.; and 12-255-111; 24-4-103; 24-72.1-102(5); 42-1-204; 42-2-107; 42-2-113; 42-2-114; 42-2-302; 42-2-303 C.R.S. This regulation applies to documents issued under Title 42, Article 2, Parts 1, 3, and 5.

Incorporation by Reference Of Federal Law

The Department incorporates by reference as part of Rule 4 of the Department of Revenue Regulations, the Americans with Disabilities Act of 1990, Pub. L. 101-336, 108th Congress, 2nd session (July 26, 1990), 104 Stat. 327, as amended by the ADA Amendments Act of 2008, Pub. L. 110-325, (September 25, 2008), 122 Stat. 3553. Such Act is published by the United States Equal Employment Opportunity Commission in full in the United States Code Annotated, Title 42, sections 12101 et seq. Rule 4 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, Room 128, Lakewood, Colorado 80214. A copy of such Act is maintained by the Colorado Department of Revenue and is on file and available for inspection during normal business hours by contacting the Driver License Section of the Colorado Department of Revenue in person at 1881 Pierce Street, Room 128, Lakewood, Colorado 80214 or by contacting the Driver License Section of the Colorado Department of Revenue by telephone at 303-205-5600. 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 Equal Employment Opportunity Commission, 131 M Street, NE, Washington DC 20507. Telephone: 202-921-3191; 1-800-669-6820 (TTY); or 1-844-234-5122 (ASL video phone).

1.1 Definitions

1.2 Applicant – Any natural person applying to the Department for a Colorado driver license, identification card or a Colorado Road and Community Safety Act identification

document.

1.3 Department – The Colorado Department of Revenue.

1.4 Driver License – A driver license, minor driver license, or instruction permit.

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

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

1.7 Professional - A physician licensed to practice medicine under article 240 of title 12 or practicing medicine under section 12-240-107(3)(i), a physician assistant licensed under section 12-240-113, a mental health professional licensed or certified under Article 245 of title 12, an advanced practice nurse registered under Section 12-255-111, a person with a master's degree in rehabilitation counseling, or a physician, physician assistant, mental health professional, or advanced practice registered nurse authorized to practice professionally by another state that shares a common border with Colorado.

2.1 **Disability Identifier Symbol**

2.2 The Department will consult with relevant stakeholders and develop a discrete disability symbol that represents all types of disabilities, including cognitive disabilities, neurological diversities, mental health disorders, sensory needs, chronic illness, chronic pain, and physical disabilities.

3.1 **Application for a Disability Identifier Symbol**

3.2 In accordance with C.R.S. 42-2-114(12) and 42-2-303(6), before issuing a Driver License or Identification Card bearing a disability identifier symbol, the Department must:

3.2.1 Receive a "Colorado Driver License/Identification Card Application for Disability Identifier Symbol" (DR2093) completed by the applicant and signed by a professional, under penalty of perjury, **affirming and verifying that:**

3.2.1.1 The applicant has a disability as defined in the federal "Americans with Disabilities Act of 1990 as amended by the Americans with Disabilities Amendments Act of 2008", 42 U.S.C. Sec. 12101 et seq., and

3.2.1.2 The disability interferes with the applicant's ability to effectively communicate with a peace officer.

4.0 Removal of the Disability Identifier Symbol

4.1 An applicant may choose to remove the disability identifier symbol on their Driver License, Identification Card, or Identification Document. The Department shall issue the applicant a new Driver License, Identification Card, or Identification Document without the disability identifier symbol at the request of the applicant, and shall not charge a fee for the issuance of the new Driver License, Identification Card, or Identification Document.

5.0 Effective Date

5.1 The effective date of this rule is July 1, 2022.

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Notice of Proposed Rulemaking

Tracking number

2021-00754

Department

300 - Department of Education

Agency

301 - Colorado State Board of Education

CCR number

1 CCR 301-88

Rule title

STANDARDS FOR CHARTER SCHOOLS AND CHARTER SCHOOL AUTHORIZERS

Rulemaking Hearing

Date

01/12/2022

Time

09:00 AM

Location

201 E. Colfax, State Board Room or Webinar

Subjects and issues involved

Pursuant to HB 10-1412, the State Board of Education is required to promulgate rules establishing standards for charter schools and charter school authorizers based on the recommendations made by the charter school and charter authorizer standards review committee pursuant to § 22-30.5-104.5, C.R.S. These rules include amendments to update in light of federal guidance on special education and civil rights.

Statutory authority

Colorado Revised Statutes § 22-2-107 (1) (c) and § 22-2-106 (1) (h)

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DEPARTMENT OF EDUCATION

Colorado State Board of Education

STANDARDS FOR CHARTER SCHOOLS AND CHARTER SCHOOL AUTHORIZERS

1 CCR 301-88

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

0.0 STATEMENT OF BASIS AND PURPOSE

These rules are promulgated pursuant to Colorado Revised Statutes § 22-2-107 (1) (c) and § 22-2-106 (1) (h). Pursuant to HB 10-1412, the State Board of Education is required to promulgate rules establishing standards for charter schools and charter school authorizers based on the recommendations made by the charter school and charter authorizer standards review committee pursuant to § 22-30.5-104.5, C.R.S. These rules do not contradict or supersede the standard of review for appeals or the standards for renewal or revocation decisions outlined in the Charter School Act, § § 22-30.5-108 and 22-30.5-110, C.R.S.

1.0 DEFINITIONS

1.01 "Charter School" means a district charter school established pursuant to § § 22-30.5-101 to 115, C.R.S., an independent charter school established pursuant to § § 22-30.5-301 to 308, C.R.S., or an institute charter school established pursuant to § 22.30.5 (6)-502, C.R.S.

1.02 "Charter School Authorizer" means, in the case of a district charter school or an independent charter school, a school district board of education or, in the case of a state institute charter school, the board of the state charter school institute as defined in § 22-30.5-502 (5), C.R.S.

1.03 "Colorado Academic Standards" means the standards adopted by the State Board pursuant to § 22-7-1005, C.R.S.

1.04 "Department" means the Department of Education created and existing pursuant to § 24-1-115, C.R.S.

1.05 "State Board" means the State Board of Education created and existing pursuant to section 1 of Article IX of the Colorado State Constitution.

2.00 STANDARDS FOR CHARTER SCHOOLS

The following standards for Charter Schools shall be considered by the State Board as guiding principles when considering an appeal from a Charter School and when making decisions concerning exclusive chartering authority. These standards also shall serve as guiding principles to Charter Schools and Charter School Authorizers when developing a charter contract.

2.01 Conflict of Interest, Nepotism, and Excessive Compensation:

2.01 (A) The Charter School adopts conflict of interest policies that comply with federal and state laws applicable to public officials.

2.01 (B) The Charter School's compensation complies with excessive executive compensation requirements under federal law or applicable industry standards.

2.01 (C) The Charter School ensures that all board members and senior administrators receive training on its conflict of interest policies and excessive executive compensation requirements.

2.01 (D) When the Charter School board contracts with a third party education service provider for the general day-to-day operation of a school, such contracts and any amendments to such contracts are subject to review by the Charter School Authorizer.

2.02 Nondiscrimination:

2.02 (A) Charter Schools are subject to all federal and state laws regarding nondiscrimination. The Charter School provides evidence of annual training on nondiscrimination laws to employees and board members, and otherwise ensures that its board and leadership stay current on all relevant provisions.

2.02 (B) The Charter School provides access to services for students with disabilities and ensures that services are delivered to students with disabilities as required by federal and state law.

2.02 (C) The Charter School provides access to services for and appropriately serves other special populations of students, including English language learners, homeless students, and gifted students. The Charter School collaborates with its Charter School Authorizer to deliver appropriate services as required by federal and state law.

2.02 (D) The Charter School does not engage in or adopt discriminatory recruiting, marketing, application, or enrollment policies or practices. The Charter School strives for transparent and honest communication.

2.02 (E) The Charter School does not establish undue barriers to students applying for enrollment, such as mandated testing prior to acceptance, that have the effect of excluding students based on socioeconomic, family, or language background, prior academic performance, special education status, or parental involvement.

2.02(E)(1) The Charter School maintains a page on their website that clearly communicates to parents how to be included in the school's choice enrollment process. The enrollment page includes a non-discrimination statement identifying all classes that are protected under federal and state law.

2.02(E)(2) The Charter School's recruitment materials do not indicate or signal that the school refuses admission generally to any applicant that is part of a protected class, including students with disabilities.

2.02(E)(3) The Charter School takes appropriate steps to ensure that choice applications are accessible to and usable by applicants with disabilities. The Charter School takes appropriate steps to provide the language assistance necessary to ensure meaningful communication with limited English proficient parents in a language they can understand.

2.02(E)(4) The Charter School's application materials and process do not inquire into characteristics that would reveal protected characteristics, except where expressly allowed by federal or state law.

2.02(E)(5) The Charter School's admissions staff is appropriately trained to address parents' questions in a manner consistent with the school's and its authorizer's nondiscrimination policies.

2.02 (F) The Charter School admits students through a publicly verifiable selection process that is either random in nature or first-come-first-served.

2.02 (G) The Charter School adopts post-admissions enrollment practices that ensure that enrollment decisions are non-discriminatory and consistent with the best interests of the student applicant. Such practices include training staff on compliance with federal and state statutes.

2.02 (H) The Charter School annually reviews its discipline and enrollment records to ensure that its policies have been applied equitably to all students.

3.00 STANDARDS FOR CHARTER SCHOOL AUTHORIZERS

The following standards for Charter School Authorizers shall be considered by the State Board as guiding principles when considering an appeal from an already operating Charter School and when making decisions concerning exclusive chartering authority. These standards also shall serve as guiding principles to Charter Schools and Charter School Authorizers when developing a charter contract. A Charter School Authorizer may choose to contract with other entities or develop other partnerships that will improve its ability to meet these principles and standards.

The standards described in sections 3.01 through 3.06 of these rules are based on the 2010 Edition of the Principles and Standards of Quality Charter School Authorizing adopted by the National Association of Charter School Authorizers.

3.01 Three Core Principles of Charter Authorizing. The Charter School Authorizer engages in responsible oversight of charter schools by ensuring that schools have both the autonomy to which they are entitled and the public accountability for which they are responsible. The following three responsibilities lie at the heart of the authorizing endeavor, and authorizers should be guided by and fulfill these core principles in all aspects of their work: maintain high standards for schools, uphold school autonomy, and protect student and public interests.

3.01 (A) The Charter School Authorizer maintains high standards by doing the following:

3.01 (A) (1) Setting high standards for approving charter applicants;

3.01 (A) (2) Maintaining high standards for the schools it oversees;

3.01 (A) (3) Effectively cultivating quality charter schools that meet identified educational needs;

3.01 (A) (4) Overseeing charter schools that, over time, meet the performance standards and targets set forth in their charter contracts on a range of measures and metrics; and

3.01 (A) (5) Closing schools that fail to meet standards and targets set forth in law and by contract.

3.01 (B) The Charter School Authorizer upholds school autonomy by doing the following:

3.01 (B) (1) Honoring and preserving innovations and core autonomies crucial to school success, including governing board independence from the authorizer, personnel, school vision and culture, instructional programming, design, and use of time, and budgeting;

3.01 (B) (2) Assuming responsibility not for the success or failure of individual schools but for holding schools accountable for their performance;

3.01 (B) (3) Minimizing administrative and compliance burdens on schools; and

3.01 (B) (4) Focusing on holding schools accountable for outcomes rather than processes.

3.01 (C) The Charter School Authorizer protects student and public interests by doing the following:

3.01 (C) (1) Making the well-being and interests of students the fundamental value informing all the authorizer's actions and decisions;

3.01 (C) (2) Holding schools accountable for fulfilling fundamental public education obligations to all students, including: providing nonselective, nondiscriminatory access to all eligible students; fair treatment for all students in admissions and disciplinary actions; and appropriate services for all students in accordance with law. Specifically, the Charter School Authorizer does not engage in or adopt discriminatory recruiting or marketing policies or practices, adopts enrollment practices that ensure that enrollment decisions are non-discriminatory and consistent with the best interests of the student applicant, and develops systems to ensure that services are delivered to students with disabilities as required by federal and state law.

3.01 (C) (3) Holding schools accountable for fulfilling fundamental obligations to the public, including providing: sound governance, management, and stewardship of public funds; and public information and operational transparency in accordance with law;

3.01 (C) (4) Ensuring in its own work: ethical conduct; focus on the mission of chartering high-quality schools; clarity, consistency, and public transparency in authorizing policies, practices, and decisions; effective and efficient public stewardship; and compliance with applicable laws and regulations; and

3.01 (C) (5) Supporting parents and students in being well-informed about the quality of education provided by charter schools.

3.02 Agency Commitment and Capacity. The Charter School Authorizer recognizes that chartering is a means to foster excellent schools that meet identified needs; clearly prioritizes a commitment to excellence in education and in authorizing practices; and creates organizational structures and commits to human and financial resources necessary to conduct its authorizing duties effectively and efficiently.

3.02 (A) The Charter School Authorizer plans and commits to excellence by doing the following:

3.02 (A) (1) Supporting and advancing the purposes of charter school law;

3.02 (A) (2) Ensuring that the authorizer's governing board, leadership, and staff understand and are committed to the three Core Principles of authorizing;

3.02 (A) (3) Defining external relationships and lines of authority to protect its authorizing functions from conflicts of interest and political influence;

3.02 (A) (4) Implementing policies, processes, and practices that streamline and systematize its work toward stated goals, and executes its duties efficiently while minimizing administrative burdens on schools;

3.02 (A) (5) Evaluating its work regularly against national standards for quality authorizing and recognized effective practices, and develops and implements timely plans for improvement when it falls short;

3.02 (A) (6) Stating a clear mission for quality authorizing (advanced standard);

3.02 (A) (7) Articulating and implementing an intentional strategic vision and plan for chartering, including clear priorities, goals, and time frames for achievement (advanced standard);

3.02 (A) (8) Evaluating its work regularly against its chartering mission and strategic plan goals, and implementing plans for improvement when it falls short of its mission and strategic plan (advanced standard); and

3.02 (A) (9) Providing an annual public report on the authorizer's progress and performance in meeting its strategic plan goals (advanced standard).

3.02 (B) The Charter School Authorizer demonstrates exemplary practices in human resources by doing the following:

3.02 (B) (1) Enlisting expertise and competent leadership for all areas essential to charter school oversight - including, but not limited to, education leadership; curriculum, instruction, and assessment; special education; performance management and accountability; law; finance; facilities; and nonprofit governance and management - through staff, contractual relationships, and/or intra- or inter-agency collaborations;

3.02 (B) (2) Employing competent personnel at a staffing level appropriate and sufficient to carry out all authorizing responsibilities in accordance with national standards, and commensurate with the scale of the charter school portfolio;

3.02 (B) (3) Providing for regular professional development for the agency's leadership and staff to achieve and maintain high standards of professional authorizing practice and enable continual agency improvement; and

3.02 (B) (4) Reviewing conflict of interest policies, excessive executive compensation requirements, and compliance therewith as part of its oversight and contract renewal process.

3.02 (C) The Charter School Authorizer demonstrates exemplary financial practices by doing the following:

3.02 (C) (1) Determining the financial needs of the authorizing office and devoting sufficient financial resources to fulfill its authorizing

responsibilities in accordance with national standards and commensurate with the scale of the charter school portfolio;

3.02 (C) (2) Structuring its funding in a manner that avoids conflicts of interest, inducements, incentives, or disincentives that might compromise its judgment in charter approval and accountability decision making;

3.02 (C) (3) Deploying funds effectively and efficiently with the public's interests in mind; and

3.02 (C) (4) Requiring each Charter School to conduct an annual financial audit by an independent auditor to be selected by the Charter School.

3.03 Application Process and Decision Making. The Charter School Authorizer implements a comprehensive application process that includes clear application questions and guidance; follows fair, transparent procedures and rigorous criteria; and grants charters only to applicants who demonstrate a strong capacity to establish and operate a quality charter school.

3.03 (A) The Charter School Authorizer demonstrates exemplary practices in matters related to proposal information, questions, and guidance by doing the following:

3.03 (A) (1) Issuing a charter application information packet or request for proposals (RFP) that: states any chartering priorities the authorizer may have established; articulates comprehensive application questions to elicit the information needed for rigorous evaluation of applicants' plans and capacities; and provides clear guidance and requirements regarding application content and format, while explaining evaluation criteria;

3.03 (A) (2) Welcoming proposals from first-time charter applicants as well as existing school operators/replicators, while appropriately distinguishing between the two kinds of developers in proposal requirements and evaluation criteria;

3.03 (A) (3) Encouraging expansion and replication of charter schools demonstrating success and capacity for growth;

3.03 (A) (4) Being open to considering diverse educational philosophies and approaches; and

3.03 (A) (5) Broadly inviting and soliciting charter applications while publicizing the authorizer's strategic vision and chartering priorities, without restricting or refusing to review applications that propose to fulfill other goals (advanced standard).

3.03 (B) The Charter School Authorizer employs fair, transparent, quality-focused procedures in the following areas:

3.03 (B) (1) Implementing a charter application process that is open, well-publicized, and transparent, and is organized around clear, realistic time lines;

3.03 (B) (2) Allowing sufficient time for each stage of the application and school pre-opening process to be carried out with quality and integrity;

3.03 (B) (3) Explaining how each stage of the application process is conducted and evaluated;

3.03 (B) (4) Communicating chartering opportunities, processes, approval criteria, and decisions clearly to the public; and

3.03 (B) (5) Informing applicants of their rights and responsibilities and promptly notifying applicants of approval or denial, while explaining the factors that determined the decision.

3.03 (C) The Charter School Authorizer uses rigorous approval criteria in the following manner:

3.03 (C) (1) Requiring all applicants to present a clear and compelling mission; a quality educational program; a solid business plan; effective governance and management structures and systems; founding team members demonstrating diverse and necessary capabilities; and clear evidence of the applicant's capacity to execute its plan successfully;

3.03 (C) (2) Establishing distinct requirements and criteria for applicants who are existing school operators or replicators;

3.03 (C) (3) Establishing distinct requirements and criteria for applicants proposing to contract with education service or management providers;

3.03 (C) (4) Establishing distinct requirements and criteria for applicants proposing to operate virtual or online charter schools.

3.03 (D) The Charter School Authorizer uses rigorous decision making in the following manner:

3.03 (D) (1) Granting charters only to applicants that have demonstrated competence and capacity to succeed in all aspects of the school, consistent with the stated approval criteria;

3.03 (D) (2) Rigorously evaluating each application through thorough review of the written proposal, a substantive in-person interview with the applicant group, and other due diligence to examine the applicant's experience and capacity, conducted by knowledgeable and competent evaluators;

3.03 (D) (3) Engaging, for both written application reviews and applicant interviews, highly competent teams of internal and external evaluators with relevant educational, organizational (governance and management), financial, and legal expertise, as well as a thorough understanding of the essential principles of charter school autonomy and accountability;

3.03 (D) (4) Providing orientation or training to application evaluators (including interviewers) to ensure consistent evaluation standards and practices, observance of essential protocols, and fair treatment of applicants; and

3.03 (D) (5) Ensuring that the application review process and decision making are free of conflicts of interest, and requiring full disclosure of any potential or perceived conflicts of interest between reviewers or decision makers and applicants.

3.04 Performance Contracting. The Charter School Authorizer executes contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms. The contract is an essential document, separate from the charter application, that establishes the legally binding agreement and terms under which the school will operate.

3.04 (A) The Charter School Authorizer demonstrates exemplary practices in matters related to contract term, negotiation, and execution by doing the following:

3.04 (A) (1) Executing a contract with a legally incorporated governing board independent of the Charter School Authorizer;

3.04 (A) (2) Granting charter contracts for a term of five operating years, or longer only with periodic high-stakes reviews every five years;

3.04 (A) (3) Defining material terms of the contract;

3.04 (A) (4) Ensuring mutual understanding and acceptance of the terms of the contract by the school's governing board prior to authorization or charter granting by the authorizing board; and

3.04 (A) (5) Allowing - and requiring contract amendments for - occasional material changes to a school's plans, but does not require amending the contract for non-material modifications.

3.04 (B) The Charter School Authorizer demonstrates exemplary practices related to rights and duties by doing the following:

3.04 (B) (1) Executing charter contracts that clearly:

3.04 (B) (1) (a) State the rights and responsibilities of the Charter School and the Charter School Authorizer;

3.04 (B) (1) (b) State and respect the autonomies to which schools are entitled - based on statute, waiver, or authorizer policy - including those relating to the school's authority over educational programming, staffing, budgeting, and scheduling;

3.04 (B) (1) (c) Define performance standards, criteria and conditions for renewal, intervention, revocation, and non-renewal, while establishing the consequences for meeting or not meeting standards or conditions;

3.04 (B) (1) (d) State the statutory, regulatory, and procedural terms and conditions for the school's operation;

3.04 (B) (1) (e) State reasonable pre-opening requirements or conditions for new schools to ensure that they meet all health, safety, and other legal requirements prior to opening and are prepared to open smoothly;

3.04 (B) (1) (f) State the responsibility and commitment of the school to adhere to essential public education obligations, including admitting and serving all eligible students so long as space is available, and not expelling or counseling out students except as

pursuant to a legal discipline policy approved by the authorizer; and

3.04 (B) (1) (g) State the responsibilities of the school and the authorizer in the event of school closure; and

3.04 (B) (2) Ensuring that any fee-based services provided by the authorizer are set forth in a services agreement separate from the charter contract; and ensures that purchasing such services is explicitly not a condition of charter approval, continuation, or renewal.

3.04 (C) The Charter School Authorizer demonstrates exemplary practices in matters related to performance framework and standards by executing charter contracts that clearly:

3.04 (C) (1) Establish the performance framework under which schools will be evaluated, using objective and verifiable measures of student achievement as the primary measure of school quality;

3.04 (C) (2) Define clear, measurable, and attainable academic, financial, and operational performance standards and targets that the school must meet as a condition of renewal, including, but not limited to, state and federal measures;

3.04 (C) (3) Define the sources of data that will form the evidence base for ongoing and renewal evaluation, including state-mandated and other standardized assessments, internal assessments, qualitative reviews, and performance comparisons with other public schools in the district and state; and

3.04 (C) (4) Continuously reflect upon its practices and pursue innovative and promising approaches to authorizing.

3.04 (D) The Charter School Authorizer, if it contracts with education services or management, demonstrates exemplary practices in the following manner:

3.04 (D) (1) For any school contracting with a third-party provider for education design and operation or management, including additional contractual provisions that ensure rigorous, independent contract oversight by the charter governing board and the school's financial independence from the external provider;

3.04 (D) (2) Reviewing the proposed third-party contract as a condition of charter approval to ensure that it is consistent with applicable law, authorizer policy, and the public interest;

3.04 (D) (3) Otherwise ensuring that the oversight of the school's contract complies with the standards outlined in section 3.01 of these rules.

3.05 Ongoing Oversight and Evaluation. The Charter School Authorizer conducts contract oversight that competently evaluates performance and monitors compliance; ensures schools' legally entitled autonomy; protects student rights; informs intervention, revocation, and renewal decisions; and provides annual public reports on school performance.

3.05 (A) The Charter School Authorizer demonstrates exemplary practices related to performance evaluation and compliance monitoring by doing the following:

3.05 (A) (1) Implementing a comprehensive performance accountability and compliance monitoring system that is defined by the charter contract and provides the information necessary to make rigorous and standards-based renewal, revocation, and intervention decisions;

3.05 (A) (2) Defining and communicating to schools the process, methods, and timing of gathering and reporting school performance and compliance data;

3.05 (A) (3) Implementing an accountability system that effectively streamlines federal, state, and local performance expectations and compliance requirements while protecting schools' legally entitled autonomy and minimizing schools' administrative and reporting burdens;

3.05 (A) (4) Visiting each school as appropriate and necessary for collecting data that cannot be obtained otherwise and in accordance with the contract, while ensuring that the frequency, purposes, and methods of such visits respect school autonomy and avoid operational interference;

3.05 (A) (5) Evaluating each school annually on its performance and progress toward meeting the standards and targets stated in the charter contract, including essential compliance requirements, and clearly communicates evaluation results to the school's governing board and leadership;

3.05 (A) (6) Communicating regularly with schools as needed, including both the school leader and governing board, and provides timely notice of contract violations or performance deficiencies;

3.05 (A) (7) Providing an annual written report to each school, summarizing its performance and compliance to date and identifying areas of strength and areas needing improvement; and

3.05 (A) (8) Articulating and enforcing stated consequences for failing to meet performance expectations or compliance requirements.

3.05 (B) The Charter School Authorizer demonstrates respects school autonomy by doing the following:

3.05 (B) (1) Respecting the school's authority over its day-to-day operations;

3.05 (B) (2) Collecting information from the school in a manner that minimizes administrative burdens on the school, while ensuring that performance and compliance information is collected with sufficient detail and timeliness to protect student and public interests; and

3.05 (B) (3) Periodically reviewing compliance requirements and evaluating the potential to increase school autonomy based on flexibility in the law, streamlining requirements, demonstrated school performance, or other considerations.

3.05 (C) The Charter School Authorizer protects student rights by doing the following:

3.05 (C) (1) Ensuring that schools admit students through a random selection process that is open to all students, publicly verifiable, and does not establish undue barriers to application (such as mandatory information meetings, mandated volunteer service, or parent contracts) that have the effect of excluding students based on socioeconomic, family, or language background, prior academic performance, special education status, or parental involvement;

3.05 (C) (2) Ensuring that schools provide access and services to students with disabilities as required by federal and state law;

3.05 (C) (3) Ensuring that schools provide access to and appropriately serve other special populations of students, including English learners, homeless students, and gifted students, as required by federal and state law; and

3.05 (C) (4) Ensuring that schools' student discipline policies and actions are legal and fair, and that no student is expelled or counseled out of a school outside of that process.

3.05 (D) The Charter School Authorizer demonstrates exemplary practices related to intervention by doing the following:

3.05 (D) (1) Establishing and making known to schools at the outset an intervention policy stating the general conditions that may trigger intervention and the types of actions and consequences that may ensue;

3.05 (D) (2) Giving schools clear, adequate, evidence-based, and timely notice of contract violations or performance deficiencies;

3.05 (D) (3) Allowing schools reasonable time and opportunity for remediation in non-emergency situations; and

3.05 (D) (4) Where intervention is needed, engaging in intervention strategies that clearly preserve school autonomy and responsibility (identifying what the school must remedy without prescribing solutions).

3.05 (E) The Charter School Authorizer produces an annual public report that provides clear, accurate performance data for the charter schools it oversees, reporting on individual school and overall portfolio performance according to the framework set forth in the charter contract.

3.06 Revocation and Renewal Decision Making. The Charter School Authorizer designs and implements a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

3.06 (A) The Charter School Authorizer revokes a charter during the charter term if there is clear evidence of extreme underperformance or violation of law or the public trust that imperils students or public funds.

3.06 (B) In addition to the required standards outlined in § 22-30.50-110, C.R.S., the Charter School Authorizer ensures that renewal decisions are based on merit and inclusive evidence by doing the following:

3.06 (B) (1) Basing the renewal process and renewal decisions on thorough analyses of a comprehensive body of objective evidence defined by the performance framework in the charter contract, and ensuring that improved academic achievement is the most important factor to consider when determining whether to revoke or not renew a charter;

3.06 (B) (2) Granting renewal only to schools that have achieved the standards and targets stated in the charter contract, are organizationally and fiscally viable, and have been faithful to the terms of the contract and applicable law; and

3.06 (B) (3) Not making renewal decisions, including granting probationary or short-term renewals, on the basis of political or community pressure or solely on promises of future improvement.

3.06 (C) The Charter School Authorizer demonstrates exemplary practices related to its cumulative report and renewal application by doing the following:

3.06 (C) (1) Providing to each school, in advance of the renewal decision, a cumulative performance report that summarizes the school's performance record over the charter term and states the authorizer's summative findings concerning the school's performance and its prospects for renewal; and

3.06 (C) (2) Requiring any school seeking renewal to apply for it through a renewal application, which provides the school a meaningful opportunity and reasonable time to respond to the cumulative report; correct the record, if needed; and present additional evidence regarding its performance.

3.06 (D) The Charter School Authorizer uses a fair and transparent process by doing the following:

3.06 (D) (1) Clearly communicating to schools the criteria for charter revocation, renewal, and non-renewal decisions, consistent with the charter contract;

3.06 (D) (2) Promptly notifying each school of its renewal (or, if applicable, revocation) decision, including written explanation of the reasons for the decision;

3.06 (D) (3) Promptly communicating renewal or revocation decisions to the school community and public within a time frame that allows parents and students to exercise choices for the coming school year;

3.06 (D) (4) Explaining in writing any available rights of legal or administrative appeal through which a school may challenge the authorizer's decision; and

3.06 (D) (5) Regularly updating and publishing the process for renewal decision making, including guidance regarding required content and format for renewal applications.

3.06 (E) In the event of a school closure, the Charter School Authorizer oversees and works with the school governing board and leadership in carrying out a detailed closure protocol that ensures timely notification to parents; orderly transition of

students and student records to new schools; and disposition of school funds, property, and assets in accordance with law.

Editor's Notes

History

Entire rule eff. 03/01/2012.

DEPARTMENT OF EDUCATION

Colorado State Board of Education

STANDARDS FOR CHARTER SCHOOLS AND CHARTER SCHOOL AUTHORIZERS

1 CCR 301-88

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

0.0 STATEMENT OF BASIS AND PURPOSE

These rules are promulgated pursuant to Colorado Revised Statutes § 22-2-107 (1) (c) and § 22-2-106 (1) (h). Pursuant to HB 10-1412, the State Board of Education is required to promulgate rules establishing standards for charter schools and charter school authorizers based on the recommendations made by the charter school and charter authorizer standards review committee pursuant to § 22-30.5-104.5, C.R.S. These rules do not contradict or supersede the standard of review for appeals or the standards for renewal or revocation decisions outlined in the Charter School Act, § § 22-30.5-108 and 22-30.5-110, C.R.S.

1.0 DEFINITIONS

1.01 "Charter School" means a district charter school established pursuant to § § 22-30.5-101 to 115, C.R.S., an independent charter school established pursuant to § § 22-30.5-301 to 308, C.R.S., or an institute charter school established pursuant to § 22.30.5 (6)-502, C.R.S.

1.02 "Charter School Authorizer" means, in the case of a district charter school or an independent charter school, a school district board of education or, in the case of a state institute charter school, the board of the state charter school institute as defined in § 22-30.5-502 (5), C.R.S.

1.03 "Colorado Academic Standards" means the standards adopted by the State Board pursuant to § 22-7-1005, C.R.S.

1.04 "Department" means the Department of Education created and existing pursuant to § 24-1-115, C.R.S.

1.05 "State Board" means the State Board of Education created and existing pursuant to section 1 of Article IX of the Colorado State Constitution.

2.00 STANDARDS FOR CHARTER SCHOOLS

The following standards for Charter Schools shall be considered by the State Board as guiding principles when considering an appeal from a Charter School and when making decisions concerning exclusive chartering authority. These standards also shall serve as guiding principles to Charter Schools and Charter School Authorizers when developing a charter contract.

2.01 Conflict of Interest, Nepotism, and Excessive Compensation:

2.01 (A) The Charter School adopts conflict of interest policies that comply with federal and state laws applicable to public officials.

2.01 (B) The Charter School's compensation complies with excessive executive compensation requirements under federal law or applicable industry standards.

2.01 (C) The Charter School ensures that all board members and senior administrators receive training on its conflict of interest policies and excessive executive compensation requirements.

2.01 (D) When the Charter School board contracts with a third party education service provider for the general day-to-day operation of a school, such contracts and any amendments to such contracts are subject to review by the Charter School Authorizer.

2.02 Nondiscrimination:

2.02 (A) Charter Schools are subject to all federal and state laws regarding nondiscrimination. The Charter School provides evidence of annual training on nondiscrimination laws to employees and board members, and otherwise ensures that its board and leadership stay current on all relevant provisions.

2.02 (B) The Charter School provides access to services for students with disabilities and ensures that services are delivered to students with disabilities as required by federal and state law.

2.02 (C) The Charter School provides access to services for and appropriately serves other special populations of students, including English language learners, homeless students, and gifted students. The Charter School collaborates with its Charter School Authorizer to deliver appropriate services as required by federal and state law.

2.02 (D) The Charter School does not engage in or adopt discriminatory recruiting, marketing, application, or enrollment policies or practices. The Charter School strives for transparent and honest communication.

2.02 (E) The Charter School does not establish undue barriers to students applying for enrollment, such as mandated testing prior to acceptance, that have the effect of excluding students based on socioeconomic, family, or language background, prior academic performance, special education status, or parental involvement.

2.02(E)(1) The Charter School maintains a page on their website that clearly communicates to parents how to be included in the school's choice enrollment process. The enrollment page includes a non-discrimination statement identifying all classes that are protected under federal and state law.

2.02(E)(2) The Charter School's recruitment materials do not indicate or signal that the school refuses admission generally to any applicant that is part of a protected class, including students with disabilities.

2.02(E)(3) The Charter School takes appropriate steps to ensure that choice applications are accessible to and usable by applicants with disabilities. The Charter School takes appropriate steps to provide the language assistance necessary to ensure meaningful communication with limited English proficient parents in a language they can understand.

2.02(E)(4) The Charter School's application materials and process do not inquire into characteristics that would reveal protected characteristics, except where expressly allowed by federal or state law.

2.02(E)(5) The Charter School's admissions staff is appropriately trained to address parents' questions in a manner consistent with the school's and its authorizer's nondiscrimination policies.

2.02 (F) The Charter School admits students through a publicly verifiable selection process that is either random in nature or first-come-first-served.

2.02 (G) The Charter School adopts post-admissions enrollment practices that ensure that enrollment decisions are non-discriminatory and consistent with the best interests of the student applicant. Such practices ~~include a pre-enrollment admissions process that is in compliance~~include training staff on compliance with federal and state statutes.~~, and that meets the following standards:~~

~~2.02 (G) (1) During the pre-enrollment admissions process, the Charter School, in consultation with the Charter School Authorizer, determines whether the Charter School is an appropriate placement for students with special needs, including but not limited to students with disabilities, English language learners, students with disciplinary history, and students who may pose a threat to the safety of themselves or other students.~~

~~2.02 (G) (2) The pre-enrollment admissions process requires, at a minimum, (i) a pre-enrollment admissions determination; (ii) prompt, collaborative, and individualized decisions in accordance with federal and state law; (iii) prompt record sharing; and (iv) fair and transparent decisions.~~

2.02 (H~~G) (3~~) The Charter School annually reviews its discipline and enrollment records to ensure that its policies have been applied equitably to all students.

3.00 STANDARDS FOR CHARTER SCHOOL AUTHORIZERS

The following standards for Charter School Authorizers shall be considered by the State Board as guiding principles when considering an appeal from an already operating Charter School and when making decisions concerning exclusive chartering authority. These standards also shall serve as guiding principles to Charter Schools and Charter School Authorizers when developing a charter contract. A Charter School Authorizer may choose to contract with other entities or develop other partnerships that will improve its ability to meet these principles and standards.

The standards described in sections 3.01 through 3.06 of these rules are based on the 2010 Edition of the Principles and Standards of Quality Charter School Authorizing adopted by the National Association of Charter School Authorizers.

3.01 Three Core Principles of Charter Authorizing. The Charter School Authorizer engages in responsible oversight of charter schools by ensuring that schools have both the autonomy to which they are entitled and the public accountability for which they are responsible. The following three responsibilities lie at the heart of the authorizing endeavor, and authorizers should be guided by and fulfill these core principles in all aspects of their work: maintain high standards for schools, uphold school autonomy, and protect student and public interests.

3.01 (A) The Charter School Authorizer maintains high standards by doing the following:

3.01 (A) (1) Setting high standards for approving charter applicants;

3.01 (A) (2) Maintaining high standards for the schools it oversees;

3.01 (A) (3) Effectively cultivating quality charter schools that meet identified educational needs;

3.01 (A) (4) Overseeing charter schools that, over time, meet the performance standards and targets set forth in their charter contracts on a range of measures and metrics; and

3.01 (A) (5) Closing schools that fail to meet standards and targets set forth in law and by contract.

3.01 (B) The Charter School Authorizer upholds school autonomy by doing the following:

3.01 (B) (1) Honoring and preserving innovations and core autonomies crucial to school success, including governing board independence from the authorizer, personnel, school vision and culture, instructional programming, design, and use of time, and budgeting;

3.01 (B) (2) Assuming responsibility not for the success or failure of individual schools but for holding schools accountable for their performance;

3.01 (B) (3) Minimizing administrative and compliance burdens on schools; and

3.01 (B) (4) Focusing on holding schools accountable for outcomes rather than processes.

3.01 (C) The Charter School Authorizer protects student and public interests by doing the following:

3.01 (C) (1) Making the well-being and interests of students the fundamental value informing all the authorizer's actions and decisions;

3.01 (C) (2) Holding schools accountable for fulfilling fundamental public education obligations to all students, including: providing nonselective, nondiscriminatory access to all eligible students; fair treatment for all students in admissions and disciplinary actions; and appropriate services for all students in accordance with law. Specifically, the Charter School Authorizer does not engage in or adopt discriminatory recruiting or marketing policies or practices, adopts enrollment practices that ensure that enrollment decisions are non-discriminatory and consistent with the best interests of the student applicant, and develops systems to ensure that services are delivered to students with disabilities as required by federal and state law.

3.01 (C) (3) Holding schools accountable for fulfilling fundamental obligations to the public, including providing: sound governance, management, and stewardship of public funds; and public information and operational transparency in accordance with law;

3.01 (C) (4) Ensuring in its own work: ethical conduct; focus on the mission of chartering high-quality schools; clarity, consistency, and public transparency in authorizing policies, practices, and decisions; effective and efficient public stewardship; and compliance with applicable laws and regulations; and

3.01 (C) (5) Supporting parents and students in being well-informed about the quality of education provided by charter schools.

3.02 Agency Commitment and Capacity. The Charter School Authorizer recognizes that chartering is a means to foster excellent schools that meet identified needs; clearly prioritizes a commitment to excellence in education and in authorizing practices; and creates organizational structures and commits to human and financial resources necessary to conduct its authorizing duties effectively and efficiently.

3.02 (A) The Charter School Authorizer plans and commits to excellence by doing the following:

3.02 (A) (1) Supporting and advancing the purposes of charter school law;

3.02 (A) (2) Ensuring that the authorizer's governing board, leadership, and staff understand and are committed to the three Core Principles of authorizing;

3.02 (A) (3) Defining external relationships and lines of authority to protect its authorizing functions from conflicts of interest and political influence;

3.02 (A) (4) Implementing policies, processes, and practices that streamline and systematize its work toward stated goals, and executes its duties efficiently while minimizing administrative burdens on schools;

3.02 (A) (5) Evaluating its work regularly against national standards for quality authorizing and recognized effective practices, and develops and implements timely plans for improvement when it falls short;

3.02 (A) (6) Stating a clear mission for quality authorizing (advanced standard);

3.02 (A) (7) Articulating and implementing an intentional strategic vision and plan for chartering, including clear priorities, goals, and time frames for achievement (advanced standard);

3.02 (A) (8) Evaluating its work regularly against its chartering mission and strategic plan goals, and implementing plans for improvement when it falls short of its mission and strategic plan (advanced standard); and

3.02 (A) (9) Providing an annual public report on the authorizer's progress and performance in meeting its strategic plan goals (advanced standard).

3.02 (B) The Charter School Authorizer demonstrates exemplary practices in human resources by doing the following:

3.02 (B) (1) Enlisting expertise and competent leadership for all areas essential to charter school oversight - including, but not limited to, education leadership; curriculum, instruction, and assessment; special education; performance management and accountability; law; finance; facilities; and nonprofit governance and management - through staff, contractual relationships, and/or intra- or inter-agency collaborations;

3.02 (B) (2) Employing competent personnel at a staffing level appropriate and sufficient to carry out all authorizing responsibilities in accordance with national standards, and commensurate with the scale of the charter school portfolio;

3.02 (B) (3) Providing for regular professional development for the agency's leadership and staff to achieve and maintain high standards of professional authorizing practice and enable continual agency improvement; and

3.02 (B) (4) Reviewing conflict of interest policies, excessive executive compensation requirements, and compliance therewith as part of its oversight and contract renewal process.

3.02 (C) The Charter School Authorizer demonstrates exemplary financial practices by doing the following:

3.02 (C) (1) Determining the financial needs of the authorizing office and devoting sufficient financial resources to fulfill its authorizing responsibilities in accordance with national standards and commensurate with the scale of the charter school portfolio;

3.02 (C) (2) Structuring its funding in a manner that avoids conflicts of interest, inducements, incentives, or disincentives that might compromise its judgment in charter approval and accountability decision making;

3.02 (C) (3) Deploying funds effectively and efficiently with the public's interests in mind; and

3.02 (Ce) (4) Requiring each Charter School to conduct an annual financial audit by an independent auditor to be selected by the Charter School.

3.03 Application Process and Decision Making. The Charter School Authorizer implements a comprehensive application process that includes clear application questions and guidance; follows fair, transparent procedures and rigorous criteria; and grants charters only to applicants who demonstrate a strong capacity to establish and operate a quality charter school.

3.03 (A) The Charter School Authorizer demonstrates exemplary practices in matters related to proposal information, questions, and guidance by doing the following:

3.03 (A) (1) Issuing a charter application information packet or request for proposals (RFP) that: states any chartering priorities the authorizer may have established; articulates comprehensive application questions to elicit the information needed for rigorous evaluation of applicants' plans and capacities; and provides clear guidance and requirements regarding application content and format, while explaining evaluation criteria;

3.03 (A) (2) Welcoming proposals from first-time charter applicants as well as existing school operators/replicators, while appropriately distinguishing between the two kinds of developers in proposal requirements and evaluation criteria;

3.03 (A) (3) Encouraging expansion and replication of charter schools demonstrating success and capacity for growth;

3.03 (A) (4) Being open to considering diverse educational philosophies and approaches; and

3.03 (A) (5) Broadly inviting and soliciting charter applications while publicizing the authorizer's strategic vision and chartering priorities, without

restricting or refusing to review applications that propose to fulfill other goals (advanced standard).

3.03 (B) The Charter School Authorizer employs fair, transparent, quality-focused procedures in the following areas:

3.03 (B) (1) Implementing a charter application process that is open, well-publicized, and transparent, and is organized around clear, realistic time lines;

3.03 (B) (2) Allowing sufficient time for each stage of the application and school pre-opening process to be carried out with quality and integrity;

3.03 (B) (3) Explaining how each stage of the application process is conducted and evaluated;

3.03 (B) (4) Communicating chartering opportunities, processes, approval criteria, and decisions clearly to the public; and

3.03 (B) (5) Informing applicants of their rights and responsibilities and promptly notifying applicants of approval or denial, while explaining the factors that determined the decision.

3.03 (C) The Charter School Authorizer uses rigorous approval criteria in the following manner:

3.03 (C) (1) Requiring all applicants to present a clear and compelling mission; a quality educational program; a solid business plan; effective governance and management structures and systems; founding team members demonstrating diverse and necessary capabilities; and clear evidence of the applicant's capacity to execute its plan successfully;

3.03 (C) (2) Establishing distinct requirements and criteria for applicants who are existing school operators or replicators;

3.03 (C) (3) Establishing distinct requirements and criteria for applicants proposing to contract with education service or management providers;

3.03 (C) (4) Establishing distinct requirements and criteria for applicants proposing to operate virtual or online charter schools.

3.03 (D) The Charter School Authorizer uses rigorous decision making in the following manner:

3.03 (D) (1) Granting charters only to applicants that have demonstrated competence and capacity to succeed in all aspects of the school, consistent with the stated approval criteria;

3.03 (D) (2) Rigorously evaluating each application through thorough review of the written proposal, a substantive in-person interview with the applicant group, and other due diligence to examine the applicant's experience and capacity, conducted by knowledgeable and competent evaluators;

3.03 (D) (3) Engaging, for both written application reviews and applicant interviews, highly competent teams of internal and external evaluators

with relevant educational, organizational (governance and management), financial, and legal expertise, as well as a thorough understanding of the essential principles of charter school autonomy and accountability;

3.03 (D) (4) Providing orientation or training to application evaluators (including interviewers) to ensure consistent evaluation standards and practices, observance of essential protocols, and fair treatment of applicants; and

3.03 (D) (5) Ensuring that the application review process and decision making are free of conflicts of interest, and requiring full disclosure of any potential or perceived conflicts of interest between reviewers or decision makers and applicants.

3.04 Performance Contracting. The Charter School Authorizer executes contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms. The contract is an essential document, separate from the charter application, that establishes the legally binding agreement and terms under which the school will operate.

3.04 (A) The Charter School Authorizer demonstrates exemplary practices in matters related to contract term, negotiation, and execution by doing the following:

3.04 (A) (1) Executing a contract with a legally incorporated governing board independent of the Charter School Authorizer;

3.04 (A) (2) Granting charter contracts for a term of five operating years, or longer only with periodic high-stakes reviews every five years;

3.04 (A) (3) Defining material terms of the contract;

3.04 (A) (4) Ensuring mutual understanding and acceptance of the terms of the contract by the school's governing board prior to authorization or charter granting by the authorizing board; and

3.04 (A) (5) Allowing - and requiring contract amendments for - occasional material changes to a school's plans, but does not require amending the contract for non-material modifications.

3.04 (B) The Charter School Authorizer demonstrates exemplary practices related to rights and duties by doing the following:

3.04 (B) (1) Executing charter contracts that clearly:

3.04 (B) (1) (a) State the rights and responsibilities of the Charter School and the Charter School Authorizer;

3.04 (B) (1) (b) State and respect the autonomies to which schools are entitled - based on statute, waiver, or authorizer policy - including those relating to the school's authority over educational programming, staffing, budgeting, and scheduling;

3.04 (B) (1) (c) Define performance standards, criteria and conditions for renewal, intervention, revocation, and non-renewal, while establishing the consequences for meeting or not meeting standards or conditions;

3.04 (B) (1) (d) State the statutory, regulatory, and procedural terms and conditions for the school's operation;

3.04 (B) (1) (e) State reasonable pre-opening requirements or conditions for new schools to ensure that they meet all health, safety, and other legal requirements prior to opening and are prepared to open smoothly;

3.04 (B) (1) (f) State the responsibility and commitment of the school to adhere to essential public education obligations, including admitting and serving all eligible students so long as space is available, and not expelling or counseling out students except as pursuant to a legal discipline policy approved by the authorizer; and

3.04 (B) (1) (g) State the responsibilities of the school and the authorizer in the event of school closure; and

3.04 (B) (2) Ensuring that any fee-based services provided by the authorizer are set forth in a services agreement separate from the charter contract; and ensures that purchasing such services is explicitly not a condition of charter approval, continuation, or renewal.

3.04 (C) The Charter School Authorizer demonstrates exemplary practices in matters related to performance framework and standards by executing charter contracts that clearly:

3.04 (C) (1) Establish the performance framework under which schools will be evaluated, using objective and verifiable measures of student achievement as the primary measure of school quality;

3.04 (C) (2) Define clear, measurable, and attainable academic, financial, and operational performance standards and targets that the school must meet as a condition of renewal, including, but not limited to, state and federal measures;

3.04 (C) (3) Define the sources of data that will form the evidence base for ongoing and renewal evaluation, including state-mandated and other standardized assessments, internal assessments, qualitative reviews, and performance comparisons with other public schools in the district and state; and

3.04 (C) (4) Continuously reflect upon its practices and pursue innovative and promising approaches to authorizing.

3.04 (D) The Charter School Authorizer, if it contracts with education services or management, demonstrates exemplary practices in the following manner:

3.04 (D) (1) For any school contracting with a third-party provider for education design and operation or management, including additional contractual provisions that ensure rigorous, independent contract oversight by the charter governing board and the school's financial independence from the external provider;

3.04 (D) (2) Reviewing the proposed third-party contract as a condition of charter approval to ensure that it is consistent with applicable law, authorizer policy, and the public interest;

3.04 (D) (3) Otherwise ensuring that the oversight of the school's contract complies with the standards outlined in section 3.01 of these rules.

3.05 Ongoing Oversight and Evaluation. The Charter School Authorizer conducts contract oversight that competently evaluates performance and monitors compliance; ensures schools' legally entitled autonomy; protects student rights; informs intervention, revocation, and renewal decisions; and provides annual public reports on school performance.

3.05 (A) The Charter School Authorizer demonstrates exemplary practices related to performance evaluation and compliance monitoring by doing the following:

3.05 (A) (1) Implementing a comprehensive performance accountability and compliance monitoring system that is defined by the charter contract and provides the information necessary to make rigorous and standards-based renewal, revocation, and intervention decisions;

3.05 (A) (2) Defining and communicating to schools the process, methods, and timing of gathering and reporting school performance and compliance data;

3.05 (A) (3) Implementing an accountability system that effectively streamlines federal, state, and local performance expectations and compliance requirements while protecting schools' legally entitled autonomy and minimizing schools' administrative and reporting burdens;

3.05 (A) (4) Visiting each school as appropriate and necessary for collecting data that cannot be obtained otherwise and in accordance with the contract, while ensuring that the frequency, purposes, and methods of such visits respect school autonomy and avoid operational interference;

3.05 (A) (5) Evaluating each school annually on its performance and progress toward meeting the standards and targets stated in the charter contract, including essential compliance requirements, and clearly communicates evaluation results to the school's governing board and leadership;

3.05 (A) (6) Communicating regularly with schools as needed, including both the school leader and governing board, and provides timely notice of contract violations or performance deficiencies;

3.05 (A) (7) Providing an annual written report to each school, summarizing its performance and compliance to date and identifying areas of strength and areas needing improvement; and

3.05 (A) (8) Articulating and enforcing stated consequences for failing to meet performance expectations or compliance requirements.

3.05 (B) The Charter School Authorizer demonstrates respects school autonomy by doing the following:

3.05 (B) (1) Respecting the school's authority over its day-to-day operations;

3.05 (B) (2) Collecting information from the school in a manner that minimizes administrative burdens on the school, while ensuring that performance and compliance information is collected with sufficient detail and timeliness to protect student and public interests; and

3.05 (B) (3) Periodically reviewing compliance requirements and evaluating the potential to increase school autonomy based on flexibility in the law, streamlining requirements, demonstrated school performance, or other considerations.

3.05 (C) The Charter School Authorizer protects student rights by doing the following:

3.05 (C) (1) Ensuring that schools admit students through a random selection process that is open to all students, publicly verifiable, and does not establish undue barriers to application (such as mandatory information meetings, mandated volunteer service, or parent contracts) that have the effect of excluding students based on socioeconomic, family, or language background, prior academic performance, special education status, or parental involvement;

3.05 (C) (2) Ensuring that schools provide access and services to students with disabilities as required by federal and state law;

3.05 (C) (3) Ensuring that schools provide access to and appropriately serve other special populations of students, including English learners, homeless students, and gifted students, as required by federal and state law; and

3.05 (C) (4) Ensuring that schools' student discipline policies and actions are legal and fair, and that no student is expelled or counseled out of a school outside of that process.

3.05 (D) The Charter School Authorizer demonstrates exemplary practices related to intervention by doing the following:

3.05 (D) (1) Establishing and making known to schools at the outset an intervention policy stating the general conditions that may trigger intervention and the types of actions and consequences that may ensue;

3.05 (D) (2) Giving schools clear, adequate, evidence-based, and timely notice of contract violations or performance deficiencies;

3.05 (D) (3) Allowing schools reasonable time and opportunity for remediation in non-emergency situations; and

3.05 (D) (4) Where intervention is needed, engaging in intervention strategies that clearly preserve school autonomy and responsibility (identifying what the school must remedy without prescribing solutions).

3.05 (E) The Charter School Authorizer produces an annual public report that provides clear, accurate performance data for the charter schools it oversees, reporting on individual school and overall portfolio performance according to the framework set forth in the charter contract.

3.06 Revocation and Renewal Decision Making. The Charter School Authorizer designs and implements a transparent and rigorous process that uses comprehensive academic,

financial, and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

3.06 (A) The Charter School Authorizer revokes a charter during the charter term if there is clear evidence of extreme underperformance or violation of law or the public trust that imperils students or public funds.

3.06 (B) In addition to the required standards outlined in § 22-30.50-110, C.R.S., the Charter School Authorizer ensures that renewal decisions are based on merit and inclusive evidence by doing the following:

3.06 (B) (1) Basing the renewal process and renewal decisions on thorough analyses of a comprehensive body of objective evidence defined by the performance framework in the charter contract, and ensuring that improved academic achievement is the most important factor to consider when determining whether to revoke or not renew a charter;

3.06 (B) (2) Granting renewal only to schools that have achieved the standards and targets stated in the charter contract, are organizationally and fiscally viable, and have been faithful to the terms of the contract and applicable law; and

3.06 (B) (32) Not making renewal decisions, including granting probationary or short-term renewals, on the basis of political or community pressure or solely on promises of future improvement.

3.06 (C) The Charter School Authorizer demonstrates exemplary practices related to its cumulative report and renewal application by doing the following:

3.06 (C) (1) Providing to each school, in advance of the renewal decision, a cumulative performance report that summarizes the school's performance record over the charter term and states the authorizer's summative findings concerning the school's performance and its prospects for renewal; and

3.06 (C) (2) Requiring any school seeking renewal to apply for it through a renewal application, which provides the school a meaningful opportunity and reasonable time to respond to the cumulative report; correct the record, if needed; and present additional evidence regarding its performance.

3.06 (D) The Charter School Authorizer uses a fair and transparent process by doing the following:

3.06 (D) (1) Clearly communicating to schools the criteria for charter revocation, renewal, and non-renewal decisions, consistent with the charter contract;

3.06 (D) (2) Promptly notifying each school of its renewal (or, if applicable, revocation) decision, including written explanation of the reasons for the decision;

3.06 (D) (3) Promptly communicating renewal or revocation decisions to the school community and public within a time frame that allows parents and students to exercise choices for the coming school year;

3.06 (D) (4) Explaining in writing any available rights of legal or administrative appeal through which a school may challenge the authorizer's decision; and

3.06 (D) (5) Regularly updating and publishing the process for renewal decision making, including guidance regarding required content and format for renewal applications.

3.06 (E) In the event of a school closure, the Charter School Authorizer oversees and works with the school governing board and leadership in carrying out a detailed closure protocol that ensures timely notification to parents; orderly transition of students and student records to new schools; and disposition of school funds, property, and assets in accordance with law.

Editor's Notes

History

Entire rule eff. 03/01/2012.

Notice of Proposed Rulemaking

Tracking number

2021-00760

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-1

Rule title

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website:
https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER P-1 - PARKS AND OUTDOOR RECREATION LANDS - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

Comment deadlines: Written comments will be accepted at any time. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

> **December 29, 2021,** for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 30, 2021.**
>
> Comments received by the Division between noon on **December 29, 2021** and noon on **January 7, 2022,** will be provided to the Commission two business days before the meeting. Comments received after noon on **January 7, 2022** will be held and shared with the Commission as part of the subsequent meeting mailing.

More information on submitting public comments is available at: https://cpw.state.co.us/aboutus/Pages/Submit-Public-Comments.aspx.

The following regulatory subjects and issues shall be considered pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-105, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

**Please reference the Commission agenda, to be posted on or after January 3, 2022, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx.*

PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
- Amending the maximum allowable let-off percentage for handheld bows.
- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
- Adding 2nd and 3rd rifle season doe hunt codes DF054O2R and DF054O3R.
- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
- Adding antlered moose hunt codes for Game Management Units 4 and 5.
- Adding a cow moose hunt code for Game Management Unit 55.

Sheep
- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
- Modifying the sheep Game Management Unit S54 hunt codes by shifting archery season to be a later and changing the rifle sub-unit boundary to match the West Elk Wilderness boundary.
- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Except for the day and time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission's schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection online at https://cpw.state.co.us/aboutus/pages/commission.aspx and copies can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing Krista Heiner at krista.heiner@state.co.us at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally, if time permits, at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be e-mailed to **dnr_cpwcommission@state.co.us**.

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda can be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **January 3, 2022**.

Notice of Proposed Rulemaking

Tracking number

2021-00762

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-4

Rule title

CHAPTER P-4 - SNOWMOBILE REGULATIONS

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website:
https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER P-4 - SNOWMOBILE REGULATIONS - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

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FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

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Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

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- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

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- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
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- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
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- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

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- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
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- Limiting archery elk licenses in Game Management Units 80 and 81.
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- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

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- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

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- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
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- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
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- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

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Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda can be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **January 3, 2022**.

Notice of Proposed Rulemaking

Tracking number

2021-00763

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-7

Rule title

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website:
https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

Comment deadlines: Written comments will be accepted at any time. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

> **December 29, 2021,** for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 30, 2021.**
>
> Comments received by the Division between noon on **December 29, 2021** and noon on **January 7, 2022,** will be provided to the Commission two business days before the meeting. Comments received after noon on **January 7, 2022** will be held and shared with the Commission as part of the subsequent meeting mailing.

More information on submitting public comments is available at: https://cpw.state.co.us/aboutus/Pages/Submit-Public-Comments.aspx.

The following regulatory subjects and issues shall be considered pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-105, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

**Please reference the Commission agenda, to be posted on or after January 3, 2022, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx.*

PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
- Amending the maximum allowable let-off percentage for handheld bows.
- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
- Adding 2nd and 3rd rifle season doe hunt codes DF054O2R and DF054O3R.
- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
- Adding antlered moose hunt codes for Game Management Units 4 and 5.
- Adding a cow moose hunt code for Game Management Unit 55.

Sheep
- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
- Modifying the sheep Game Management Unit S54 hunt codes by shifting archery season to be a later and changing the rifle sub-unit boundary to match the West Elk Wilderness boundary.
- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Except for the day and time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission's schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection online at https://cpw.state.co.us/aboutus/pages/commission.aspx and copies can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing Krista Heiner at krista.heiner@state.co.us at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally, if time permits, at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be e-mailed to **dnr_cpwcommission@state.co.us**.

Use of Consent Agenda:
For more information on the Parks and Wildlife Commission's use of the consent agenda, please see its Operations Policy at https://cpw.state.co.us/Documents/Commission/policy_procedures/Policy-Commission_Operations_and_Communications_Commission_FINAL_011019.pdf.

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Notice of Proposed Rulemaking

Tracking number

2021-00761

Department

400 - Department of Natural Resources

Agency

405 - Colorado Parks and Wildlife (405 Series, Parks)

CCR number

2 CCR 405-8

Rule title

CHAPTER P-8 - AQUATIC NUISANCE SPECIES (ANS)

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website:
https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER P-8 - AQUATIC NUISANCE SPECIES (ANS) - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

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FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

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PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

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- Extending the boundary of mountain goat Game Management Unit G12.

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Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
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- Amending the maximum allowable let-off percentage for handheld bows.
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- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

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- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
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- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
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- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

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- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

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Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

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Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

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WILDLIFE REGULATIONS

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Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

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Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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Notice of Proposed Rulemaking

Tracking number

2021-00764

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-0

Rule title

CHAPTER W-0 - GENERAL PROVISIONS

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER W-0 - GENERAL PROVISIONS - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

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FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

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PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
- Amending the maximum allowable let-off percentage for handheld bows.
- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
- Adding 2nd and 3rd rifle season doe hunt codes DF054O2R and DF054O3R.
- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
- Adding antlered moose hunt codes for Game Management Units 4 and 5.
- Adding a cow moose hunt code for Game Management Unit 55.

Sheep
- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
- Modifying the sheep Game Management Unit S54 hunt codes by shifting archery season to be a later and changing the rifle sub-unit boundary to match the West Elk Wilderness boundary.
- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Except for the day and time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission's schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection online at https://cpw.state.co.us/aboutus/pages/commission.aspx and copies can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing Krista Heiner at krista.heiner@state.co.us at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally, if time permits, at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be e-mailed to **dnr_cpwcommission@state.co.us**.

Use of Consent Agenda:
For more information on the Parks and Wildlife Commission's use of the consent agenda, please see its Operations Policy at https://cpw.state.co.us/Documents/Commission/policy_procedures/Policy-Commission_Operations_and_Communications_Commission_FINAL_011019.pdf.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda can be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **January 3, 2022**.

Notice of Proposed Rulemaking

Tracking number

2021-00765

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-2

Rule title

CHAPTER W-2 - BIG GAME

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER W-2 - BIG GAME - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

Comment deadlines: Written comments will be accepted at any time. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

> **December 29, 2021,** for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 30, 2021.**
>
> Comments received by the Division between noon on **December 29, 2021** and noon on **January 7, 2022,** will be provided to the Commission two business days before the meeting. Comments received after noon on **January 7, 2022** will be held and shared with the Commission as part of the subsequent meeting mailing.

More information on submitting public comments is available at: https://cpw.state.co.us/aboutus/Pages/Submit-Public-Comments.aspx.

The following regulatory subjects and issues shall be considered pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-105, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

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PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
- Amending the maximum allowable let-off percentage for handheld bows.
- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
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- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
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Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
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Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

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Notice of Proposed Rulemaking

Tracking number

2021-00767

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-3

Rule title

CHAPTER W-3 - FURBEARERS AND SMALL GAME, EXCEPT MIGRATORY BIRDS

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website:
https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER W-3 - FURBEARERS AND SMALL GAME, EXCEPT MIGRATORY BIRDS - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
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January 12-13, 2022

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FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

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PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
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- Extending the boundary of mountain goat Game Management Unit G12.

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Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
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- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
- Adding 2nd and 3rd rifle season doe hunt codes DF054O2R and DF054O3R.
- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
- Adding antlered moose hunt codes for Game Management Units 4 and 5.
- Adding a cow moose hunt code for Game Management Unit 55.

Sheep
- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
- Modifying the sheep Game Management Unit S54 hunt codes by shifting archery season to be a later and changing the rifle sub-unit boundary to match the West Elk Wilderness boundary.
- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

Except for the day and time indicated for when the meeting is scheduled to begin, the order indicated for each agenda item is approximate and subject to change when necessary to accommodate the Commission's schedule.

Viewing of Proposed Rules: copies of the proposed rules (together with a proposed statement of basis and purpose and specific statutory authority), will be available for inspection online at https://cpw.state.co.us/aboutus/pages/commission.aspx and copies can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing Krista Heiner at krista.heiner@state.co.us at least five (5) days prior to the date of hearing. Such copies, however, are only proposals to be submitted to the Commission by the Division of Parks and Wildlife.

Modification of Proposed Rules prior to adoption: subject to the provisions of Section 24-4-103, C.R.S., modification of these proposals may be made by the Division of Parks and Wildlife or the Commission before the Commission promulgates final rules and regulations on the above topics.

Opportunity to submit alternate proposals and provide comment: the Commission will afford all interested persons an opportunity to submit alternate proposals, written data, views or arguments and to present them orally, if time permits, at the meeting unless it deems such oral presentation unnecessary. Written alternate proposals, data, views or arguments and other written statements should be e-mailed to **dnr_cpwcommission@state.co.us**.

Use of Consent Agenda:
For more information on the Parks and Wildlife Commission's use of the consent agenda, please see its Operations Policy at https://cpw.state.co.us/Documents/Commission/policy_procedures/Policy-Commission_Operations_and_Communications_Commission_FINAL_011019.pdf.

OTHER AGENDA ITEMS: The Parks and Wildlife Commission may consider and make policy, program implementation, and other non-regulatory decisions, which may be of public interest at this meeting. A copy of the complete meeting agenda can be viewed on the Division of Parks and Wildlife's internet home page at **http://cpw.state.co.us**, on or after **January 3, 2022**.

Notice of Proposed Rulemaking

Tracking number

2021-00768

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-5

Rule title

CHAPTER W-5 - MIGRATORY BIRDS

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER W-5 - MIGRATORY BIRDS - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

Comment deadlines: Written comments will be accepted at any time. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

> **December 29, 2021,** for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 30, 2021.**
>
> Comments received by the Division between noon on **December 29, 2021** and noon on **January 7, 2022,** will be provided to the Commission two business days before the meeting. Comments received after noon on **January 7, 2022** will be held and shared with the Commission as part of the subsequent meeting mailing.

More information on submitting public comments is available at: https://cpw.state.co.us/aboutus/Pages/Submit-Public-Comments.aspx.

The following regulatory subjects and issues shall be considered pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-105, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

**Please reference the Commission agenda, to be posted on or after January 3, 2022, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx.*

PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
- Amending the maximum allowable let-off percentage for handheld bows.
- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
- Adding 2nd and 3rd rifle season doe hunt codes DF054O2R and DF054O3R.
- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
- Adding antlered moose hunt codes for Game Management Units 4 and 5.
- Adding a cow moose hunt code for Game Management Unit 55.

Sheep
- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
- Modifying the sheep Game Management Unit S54 hunt codes by shifting archery season to be a later and changing the rifle sub-unit boundary to match the West Elk Wilderness boundary.
- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

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Notice of Proposed Rulemaking

Tracking number

2021-00769

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-9

Rule title

CHAPTER W-9 - WILDLIFE PROPERTIES

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER W-9 - WILDLIFE PROPERTIES - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

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The following regulatory subjects and issues shall be considered pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-105, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

**Please reference the Commission agenda, to be posted on or after January 3, 2022, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx.*

PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
- Amending the maximum allowable let-off percentage for handheld bows.
- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
- Adding 2nd and 3rd rifle season doe hunt codes DF054O2R and DF054O3R.
- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
- Adding antlered moose hunt codes for Game Management Units 4 and 5.
- Adding a cow moose hunt code for Game Management Unit 55.

Sheep
- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
- Modifying the sheep Game Management Unit S54 hunt codes by shifting archery season to be a later and changing the rifle sub-unit boundary to match the West Elk Wilderness boundary.
- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

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Notice of Proposed Rulemaking

Tracking number

2021-00766

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-10

Rule title

CHAPTER W-10 - NONGAME WILDLIFE

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER W-10 - NONGAME WILDLIFE - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
PARKS AND WILDLIFE COMMISSION MEETING
January 12-13, 2022

In accordance with the State Administrative Procedure Act, section 24-4-103, C.R.S., the Parks and Wildlife Commission gives notice that regulations will be considered for adoption at its next meeting on **January 12-13, 2022. The Parks and Wildlife Commission meeting will be held virtually in accordance with guidance from the Governor's Office of Operations** *Addressing Boards and Commissions Vaccination Policy.* **If circumstances change, there may also be in person public comment in Denver, CO. For up-to-date information on the meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx. The Parks and Wildlife Commission will make every attempt to conduct the January 12-13, 2022 meeting on Zoom or a similar platform in order to allow virtual public comment. However, the public is encouraged to comment before the meeting by submitting written comments to the Commission's email address at: dnr_cpwcommission@state.co.us.**

Comment deadlines: Written comments will be accepted at any time. However, to ensure sufficient time for consideration prior to the meeting, **comments should be provided to the Division of Parks and Wildlife by noon on the following date:**

> **December 29, 2021,** for mailing by the Division of Parks and Wildlife to the Parks and Wildlife Commission on **December 30, 2021.**
>
> Comments received by the Division between noon on **December 29, 2021** and noon on **January 7, 2022,** will be provided to the Commission two business days before the meeting. Comments received after noon on **January 7, 2022** will be held and shared with the Commission as part of the subsequent meeting mailing.

More information on submitting public comments is available at: https://cpw.state.co.us/aboutus/Pages/Submit-Public-Comments.aspx.

The following regulatory subjects and issues shall be considered pursuant to the Commission's authority in sections 33-9-101 to 111, C.R.S. ("Administration of Parks and Wildlife"), in sections 33-1-101 to 33-6-209, C.R.S. (the "Wildlife Act"), and especially sections 33-1-104, 33-1-105, 33-1-106, 33-1-107, 33-1-108, 33-1-121, 33-2-104, 33-2-105, 33-2-106, 33-3-104, 33-4-101, 33-4-102 and 33-5.5-102, 33-6-107, 33-6-109, 33-6-112, 33-6-113, 33-6-114, 33-6-114.5, 33-6-117, 33-6-119, 33-6-121, 33-6-124, 33-6-125, 33-6-127, 33-6-128, 33-6-130, 33-6-205, 33-6-206, 33-6-207, 33-6-208, 33-6-209, C.R.S., and in sections 33-10-101 to 33-33-113, C.R.S. (the "Parks Act"), and especially sections 33-10-106, 33-10-107, 33-10.5-107, 33-11-109, 33-12-101, 33-12-103, 33-12-103.5, 33-12-106, 33-12.5-103, 33-13-103, 33-13-104, 33-13-106, 33-13-109, 33-13-110, 33-13-111, 33-14-107, 33-14.5-107, 33-32-103 and 33-33-105. C.R.S.

FINAL REGULATORY ADOPTION – **January 12-13, 2022,** beginning **at 8:00 a.m.***

EFFECTIVE DATE OF REGULATIONS approved during the January 2022 Parks and Wildlife Commission meeting: March 2, 2022, unless otherwise noted.

FINAL REGULATIONS

**Please reference the Commission agenda, to be posted on or after January 3, 2022, to ensure when each regulatory item will be addressed by the Commission. The agenda will be posted at http://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx.*

PARK REGULATIONS

Chapter P-1 - "Parks and Outdoor Recreation Lands" - 2 CCR 405-1

Open for consideration of regulations, including, but not limited to:

- Requiring reservations for big game and small game hunting in the Jefferson County portion of Golden Gate Canyon State Park where hunting is permitted.
- Permitting kiteboarding through special activity permits at Navajo State Park.

Chapter P-8 – "Aquatic Nuisance Species" 2 CCR 405-8

Open for consideration of regulations, including, but not limited to:

- Amending the definition of vessel or other floating device to ensure consistency with the statutory definition of vessel.

WILDLIFE REGULATIONS

Chapter W-0 - "General Provisions" 2 CCR 406-0

Open for annual review of the entire chapter, including but not limited to, Game Management Unit boundary modifications, regulations relating to fish management, health, importation, prohibited species, and other annual changes. Specific changes include, but are not limited to:

- Decreasing the fee charged for exchanged licenses.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Extending the boundary of mountain goat Game Management Unit G12.

Chapter W-2 - "Big Game" 2 CCR 406-2 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) necessary to accommodate changes to or ensure consistency with Chapter W-2

Open for annual review of the entire chapter, including, but not limited to:

Multiple Species

- Annual changes to season dates, limited license areas, quotas and manner of take provisions for bighorn sheep and mountain goat (statewide).
- Annual changes to season dates, limited license areas, and manner of take provisions for deer, elk, pronghorn antelope, moose and bear (statewide).
- Amending the maximum allowable let-off percentage for handheld bows.
- Amending season timing and/or fluorescent orange/pink requirements during the overlapping archery and muzzleloader seasons.
- Excluding five preference point or more licenses and public Ranching for Wildlife licenses returned or not paid for in the Primary Draw from the secondary draw.
- Clarifying that youth only hunt codes also fall into the youth preference draw and the same hunt code choice stipulations for youth preference apply.
- Modifying game management unit boundaries for units 22, 23, 211, 11, 12, 13, 3, 301, 4, 32 and 33.
- Clarifying regulations related to National Wildlife Refuge hunting permits.

- Modifying regulations related to the process and application deadline for the hunting access permit drawing on the James M. John SWA.

Deer
- Creating new deer hunt codes for Game Management Units 122, 125, 126, 127, 129, 130, 132, 137, 138, 139, 143, 144, 145, and 146.
- Adding 2nd and 3rd rifle season doe hunt codes DF054O2R and DF054O3R.
- Adding Private Land Only doe hunt codes for Game Management Unit 72.

Elk
- Limiting archery elk licenses in Game Management Units 80 and 81.
- Removing over the counter antlerless hunt codes for Game Management Units 14 and 214.
- Extending the E-3 antlerless elk Private Land Only season dates for hunt code EF006P5R.
- Eliminating hunt codes EF073P5R, EF077P5R, and EM74104R.

Pronghorn
- Modifying the hunt code structure for muzzleloader season in pronghorn DAU PH30.

Bear
- Creating an over the counter private land only rifle bear season for units 4, 5, 12, 13, 14, 23, 24, 33, 214, and 441 from October 1 through the end of the concurrent 4th rifle season.

Moose
- Removing Game Management Units 51, 59, 511, and 581 from current hunt codes MM050 and MF050 and creating new moose hunt codes including GMUs 51, 59, 511, and 581.
- Adding antlered moose hunt codes for Game Management Units 4 and 5.
- Adding a cow moose hunt code for Game Management Unit 55.

Sheep
- Replacing the individual ram bighorn sheep hunt code for S-19 with an either sex hunt code.
- Modifying the sheep Game Management Unit S54 hunt codes by shifting archery season to be a later and changing the rifle sub-unit boundary to match the West Elk Wilderness boundary.
- Creating two ram sheep seasons in sheep Game Management Unit S16.

Section #1000.A of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1000.A

Open for consideration of new and amended regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.

Section #1001 of Chapter W-10 - "Nongame Wildlife" 2 CCR 406-10 and those related provisions of Chapter W-10 ("Nongame Wildlife" 2 CCR 406-10) necessary to accommodate changes to or ensure consistency with Section #1001.

Open for consideration of new and amended regulations making it unlawful for any person to place any olfactory attractant or use any lure with the intent to lure any threatened or endangered species unless permitted by the division.

ISSUES IDENTIFICATION

PARKS REGULATIONS

Chapter P-4 - "Snowmobile Regulations" 2 CCR 405-4

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to registration and required safety equipment of snowmobiles.

Chapter P-7 - "Passes, Permits and Registrations" - 2 CCR 405-7

Open for consideration of regulations including, but not limited to, the following:

- Setting the price for the Keep Colorado Wild pass pursuant to implementation of Senate Bill 21-249.

WILDLIFE REGULATIONS

Chapter W-3 - "Furbearers and Small Game, Except Migratory Birds" 2 CCR 406-3

Open for consideration of annual changes to game bird seasons, excluding turkey, and other small game seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-5 - "Small Game - Migratory Game Birds" - 2 CCR 406-5 and those related provisions of Chapter W-9 ("Wildlife Properties" 2 CCR 406-9) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-5

Open for consideration of annual changes to waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.

Chapter W-9 - "Wildlife Properties" 2 CCR 406-9 and those related provisions of Chapter W-0 ("General Provisions" 2 CCR 406-0) and Chapter P-1 ("Parks and Outdoor Recreation Lands" 2 CCR 405-1) necessary to accommodate changes to or ensure consistency with Chapter W-9

Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

Open for annual review of the entire chapter including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife.

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Notice of Proposed Rulemaking

Tracking number

2021-00770

Department

400 - Department of Natural Resources

Agency

406 - Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-11

Rule title

CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE

Rulemaking Hearing

Date

01/12/2022

Time

08:00 AM

Location

Virtual Meeting, please refer to the Parks and Wildlife Commission website:
https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx

Subjects and issues involved

CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE - SEE ATTACHED

Statutory authority

SEE ATTACHED

Contact information

Name

Krista Heiner

Title

Regulations Manager

Telephone

303-291-7625

Email

krista.heiner@state.co.us

November 30, 2021

RULE-MAKING NOTICE
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January 12-13, 2022

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Open for annual review of the entire chapter including, but not limited to, generally applicable and property-specific requirements for, or restrictions on use of wildlife properties controlled by the Division of Parks and Wildlife, including State Trust Lands leased by the Division. This includes regulations related to the requirements to access State Wildlife Areas and State Trust Lands leased by the Division.

Chapter W-11 - "Wildlife Parks and Unregulated Wildlife" 2 CCR 406-11

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Notice of Proposed Rulemaking

Tracking number

2021-00773

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

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

Rulemaking Hearing

Date

01/04/2022

Time

11:00 AM

Location

Webinar or 1560 Broadway, STE 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to provide carriers offering the Colorado Option standardized bronze, silver, and gold health benefit plans with the requirements to offer a culturally responsive network of providers and the action plan elements in the event that the network does not meet these standards as required by 10-16-1304(2), C.R.S.

Statutory authority

§§ 10-1-109(1), 10-16-109, 10-16-1304(2)(c), and 10-16-1312, C.R.S.

Contact information

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Title

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed New Regulation 4-2-80

CONCERNING NETWORK ADEQUACY STANDARDS AND REPORTING REQUIREMENTS FOR COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), 10-16-109, 10-16-1304(2)(c), and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to provide carriers offering the Colorado Option standardized bronze, silver, and gold health benefit plans with the requirements to offer a culturally responsive network of providers and the action plan elements in the event that the network does not meet these standards as required by 10-16-1304(2), C.R.S.

Section 3 Applicability

In addition to Colorado Regulations 4-2-53, 4-2-54, 4-2-55, and 4-2-56, the following requirements apply to all carriers offering individual and small group Colorado Option standardized plans required by § 10-16-1304. C.R.S.

Section 4 Definitions

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

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

C. “Essential community provider” or “ECP” means, for the purposes of this regulation, a provider that serves predominantly low-income, medically underserved individuals, including health care providers defined in § 25.5-5-403(2), C.R.S. and at 45 C.F.R. § 156.235(c).

D. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

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

F. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.

G. “Standardized plan” shall have the same meaning as found at §10-16-1303(14), C.R.S.

Section 5 Network Adequacy Requirements for the Colorado Option Standardized Plans

A. Demographic Data Collection

1. Network Provider Data:

a. Carriers shall develop written materials for network providers and their front office staff requesting the voluntary reporting of demographic data to the carrier explaining the intended uses of the data and how such data will be shared. In their written materials, carriers shall explain that the data will be used to improve racial health equity, reduce health disparities for covered persons who experience higher rates of health disparities and inequities, and to provide aggregate information about the diversity of the providers in the carrier’s network.

Carriers shall include any voluntarily reported network provider demographic data in the network access plan in the aggregate only. Personally identifiable information shall be kept confidential and will not be disclosed without the written consent of the reporting provider or office staff member.

b. Carriers shall collect the following demographic data voluntarily submitted by network providers for the carriers’ Colorado Option standardized plans:

(1) Race and ethnicity data, collected using the racial/ethnic categories included in the U.S. Office of Budget and Management Revised Standards for the Classification of Federal Data on Race and Ethnicity;

(2) Sexual orientation and gender identity data, collected using the following questions:

(a) How do you identify your sexual orientation? (Select all that apply):

- Straight
- Lesbian
- Gay
- Bisexual
- Pansexual
- Queer
- Asexual
- A sexual orientation not listed here (specify): _____
- Prefer not to answer

(b) How do you describe your current gender identity? (Select all that apply):

- Female
- Male
- Transgender Female/Transgender Women
- Transgender Male/Transgender Man
- Non-Binary
- Two-spirit
- Intersex
- Gender Queer/Gender Fluid
- A gender identity not listed here (specify): _____
- Prefer not to answer

(c) What was your sex assigned at birth?

- Female
- Male
- Not designated on birth certificate
- Prefer not to answer

(3) Ability status data.

(a) Do you have a disability?

- Yes
- No
- Prefer not to answer

c. Carriers may request the data directly from network providers or use such other data sources as may be available. In collecting such data from network providers, carriers shall minimize the burden on network providers by including the request with its request for data for the provider directory.

2. Covered Person Data:

a. Carriers shall develop educational materials about the reasons for collecting covered persons' demographic data and shall post the educational materials on its website in a manner that is accessible to the public. The educational materials must clearly indicate that demographic data collected will be confidential, de-identified, and used to improve racial health equity, reduce health disparities for covered persons who experience higher rates of health disparities and inequities and provide aggregate information regarding the demographic diversity of the insurer's covered population.

b. Carriers shall collect the following demographic data from covered persons who voluntarily choose to provide such data:

(1) Race and ethnicity data, collected using the racial/ethnic categories included in the U.S. Office of Budget and Management Revised Standards for the Classification of Federal Data on Race and Ethnicity;

(2) Sexual orientation and gender identity data, collected using the following questions:

(a) How do you identify your sexual orientation? (Select all that apply):

- Straight
- Lesbian
- Gay
- Bisexual
- Pansexual
- Queer
- Asexual
- A sexual orientation not listed here (specify): _____
- Prefer not to answer

(b) How do you describe your current gender identity? (Select all that apply):

- Female
- Male
- Transgender Female/Transgender Women
- Transgender Male/Transgender Man
- Non-Binary
- Two-spirit
- Intersex
- Gender Queer/Gender Fluid
- A gender identity not listed here (specify): _____
- Prefer not to answer

(c) What was your sex assigned at birth?

- Female
- Male
- Not designated on birth certificate
- Prefer not to answer

(3) Ability status data

(a) Do you have a disability?

- Yes
- No
- Prefer not to answer

B. Inclusion of Certified Nurse Midwives in the Colorado Option Standardized Plan Networks

To address racial health disparities and improve perinatal health care coverage, carriers shall attest that at least one certified nurse midwife is available within the maximum road travel distance of any covered person in the Colorado Option standardized plan network.

	Large Metro	Metro	Micro	Rural	CEAs
Provider Type	Maximum	Maximum	Maximum	Maximum	Maximum

	Distance (miles)	Distance (miles)	Distance (miles)	Distance (miles)	Distance (miles)
Certified Nurse Midwives	5	10	20	30	60

C. Training requirements

1. Carrier Customer Service Representatives

a. Prior to the commencement of plan year 2023 open enrollment and on an annual basis thereafter, carriers' customer service representatives who assist applicants in the enrollment process and covered persons in utilizing their Colorado Option standardized plan benefits must complete at least one anti-bias, cultural competency, or similar training designed to educate carrier customer service representatives about the health care needs of covered persons who experience higher rates of health disparities and inequities.

2. Provider and Provider Front Office Staff

a. Carriers shall create a process for their Colorado Option standardized plan network providers and providers' front office staff to annually report on the anti-bias, cultural competency, or similar training that providers and providers' front office staff have taken in the last year designed to assist covered persons who experience higher rates of health disparities and inequities.

b. Carriers shall collect network provider and front office staff training information using a standard reporting form created by the Division which will include, at a minimum, the duration of the training for network providers and front office staff, any certifications, and a description of the training.

c. Carriers, at a minimum, shall ensure:

(1) At least 50% of providers and their front office staff have undertaken such training no later than January 1, 2023;

(2) At least 75% of providers and their front office staff have undertaken such training no later than January 1, 2024; and

(3) At least 90% of providers and their front office staff have undertaken such training no later than January 1, 2025.

D. Provider Directories

1. In addition to the provider directory requirements in Colorado Regulation 4-2-55, carriers must include in their Colorado Option standardized plan provider directories information regarding:

a. the availability of translation and interpreter services in languages other than English for individuals with limited English proficiency;

b. accessibility services for people with disabilities and the procedures for requesting such services from the carrier;

c. information on how to file a complaint related to the accuracy of the provider directory and/or the provider experience.

2. The provider directories, both printed and online, shall identify the following information about network providers:

a. Providers who are multilingual or employ multilingual front office staff and languages spoken by providers and by front office staff;

b. If the provider offers extended and weekend hours;

c. The accessibility of the provider office and examination rooms for persons with disabilities.

E. Language Access

1. Carriers shall ensure that language assistance services, including American Sign Language (ASL) and other communication services for people who are Deaf, Harding of Hearing, and DeafBlind, are available to covered persons enrolled in a Colorado Option standardized plan and develop a process for notifying covered persons of the availability of these services and how they can be accessed.

a. Carriers must ensure language assistance services are available for covered persons when communicating directly with the carrier (i.e., customer service representatives).

b. Carriers must ensure language assistance services are available for covered persons when communicating with network providers.

c. Carriers may require covered persons to provide timely notice of the need for language assistance for communications with the carrier and/or a network provider. For the purposes of this section, “timely” means in a manner appropriate for the situation in which language assistance is needed. Language assistance services are not timely if delay results in the effective denial of the service, benefit, or right at issue.

d. Language assistance services shall be offered at no cost to covered persons during all points of contact when language assistance is needed and timely notice is given.

2. Carriers shall provide covered persons with written notice of the availability of interpretation and translation services for documents from the carrier in the covered person’s indicated language and available at health care provider offices. Carriers are required to post taglines in at least the top 15 languages spoken by individuals with limited English proficiency indicating the availability of language assistance services, including ASL and other communication services for people who are Deaf, Harding of Hearing, and DeafBlind, free of charge.

Section 6 Essential Community Provider Standards

Carriers must meet one of the following ECP standards:

A. General ECP Standard: Carriers utilizing this standard shall have greater than 50% of the essential community providers in each service area for each of the Colorado Option standardized plan provider networks. Carriers shall demonstrate in their “Essential Community

Provider/Network Adequacy Template" that greater than 50% of available ECPs in each plan's service area participate in each Colorado Option standardized plan network. This standard applies to all carriers except those who qualify for the alternate ECP standard.

B. Alternate ECP Standard. Carriers utilizing this standard shall demonstrate in their "Essential Community Provider/Network Adequacy Template" and justifications, that they have the same number of ECPs as defined in the general ECP standard (calculated as greater than 50 percent (50%) of the ECPs in the carrier's service area), but the ECPs should be located within Health Professional Shortage Areas (HPSAs) or five-digit ZIP codes in which 30 percent (30%) or more of the population falls below 200 percent (200%) of the federal poverty level (FPL). An alternate ECP standard carrier is one that provides a majority of covered professional services through physicians it employs or through a single contracted medical group.

Section 7 Network Access Plan Requirements

In addition to the access plan requirements set forth in Regulation 4-2-54, a carrier offering the Colorado Option Standardized plan shall include a description of the carrier's efforts to construct a diverse and culturally responsive network in its access plan. The following information shall be included:

A. Summary of demographic data collected

1. Carriers shall report any demographic data voluntarily reported by network providers or covered persons in accordance with Subsections 5(A)1 and 5(A)(2) in aggregate only. No identifiable or individual network provider or covered person data should be included in the access plan.

2. Network Provider demographic data:

a. A copy of the information provided to network providers on the relevance of collecting demographic data;

b. The methods used to collect demographic data;

c. The number of providers in the network and the number of network providers who submitted demographic data;

d. A description of any other data sources used to assess network provider demographic data and the completeness of those data sources; and

e. A breakdown of the demographic data, by race and ethnicity, ability, sexual orientation, and gender identity using the categories in Sections 5.A.1(b).

3. Covered Person demographic data:

a. A copy of the information provided to covered persons on the relevance of collecting demographic data; and

b. A summary of the number of covered persons who submitted demographic data and a breakdown by race and ethnicity, disability, and sexual orientation and gender identity using the categories in Section 5.A.2(b).

B. Summary of the anti-bias, cultural competency, or similar training offered

1. Customer service training:

a. The subject matter and duration of the training(s) offered; and

b. The total number and the percentage of customer service representatives who completed the training in the past 12 months.

2. Provider and provider front office staff training:

a. A description of the type of training reported by providers and their front office staff; and

b. The total number and the percentage of network providers and front office staff who completed the training in the past 12 months.

C. A description of the network providers and services that are included in the Colorado Option standardized plan networks, such as community health workers or promotoras, to assist covered persons who experience higher rates of health disparities and inequities.

D. Demonstration by service area that each Colorado Option standardized plan network is no more restrictive than the carrier's narrowest network; and

E. Carriers' evaluation of the efforts to create a culturally responsive network, which includes a description of how the carrier has assessed the network is adequate for the anticipated volume of demand for outpatient visits for perinatal, primary care, and behavioral health care as required in the standardized plan.

Section 8 Action Plan Requirements

If a carrier is unable to build a culturally responsive network for the Colorado Option Standardized plan or if the Division determines, after a review of the carrier's network access plan, that the network does not meet the requirements of Sections 5, 6, and 7 of this regulation, the carrier shall prepare and submit to the Division an action plan. The action plan shall contain the following information:

A. A description of the outreach efforts to providers, including, at a minimum:

1. The types of providers that were contacted;

2. The method(s) by which the outreach was conducted; and

3. The frequency of outreach;

B. The reasons providers did not or were unable to join the network;

C. The reasons the carrier was unable to obtain demographic data from providers and/or plan covered persons;

D. A description of the complaints the carrier has received from covered persons regarding the provider network as a whole, and the approach used to address issues raised in complaints; and

E. For each issue described in the action plan, the carrier shall identify:

1. A set of measurable steps and goals for taking necessary corrective action(s); and

2. The timelines for achieving each step or goal for each corrective action.

F. Upon receipt of a carrier's action plan, if the Division determines the proposed corrective action(s) and/or timelines are insufficient or unreasonable, it will notify carriers of deficiencies. The Division will work with carriers to determine reasonable remediation steps, and carriers must resubmit a revised action plan with deficiencies corrected within 30 days of notification from the Division.

Section 9 Required Carrier Attestations

A. In addition to the attestations required by Regulation 4-2-54, a carrier offering Colorado Option standardized plans shall attest that the Colorado Option standardized plan network:

1. Is not more narrow than the most restrictive network that the carrier offers in the service area; and

2. Meets the requirements of Sections 5, 6 and 7 of this regulation or, if not, that it has made good faith efforts to build such networks and has documented those efforts in its Action Plan as required by Section 8 of this Regulation.

B. Each attestation shall be made on the "Carrier Network Adequacy Summary and Attestation Form" submitted with the network adequacy form filing.

Section 10 Severability

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

Section 11 Incorporated Materials

U.S. Office of Budget and Management Revised Standards for the Classification of Federal Data on Race and Ethnicity as published on the effective date of this regulation and does not include later amendments or editions of the Standards. A copy of the Standards 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 Standards may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A charge for certification or copies may apply. A copy may also be obtained online at https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf.

Section 12 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 13 Effective Date

This regulation shall become effective on March 2, 2022

Section 14 History

Regulation effective March 2, 2022.

Notice of Proposed Rulemaking

Tracking number

2021-00771

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

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

Rulemaking Hearing

Date

01/04/2022

Time

11:00 AM

Location

Webinar or 1560 Broadway, STE 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to establish the requirements for individual and small group health benefit plans to provide coverage for human immunodeficiency virus (HIV) pre-exposure prophylaxis (PrEP) as well as baseline and monitoring services in accordance with Article 16 of Title 10 of the Colorado Revised Statutes, and the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the Affordable Care Act (ACA).

This regulation is being amended to require coverage of baseline and monitoring services.

Statutory authority

§§ 10-1-109(1), 10-16-104(18)(b)(X), and 10-16-109, C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE ACCIDENT AND HEALTH

~~New~~ DRAFT Proposed Amended Regulation 4-2-73

CONCERNING HUMAN IMMUNODEFICIENCY VIRUS PRE-EXPOSURE PROPHYLAXIS PRESCRIPTION DRUGS AND BASELINE AND MONITORING SERVICES

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), 10-16-104(18)(b)(X), and 10-16-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish the requirements for individual and small group health benefit plans to provide coverage for human immunodeficiency virus (HIV) pre-exposure prophylaxis (PrEP) as well as baseline and monitoring services in accordance with Article 16 of Title 10 of the Colorado Revised Statutes, and the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the "Affordable Care Act" (ACA).

Section 3 Applicability

This regulation applies to all carriers marketing and issuing individual and small group health benefit plans subject to the individual and group laws ~~in the State~~ of Colorado on or ~~after~~ after the effective date of this regulation.~~January 1, 2021~~. This regulation does not apply to grandfathered health benefit plans.

Section 4 Definitions

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

B. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.

C. “Human immunodeficiency virus” and “HIV” mean, for the purposes of this regulation, the virus that attacks the immune system that can lead to acquired immunodeficiency syndrome or AIDS if not treated.

D. “Pre-exposure prophylaxis” and “PrEP” mean, for the purposes of this regulation, medication or medications ~~taken on a daily basis~~ intended to prevent HIV infection when an individual is exposed to HIV.

E. “Serodiscordant sex partner” means, for purposes of this regulation, having a sexual relationship with a partner who is living with HIV.

F. “United States Preventive Services Taskforce” and “USPSTF” shall have the same meaning as found at § 10-16-104(18)(c)(IV), C.R.S.

G. “Urgent prior authorization request” shall have the same meaning as found at § 10-16- 124.5(8)(b), C.R.S.

Section 5 Carrier Coverage Requirements

A. Consistent with USPSTF Recommendations, carriers must provide coverage for the federal Food and Drug Administration (FDA)-approved medication prescribed for pre-exposure prophylaxis (PrEP) without copayment or cost-sharing for individuals who, according to their provider or pharmacist pursuant to § 12-280-125.7, C.R.S, are indicated for PrEP. Carriers shall provide such coverage without copayment or cost-sharing for the PrEP medication that is clinically indicated for the individual according to the prescribing provider or pharmacist. Based on Centers for Disease Control and Prevention Guidelines, individuals indicated for PrEP include:

1. Men who have sex with men, are sexually active, and have one of the following characteristics:

   a. Having a serodiscordant sex partner;

   b. Inconsistent use of condoms during receptive or insertive anal sex; or

   c. A sexually transmitted infection (STI) with syphilis, gonorrhea, or chlamydia within the past 6 months.

2. Heterosexually active women and men who have one of the following characteristics:

   a. Having a serodiscordant sex partner;

   b. Inconsistent use of condoms during sex with a partner whose HIV status is unknown and who is at high risk (e.g. a person who injects drugs or a man who has sex with men and women); or

   c. An STI with syphilis or gonorrhea within the past 6 months.

3. Persons who inject drugs and have one of the following characteristics:

   a. Shared use of drug injection equipment; or

   b. Engage in any of the behaviors or have any of the conditions identified in Sections 5.A.1. or 5.A.2.

4. Persons who engage in transactional sex, such as sex for money, drugs, or housing, including commercial sex workers or persons trafficked for sex work.

5. Men who have sex with men and women who engage in any of the behaviors or have any of the conditions identified in Sections 5.A.1. through 5.A.4.

6. Transgender women and men who are sexually active and who engage in any of the behaviors or have any of the conditions identified in Sections 5.A.1. through 5.A.4.

B. Carriers must provide coverage for PrEP baseline and monitoring services, consistent with USPSTF recommendations, without copayment or cost sharing for services obtained from participating providers when HIV PrEP medication is prescribed.

1. Baseline and monitoring services include: HIV testing; Hepatitis B and C testing; creatinine testing and calculated estimated creatinine clearance (eCrCl) or glomerular filtration rate (eGFR); pregnancy testing; sexually transmitted infection screening and counseling; and adherence counseling.

2. Office visits associated with baseline and monitoring services must also be covered without cost sharing, when the service is not billed separately from an office visits, and the primary purpose of the office visit is the delivery of the recommended preventive service.

3. Carriers cannot limit or restrict the frequency of PrEP baseline and monitoring services in a manner inconsistent with the USPSTF PrEP recommendation. Carriers also cannot limit or restrict the number of times an individual may start PrEP if the individual meets the criteria specified in the USPSTF recommendation and PrEP is deemed to be medically appropriate by the individual's health care provider.

C~~B~~. No more than 50% of drugs on a carrier's formulary used for the prevention of HIV may be placed on the plan's highest cost formulary tier.

D~~C~~. Carriers shall not require a covered person to undergo step therapy or receive prior authorization before a pharmacist may prescribe and dispense PrEP.

E~~D~~. Carriers shall consider any request for PrEP from a provider, as specified in § 10-16-124.5(8)(b), C.R.S., other than from a pharmacist, to be an urgent prior authorization request, and a carrier must comply with the requirements for an urgent prior authorization request found in Colorado Insurance Regulation 4-2-49, "Concerning the development and implementation of a uniform drug benefit prior authorization process, the required drug appeals process, and the coverage of certain opioid dependence and other substance use disorder treatment drugs."

F~~E~~. Carriers shall not impose additional utilization management procedures or requirements that restrict or limit access to PrEP.

Section 6 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 7 Incorporated Materials

The U.S. Preventive Services Task Force A and B Recommendations as published on the effective date of this regulation and does not include later amendments or editions of the Recommendations. A copy of the Recommendations 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 Recommendations may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A charge for certification or copies may apply. A copy may also be obtained online at: https://www.uspreventiveservicestaskforce.org/uspstf/document/RecommendationStatementFinal/prevention-of-human-immunodeficiency-virus-hiv-infection-pre-exposure-prophylaxis

The Centers for Disease Prevention Control and Prevention Guidelines as published on the effective date of this regulation and does not include later amendments or editions of the Guidelines. A copy of the Guidelines 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 Guidelines may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A charge for certification or copies may apply. A copy may also be obtained online at https://www.cdc.gov/hiv/effective-interventions/prevent/prep/index.html#PrEP-Care-System

The FAQs about Affordable Care Act Implementation Part 47 as published on the effective date of this regulation and does not include later amendments or editions of the FAQs. A copy of the FAQs may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A certified copy of the FAQs may be requested from the Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A charge for certification or copies may apply. A copy may also be obtained online at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-47.pdf.

Section 8 Enforcement

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

Section 8 Effective Date

~~This regulation shall be effective January 1, 2021.~~
This regulation shall be effective March 2, 2022

Section 9 History

New regulation effective January 1, 2021.
Amended regulation effective March 2, 2022

Notice of Proposed Rulemaking

Tracking number

2021-00774

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-5

Rule title

PROPERTY AND CASUALTY

Rulemaking Hearing

Date

01/04/2022

Time

11:00 AM

Location

Webinar or 1560 Broadway, STE 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to interpret and implement the provisions of Part 6 of Article 4 of Title 10 of the Colorado Revised Statutes. In addition, this regulation provides rules governing the rejection of coverage, cancellation, nonrenewal, increase in premium, and reduction in coverage on complying policies of automobile insurance.

This regulation is being amended to make changes to the definition of "usage based insurance" and add additional information concerning SR-22's and SR-26 forms.

Statutory authority

§§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-5

PROPERTY AND CASUALTY

DRAFT Proposed Amended Regulation 5-2-12

CONCERNING AUTOMOBILE INSURANCE CONSUMER PROTECTIONS

Section 1 Authority

This ~~Regulation~~ regulation is promulgated and adopted by the Commissioner of Insurance ~~(Commissioner)~~ under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to interpret and implement the provisions of Part 6 of Article 4 of Title 10 of the Colorado Revised Statutes. In addition, this regulation provides rules governing the rejection of coverage, cancellation, nonrenewal, increase in premium, and reduction in coverage on complying policies of automobile insurance.

Section 3 Applicability

This regulation shall apply to all insurers that issue or renew automobile coverage pursuant to Part 6 of Article 4 of Title 10 of the Colorado Revised Statutes.

Section 4 Definitions

A. "Complying policy" shall have the same meaning as in § 10-4-601(2), C.R.S.

B. "Distinct" shall mean, for the purposes of this regulation, a notice sent in accordance with § 10-4-629(2), C.R.S. that is recognizably different from similar policy forms or notices delivered to the insured.

C. "Incident" shall mean an event or occurrence that results in an at-fault accident or motor vehicle conviction. An accident resulting in a motor vehicle conviction shall be treated as a single incident.

D. "Insured" shall have the same meaning as § 10-4-601(5), C.R.S.

E. "Increase in Premium" shall mean, for the purpose of a notice subject to § 10-4-629, C.R.S., other than a general rate increase filed with the Commissioner, the result of an at-fault accident, a motor vehicle conviction or an adverse change in credit information.

F. "Motor vehicle conviction" shall mean an adjudication of guilt to a traffic offense, whether based upon a trial resulting in conviction or a plea of guilty or no contest to the original charge or to a reduced charge.

G. "Prominently display" shall mean using bold characters, underlining, italicizing, larger font, or some other means of ensuring the information is distinct and easily recognized by the recipient of the document.

H. "Quarterly premium payment" shall mean one fourth (1/4) of the gross annual premium plus additional service charges, if any, for policies written for a term of one year or longer, or one half (1/2) of the gross six months premium, plus additional service charges, if any, for policies written for a six-month term.

I. "Usage based insurance" shall mean a rating structure that is based, in whole or in part, on the electronic accumulation of data through a device installed in a motor vehicle or through a mobile cellular device in which an individual's daily driving habits are used to determine a premium rate in accordance with a rating plan that has been filed with the Division of Insurance (Division).

J. "Week" shall mean any seven (7) consecutive calendar days.

Section 5 Rules

A. Installment Premium Payments.

1. Each insurer continuing private passenger motor vehicle insurance coverage shall offer, for persons who are required to purchase insurance under Part 6 of Title 10, Article 4, C.R.S., a quarterly premium payment plan. An insurer providing a plan for payments of premium on a basis that is more frequent than quarterly, need not also provide a quarterly payment plan.

2. Each insurer shall file rules, methods or procedures to provide an installment premium payment plan and payment by automatic electronic transfer in compliance with § 10-4-119, C.R.S.

3. An insurer's premium payment plan that is more frequent than quarterly may provide for payments of an advance deposit premium not greater than one month's premium.

4. Services and/or installment charges shall be based on actual expenses incurred by the insurer for billing process. Rate filings may be submitted, including a factor of increase supportive of short term billing procedures. (For example, annual premium x 26.5% = quarterly billing; or, annual premium x 9% = monthly billing.) Such charges may all be made on the first billing or distributed over each premium due date.

5. Any other payment mode, which is at least as beneficial as the quarterly payment plan referred to above, will be considered. Finance organizations, such as subsidiaries of the insurer, bank financing, or credit card services, are considered qualifying when written agreements between the insurer and the finance organization provide for installment plans to always be available to offer to the policyholders.

6. The installment premium due notice, except for monthly payments, shall be sent to the named insured and others known to the insurer as having moneys held in trust for the

payment of automobile insurance premiums, at least twenty (20) calendar days prior to the actual due date. If the quarterly premium payment option is selected by an insured, each succeeding payment, after the initial premium due date, shall be at regular three-month intervals.

B. Rules Limiting Insurers' Action to Refuse to Write, Cancel, Nonrenew, Increase Premium, Surcharge, or Reduce Coverages.

1. Insurers shall not refuse to write, cancel, fail to renew, reclassify an insured under, rate a new applicant, reduce coverage under, or increase the premium for any complying policy based upon:

a. Not-at-fault accidents in accordance with § 10-4-628(1)(a), C.R.S.;

b. Claims paid under comprehensive coverage, unless the insurer can demonstrate that each loss was a result of an insured's negligent action.

c. Claims paid under medical payments or uninsured motorist coverage.

d. The previous producer no longer represents the company.

e. Blindness or specific physical disability, unless such classification is based upon expected risk of loss different from that of other individuals. Further, no insurer shall refuse to insure a vehicle solely because the vehicle is owned by a blind person.

f. Motor vehicle citations without convictions.

g. Existence of a physical impairment, unless the impairment is of a continuing nature, which has an adverse effect on the insured's ability to drive safely, and cannot be corrected by the use of medication or special equipment. In the event of a complaint by the insured, the insured shall have the burden of proving that the impairment does not have an adverse effect on the insured's ability to drive safely.

2. Insurers shall not increase premium, other than a general increase filed with the Commissioner of Insurance, cancel or fail to renew a complying policy based upon:

a. Payments made by insurers, without a good faith reasonable investigation to determine fault, unless the insured has admitted the reported accident was his or her fault and the evidence of admission of fault is provided. A reasonable fault investigation to support the insurer's intended action shall include, at a minimum, when available:

(1) Statements (oral, telephonic recordings or written) from all parties involved in the accident and all known eyewitnesses. A statement shall be deemed unavailable when the insured, other party in the accident or eyewitness refuses to give or sign the statement.

(2) Copies of all loss, accident, and police reports.

b. The use of a single accident resulting in payment of less than $1,000, unless the insurer has elected to file with the Division a rating plan such as a Safe Driver Plan, an Accident Surcharge Plan, etc., which includes statistical data justifying the use of a lesser threshold. The filing of such a rating plan shall not exempt the

insurer from sending a notice of Increase in Premium required by this regulation for an at fault accident, moving violation conviction and/or adverse changes in credit information.

c. The use of an individual's driving and/or loss record, while a resident of the household, if a driver exclusion offer has been made and the driver is excluded from coverage in compliance with § 10-4-630, C.R.S.

d. Claims paid under towing and labor coverage.

3. Insurers shall not fail to renew a complying policy based upon:

a. The use of one (1) motor vehicle conviction resulting in less than eight (8) points assessed under the Colorado Motor Vehicle Point Assessment system or points assessed by another state.

b. The use of one (1) motor vehicle accident, whether or not payment is made, unless a motor vehicle conviction of eight (8) points or more, assessed under the Colorado motor vehicle point assessment system, or points assessed by another state, resulted from the accident.

As used in this subsection, a conviction, accident, or payment made for the same occurrence shall be considered as one incident.

4. During an investigation of a complaint, market conduct surveillance, or market conduct examination of an intended action under a complying policy the Division will apply the following standards:

a. If the insurer bases its action upon the fact that an insured has had an incident that resulted in payment under the policy and/or a motor vehicle conviction, the insurer may base its action on incidents that occurred during the thirty-six (36) month period immediately preceding the date of the intended action for that individual insured under the policy.

However, in case of nonrenewals, increase in premiums, or reduction in coverage, in order to take action upon incidents occurring during this thirty-six (36) month period, at least one (1) incident must have occurred during the fifteen (15) month period immediately preceding the next renewal date.

b. Surcharge or merit rating changes may be applied to a newly added driver if, at the time the driver is added, the insurer is aware of an incident subject to an increase in premium. If the surcharge or merit rating change is made on the policy renewal date, the insurer shall send the notice required by § 10-4-629(2), C.R.S.

c. An insurer may cancel a newly issued policy that has been in effect less than sixty (60) calendar days at the time notice of cancellation is sent by the insurer. Any such notice of cancellation may not be based on any of the prohibited reasons listed in §§ 10-4-626 through 10-4-629, C.R.S.

(1) Notice requirements for such cancellations are governed by policy termination provisions. The notice shall be mailed or delivered at least ten (10) calendar days prior to the cancellation effective date.

(2) Whenever the insurer chooses to cancel a policy, the earned premium shall be determined on a pro-rata basis, including cancellation for nonpayment of premium.

d. An insurer may not rescind (i.e., cancel retroactively) or void a policy of insurance affording the coverages required by §§ 10-4-609, 10-4-620, and 10-4-621, C.R.S., except in cases of fraud, as defined in § 10-1-128, C.R.S., or if the insurer does not receive appropriate premium payment (i.e. insufficient funds) for the policy at the time of application.

5. Notice of intended actions.

a. A notice to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for such action. The notice required by § 10-4-629(2), C.R.S. shall be distinct from any other information delivered to the insured, but may be sent with other insurance documents. The notice shall include a statement of reasons that are clear and specific so that a person of average intelligence can understand the reasons for the insurer's decision without making further inquiry.

(1) The insurer shall clearly describe or quote its underwriting rule, policy or guideline that is the basis for the intended action.

(2) If any one individual in the household has an incident that is subject to an insurer's adverse action a notice of intended action is required to be sent for any policy that would realize an adverse impact from the intended action. The use of a household rating plan does not exempt an insurer from the notice requirements.

(3) A simple recitation of dates and incidents, without specific detail, is not acceptable. With regard to an at-fault accident, the notice shall include the driver's name, date of loss, total amount of the claim payment and a description of the loss.

(4) The requirements of this Section 5.B.5.a. apply to all policies including policies in which there is only one driver in the household.

b. Insurers intending to cancel, nonrenew, increase premium or reduce coverage shall prominently display the insured's right to submit a complaint to the Division. The following information shall be prominently displayed on the notice form:

If you have concerns regarding this intended action, you have the right to file a complaint with the Colorado Division of Insurance. Complaints may be submitted through the mail or electronically. Please contact [your producer, (agent) or the company at (phone number)], for further information.

c. In accordance with § 10-4-630(1), C.R.S., the insurer shall, in lieu of cancellation, nonrenewal or increase in premium, offer to continue or renew the insurance but exclude from coverage the named insured or other person whose claim experience or driving record justifies the intended action. This Section 5.B.5.c. is not applicable to actions taken based on adverse credit information.

d. The fact that an insured has submitted a complaint shall not negate the insurer's obligation under §§ 10-4-629(2) and 10-4-630, C.R.S., to offer the insured the right to exclude a household member.

e. For the purposes of this Section 5.B.5., a notice of intended action is not required if the increase in premium is strictly the result of an insured's voluntary enrollment in a usage based insurance rating program.

f. If an increase in premium is the result of a combination of usage based insurance rating and any adverse activity that is otherwise subject to this regulation, a notice of intended action is required.

g. If an insurer provides evidence of financial responsibility pursuant to § 42-7-406 (also known as an "SR-22") and the policy cancels or expires, the insurer shall maintain evidence of notification of such cancellation to the Colorado Division of Motor Vehicles (also known as "SR-26") for a period of time required by Colorado Regulation 1-1-7.

Section 6 Severability

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

Section 7 Enforcement

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

Section 8 Effective Date

This regulation is effective March 2, 2022.

Section 9 History

Originally issued effective February 1, 2004.
Amended regulation effective December 1, 2004.
Amended regulation effective January 1, 2007.
Amended regulation effective August 1, 2007.
Amended regulation effective September 1, 2009.
Amended regulation effective January 1, 2011.
Repealed and repromulgated effective November 1, 2012.
Amended regulation effective January 1, 2020.
Amended regulation effective March 2, 2022.

Notice of Proposed Rulemaking

Tracking number

2021-00772

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-6

Rule title

CONSUMER PROTECTION (GENERAL)

Rulemaking Hearing

Date

01/04/2022

Time

11:00 AM

Location

Webinar or 1560 Broadway, STE 850, Denver CO 80202

Subjects and issues involved

This regulation sets the requirements for using independent contractors for informal investigations, and provides a process to appeal the expenses and fees charged by such independent contractors. This regulation is being repealed.

Statutory authority

§§ 10-1-109 and 10-1-208, C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-6

CONSUMER PROTECTION (GENERAL)

DRAFT PROPOSED REPEAL of Amended Regulation 6-3-2

CONCERNING THE USE OF INDEPENDENT CONTRACTORS FOR INFORMAL INVESTIGATIONS AND THE APPEAL PROCESS FOR EXPENSES

~~Section 1 Authority~~

~~This regulation is promulgated under the authority of §§ 10-1-109 and 10-1-208, C.R.S.~~

~~Section 2 Scope and Purpose~~

~~This regulation sets the requirements for using independent contractors for informal investigations, and provides a process to appeal the expenses and fees charged by such independent contractors.~~

~~Section 3 Applicability~~

~~This regulation shall apply to informal investigations of all authorized and unauthorized insurers and producers that transact insurance business in Colorado.~~

~~Section 4 Definitions~~

~~"Informal Investigation" means, for the purposes of this regulation, a Division review, analysis, inquiry, and/or research into referrals, complaints, and/or inquiries to determine whether any violations of Colorado insurance law or Colorado insurance regulation have occurred. Informal investigations include, but are not limited to, Division reviews, analyses, and inquiries initiated as a result of an on-going, or completed financial or market conduct examination.~~

~~Section 5 Rule~~

A. Insurers and producers may be investigated without advance notice when the Division determines that an immediate investigation of the insurer's or producer's books, records or business practices is necessary for the protection of insurance consumers.

B. Selection of independent contractors to perform informal investigations

1. Pursuant to Section § 10-1-208, C.R.S., the Division may contract with a person, corporation or entity having technical or subject matter expertise or skill and experience in investigative techniques to perform informal investigations.

2. The contractor may be the same contractor that performed, or is performing, a financial or market conduct examination of an insurer or producer. If an informal investigation is conducted subsequent to, or simultaneously with, a financial or market conduct examination, the Division and the independent contractor shall execute a separate contract for the informal investigation. Payments to the contractor for the informal investigation are governed by this Regulation 6-3-2.

3. When determining whether to use independent contractors for informal investigations, the Division will consider whether it has sufficient available resources with sufficient technical expertise to perform the informal investigation. To the extent practicable the Division shall attempt to allocate Division employees possessing the necessary expertise, skill or experience to perform the informal investigation before using an independent contractor.

C. Travel requirements

In addition to fees, independent contractors shall be compensated for travel, meals and lodging in a manner that is reasonable and consistent with Colorado fiscal guidelines.

D. Appeal process for expenses and fees of independent contractors

1. Prior to an informal investigation, the Division shall provide the insurer or producer to be investigated with an estimate of costs, fees and/or expenses for the investigation.

2. Independent contractors conducting informal investigations are required to submit itemized invoices for fees and expenses to the Division for review and approval in accordance with guidelines maintained by the DivisionCommissioner. After review and approval, the Division will forward the invoice to the insurer or producer for payment directly to the independent contractor.

3. Whenever an insurer or producer considers fees or expenses charged by an independent contractor to be unreasonable, the insurer or producer may contest the amount of fees and/or expenses charged by filing an appeal with the Commissioner within ten (10) calendar days after receipt of the independent contractor's billing from the Division. Such appeal must set forth the fees and/or expenses that are considered unreasonable and the basis for the claim. The insurer or producer shall simultaneously mail a copy of the appeal to the independent contractor. The Division shall also notify the independent contractor that an appeal has been filed.

4. The insurer or producer shall not delay payment of any non-contested fees and/or expenses pending the outcome of the appeal.

5. The independent contractor may respond to the appeal filed with the Commissioner, with a copy to the insurer or producer, no later than ten (10) calendar days after the date the Division notifies the independent contractor of the appeal. Failure to file a response shall not be considered an admission by the independent contractor of the allegations raised in the insurer's or producer's appeal. Insurers and producers may not file a reply to the independent contractor's response.

6. The Commissioner shall review the appeal from the insurer or producer and any independent contractor response within ten (10) calendar days after the last date for the independent contractor to file a response. The Commissioner shall notify the parties in writing of his or her findings.

7. If the Commissioner determines that some or all of the charges under dispute are reasonable and in accordance with the Division's guidelines, the insurer or producer shall promptly pay to the independent contractor all disputed charges approved by the Commissioner.

8. Disputed charges shall not be due until the Commissioner has reviewed the appeal and rendered written findings.

9. Undisputed charges shall be paid promptly and shall not be withheld pending the Commissioner's finding on disputed charges.

10. The Commissioner's written findings shall constitute a final agency action for purposes of judicial review pursuant to § 24-4-106, C.R.S.

Section 6 Severability

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

Section 7 Enforcement

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

Section 8 Effective Date

This regulation is effective February 1, 2016.

Section 9 History

Original regulation effective December 1, 2005.
Amended regulation effective February 1, 2016.
Regulation repealed in full effective March 02, 2022

Notice of Proposed Rulemaking

Tracking number

2021-00750

Department

700 - Department of Regulatory Agencies

Agency

723 - Public Utilities Commission

CCR number

4 CCR 723-7

Rule title

RULES REGULATING RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL CROSSINGS

Rulemaking Hearing

Date

01/11/2022

Time

01:00 PM

Location

By video conference using Zoom at a link provided in the calendar of events posted on the Commissions website: https://puc.colorado.gov/

Subjects and issues involved

The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the rules governing rail crossings comprising Rules 7001 through 7301 of the Commissions Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 Code of Colorado Regulations (CCR) 723-7. The Commission has statutory authority to adopt these rules under §§ 40-2-108, 40-4-106, 40-7-105, 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S. Among other updates and revisions, the Commission amends its rules to implement fining authority for noncompliance with rail crossing safety regulations as authorized in Senate Bill (SB) 19-236, effective May 30, 2019, and codified as §§ 40-4-106 and 40-7-105, C.R.S. As discussed below, this is the Commissions second NOPR notice proposing these rule revisions. In March 2021, the Commission issued a NOPR in Proceeding No. 21R-0100R commencing a rulemaking to consider these same proposed revisions. Due to procedural concerns, the rulemaking was closed before reaching a determination on whether to adopt the rules. The proposed amendments in this NOPR are identical to those proposed in prior Proceeding No. 21R-0100R.

Statutory authority

The Commission has statutory authority to adopt these rules under §§ 40-2-108, 40-4-106, 40-7-105, 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S.

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-7

PART 7
RULES REGULATING RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL CROSSINGS

BASIS, PURPOSE, AND STATUTORY AUTHORITY

The basis for and purpose of these rules is to describe the manner of regulation over railroads, railroad corporations, rail fixed guideways, rail fixed guideway systems, transit agencies, persons holding a certificate of public convenience and necessity to operate by rail, any other person operating by rail, governmental or quasi-governmental entities that own and/or maintain public highways at rail crossings, railroad peace officers, and to Commission proceedings concerning such entities. These rules address a wide variety of subject areas including, but not limited to, applications, petitions, annual reporting, civil penalties, formal and informal complaints, operating authority, transfers of operating authority, mergers, tariffs, crossings and warning devices, cost allocation for grade separations, crossing construction and maintenance, railroad clearances, system safety program standard for rail fixed guideway systems, and employment of railroad peace officers.

The statutory authority for the promulgation of these rules can be found at §§ 24-34-108(2), 40-2-108, 40-2-119, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101(1), 40-4-101(2), 40-4-106, 40-5-105, 40-6-108(2), 40-6-111(3), 40-7-105, 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S.

* * * *

[indicates omission of unaffected rules]

CIVIL PENALTIES

7009. Definitions.

The following definitions apply to rules 7009 through 7011 unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Civil penalty" means a monetary penalty imposed by the Commission against a railroad, railroad corporation, rail fixed guideway, or transit agency for failure to comply with a Commission order or rule, as authorized in § 40-4-106(1)(b), C.R.S.

(b) "Civil penalty assessment" means the act by the Commission of imposing a civil penalty.

(c) "Civil penalty assessment notice" means the written document by which the Commission gives initial notice to a railroad, railroad corporation, rail fixed guideway, or transit agency of an alleged

failure to comply with a Commission order or rule and sets forth the proposed civil penalty amount.

7010. Civil Penalties.

(a) The Commission may impose a civil penalty against a railroad, railroad corporation, rail fixed guideway, or transit agency for failure to comply with a Commission order or rule, as authorized in § 40-4-106(1)(b), C.R.S.

(b) Civil penalty assessment notice.

(I) The Director of the Commission or his or her designee shall have the authority to issue a civil penalty assessment notice for an alleged failure to comply with a Commission order or rule.

(II) The civil penalty assessment notice shall:

(A) identify each individual alleged violation;

(B) state the proposed penalty amount for each individual alleged violation;

(C) provide for a reduced penalty of 50 percent of the penalty amount sought if paid within ten days of the railroad, railroad corporation, rail fixed guideway, or transit agency's receipt of the civil penalty assessment notice; and

(D) state the maximum amount of the penalty surcharge imposed pursuant to § 24-34-108(2), C.R.S., if any. The penalty surcharge shall be equal to the percentage set by the Department of Regulatory Agencies on an annual basis.

(c) Adjudication.

(I) The railroad, railroad corporation, rail fixed guideway, or transit agency may either admit liability or may contest the alleged violation(s) identified in the civil penalty assessment notice.

(II) The railroad, railroad corporation, rail fixed guideway, or transit agency may request a hearing before the Commission. Trial staff shall have the burden at hearing of demonstrating a violation by a preponderance of the evidence.

(d) Civil penalty assessment.

(I) The Commission shall assess a civil penalty only after a railroad, railroad corporation, rail fixed guideway, or transit either admits liability or is adjudicated to have committed the violation.

(II) In any written decision entered by the Commission assessing a final civil penalty, the Commission may impose a civil penalty of not more than two thousand dollars, pursuant to § 40-7-105(1), C.R.S. In determining the amount of civil penalty, the Commission shall consider the factors set forth in paragraph 1302(b).

(III) In accordance with § 40-7-105(2), C.R.S., every violation is considered a separate and distinct offense, and, in case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct offense.

(e) Nothing in these rules shall affect the Commission's ability to pursue other remedies in lieu of imposing a civil penalty.

7011. Regulated Railroad, Railroad Corporation, Rail Fixed Guideway, or Transit Agency Rule Violations, Civil Enforcement, and Civil Penalties.

Violation of the following statutes and rules may result in the assessment of a civil penalty of up to $2,000.00 per offense.

Citation	**Description**
	Article 1-7 of Title 40, C.R.S.
	Commission Order
Rule 7204(a)(X)(D)	Content of Railroad Cost Estimates and Schematic Design
Rule 7211(b)	Track Construction or Removal
Rule 7211(c)	Railroad Projects Involving Crossings
Rule 7211(h)	Crossing Surface Maintenance
Rule 7211(k)	Crossing Obstructions
Rule 7211(l)	Project Coordination
Rule 7211(m)	Permits, Public Notice, and Detours
Rule 7211(n)	Project Management and Support
Rule 7211(o)	Crossing Surface Replacement Timeline
Rule 7211(p)	Construction Requiring Authority
Rule 7212(c)	Warning Device Selection, Preemption Timing Selection, and Exit Gate Operation Selection
Rule 7212(d)	Report Preparation and Payment Prohibition
Rule 7212(e)	Schematic Design Provision Requirements and Cost Estimate Provision Timeline

Rule 7212(f)	Construction and Maintenance Agreement Timeline
Rule 7212(g)	Railroad Consultant Review Time Limitation
Rule 7212(h)	Existing Crossing Easement Payment Prohibition
Rule 7212(i)	Formal Complaint for Delay and/or Untimeliness
Rule 7213(a)	Minimum Crossing Safety Requirements
Rule 7301(a)	Crossing Warning Device Installation and Maintenance
Rule 7301(d)	Crossing Obstructions
Rule 7302	Accident Notification
Rule 7324(a-f)	Overhead Clearances
Rule 7325(a-j)	Side Clearances
Rule 7326(a-d)	Track Clearances
Rule 7402(a-c)	Class I Railroad Peace Officers Minimum Requirements

7012. – 7099. [Reserved].

7201. Definitions.

* * * *

[indicates omission of unaffected rules]

(m) "Crossing safety diagnostic" means a gathering of safety and traffic professionals at an existing or proposed highway-rail or pathway crossing including Commission staff and representatives from the road authority and railroad, railroad corporation, rail fixed guideway, and transit agency~~, or owner of the track~~ to evaluate the highway-rail crossing or pathway crossing conditions or proposed conditions and determine the appropriate safety mitigation measures for the existing or proposed highway-rail or pathway crossing.

* * * *

[indicates omission of unaffected rules]

7202. ~~[Reserved].~~ Necessary Parties to Application Proceeding.

In all proceedings where a road authority files an application for preliminary or final approval for any highway-rail or pathway-rail crossing, all railroads, railroad corporations, rail fixed guideways, or transit agencies that own tracks at the crossing shall be joined as a necessary party in the proceeding.

* * * *

[indicates omission of unaffected rules]

7204. Application Contents.

(a) An application may be filed for final approval of plans/drawings or for preliminary approval of conceptual level design plans/drawings (plans at any level other than final design). If a request for preliminary approval is included, an additional filing of final plans and estimates for final Commission approval will be required in the same proceeding. In the case of an application (other than to modify or replace the existing crossing surface without changing the width or configuration of a crossing) to construct, alter, or abolish a crossing, a utility crossing, or to install or modify active or passive crossing warning devices, the application shall include, in the following order and specifically identified, the information, as applicable to the specific type of application, in the application or in appropriately identified attachments.

* * * *

[indicates omission of unaffected rules]

(X) Applications for preliminary or final approval for installation of new active warning devices, replacement of existing active warning devices, or replacement of existing train detection circuitry at crossings shall include:

(A) detailed plans/drawings of a suitable scale, showing the crossing, including signing and striping, tracks, buildings, structures, property lines, and public highways within the right-of-way limits of the railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency;

(B) a description of the type of warning devices the applicant proposes to install (reference may be made to recommended standards on highway-rail grade crossing warning devices as published in current editions of the MUTCD and/or the American Railway Engineering and Maintenance-of-Way Association's Signal Manual of Recommended Practice);

(C) the detailed railroad cost estimate of the crossing warning devices~~;~~ shall be provided by the railroad to the road authority within the timeframe outlined in paragraph 7212(e); and

(D) the schematic diagram of the crossing warning devices (commonly referred to as the "front sheet" or the "state sketch") and shall specifically identify the equipment response time, advanced preemption time, minimum warning time, clearance

time, buffer time, and total warning time~~.~~ provided within the timeframe outlined in paragraph 7212(e).

* * * *

[indicates omission of unaffected rules]

7211. Crossing Construction and Maintenance.

(a) Whenever a highway, pathway, or sidewalk is removed at an existing crossing or constructed at a new crossing, or the highway, pathway, or sidewalk portion of an existing crossing is widened, the road authority shall bear all costs to remove, construct or widen crossing surfaces at the crossing including the cost of the crossing surface; the highway, pathway, and/or sidewalk approaches; and highway and/or pathway construction traffic control. Extensions of crossing surfaces for the addition of sidewalks to an existing crossing require only the addition of crossing surface panels for the sidewalks and do not require the entire crossing surface to be replaced.

(b) Whenever a track is removed at an existing crossing, or constructed at a new crossing, or the track portion of an existing crossing is widened, the railroad, railroad corporation, rail fixed guideway, or transit agency~~, or owner of the track~~ shall bear all costs to remove, construct or widen the track including the cost of the crossing surface; the highway, pathway, and or sidewalk approaches; and highway and/or pathway construction traffic control~~..~~

(c) In addition to projects described in paragraph 7211(b), railroads, railroad corporations, rail fixed guideways, and transit agencies~~, or owners of the track~~ shall bear all costs of their initiated projects (e.g., capital improvement projects) involving crossings.

(d) The crossing surface shall be of plank, concrete, rubber, flangeway and asphalt, or other suitable material that is compatible with the highway approached, and shall be of the same width as the pavement or other surfacing material in the approaches of the adjacent highway including the roadway shoulders. The crossing surface material shall make a reasonably smooth riding surface over the track or tracks and be approximately level with the top of the rails. Wherever practicable, the tracks at multiple track crossings shall be level with the mainline track.

(e) The Commission may determine the materials to be used in a crossing at the time the Commission considers the application regarding the crossing.

(f) Whenever practicable, sidewalks should be detached from the curb and constructed behind the crossing signal mast. The crossing surface material for sidewalks need not be continuous with the crossing surface material of the vehicle travel lanes.

(g) Pathway crossings of mainline trackage shall be grade separated. Rail fixed guideway and rail fixed guideway systems are exempted from this requirement. Sidewalks or pathway crossings under railroad open deck bridges or trestles shall have a protective cover (roof) extending a reasonable distance beyond the edges of the bridge or trestle to prevent material or debris from striking users of the sidewalk or pathway crossings. Sidewalks and pathway crossings under closed deck bridges may have either a protective cover extending a reasonable distance beyond the edges of the bridge or may have fencing attached to the bridge structure to prevent material or debris from striking users of the sidewalk or pathway crossing.

(h) A railroad, railroad corporation, rail fixed guideway, or transit agency~~, or owner of the track~~ shall maintain the grade crossing surface from the outside end of the tie to the outside end of the tie at single track crossings. Railroads, railroad corporations, rail fixed guideways, and transit agencies~~, and owners of the track~~ shall promptly assist any road authority to the extent required to maintain the road surface between tracks at multiple track crossings. The road authority shall bear the cost of railroad flagging required to maintain the roadway surface between tracks at multiple track crossings.

(i) The road authority that owns the highway shall maintain at its own expense the highway approaches up to the outside end of the ties.

(j) The total costs to maintain an existing crossing surface, including, but not limited to, materials, labor, traffic control, railroad flagging, and any necessary permits shall be shared equally between the railroad, railroad corporation, rail fixed guideway, or transit agency~~, or owner of the track~~ and the road authority.

(k) ~~Every~~A railroad, railroad corporation, rail fixed guideway, or transit agency~~, or owner of the track, at all points in Colorado where its tracks cross any public highway or public pathway at-grade,~~ shall remove all obstructions along the tracks that block the view of motorists, bicycles, and/or pedestrians as outlined in ~~rule~~ paragraph 7301(c). The Commission may determine what obstructions are to be removed to ~~secure~~ensure reasonable safety~~.~~ at the crossing.

(l) A railroad, railroad corporation, rail fixed guideway, or transit agency shall be required to coordinate with the road authority any highway-rail and/or public pathway crossing project that will lead to the temporary closure of the highway-rail crossing or public pathway crossing.

(m) A railroad, railroad corporation, rail fixed guideway, or transit agency shall not perform any construction work at a highway-rail crossing and/or public pathway crossing that would lead to closure of the highway-rail crossing and/or public pathway crossing prior to obtaining all required road authority permits and coordinating with the road authority to provide public notice and traffic and/or pedestrian and/or bicycle detours.

(n) A railroad, railroad corporation, rail fixed guideway, or transit agency shall provide road authorities with the project construction support needed by the road authority to construct and complete any highway-rail crossing and/or public pathway crossing project.

(o) A railroad, railroad corporation, rail fixed guideway, or transit agency shall replace crossing surfaces within 90 days of when a road authority informs the railroad, railroad corporation, rail fixed guideway, or transit agency that the crossing surface is in disrepair.

(p) A railroad, railroad corporation, rail fixed guideway, or transit agency shall obtain the required Commission authority prior to commencing any construction of a new crossing and/or making any changes at any public crossing including, but not limited to, installing sidewalk panels, installing passive warning devices other than crossbucks and yield signs, installing active warning devices, changing crossing detection circuitry, interconnecting a crossing with a traffic signal or queue cutter signal, and adding or removing additional tracks.

7212. Crossing Safety Diagnostics and Cost Estimates.

(a) A railroad, railroad corporation, rail fixed guideway, transit agency~~, owner of the track~~, road authority, or Commission staff may request a crossing safety diagnostic at any existing or proposed crossing to assess the condition of the existing crossing, to discuss proposed changes to an existing crossing, or to discuss a proposed new crossing. A crossing safety diagnostic must be held at least 30 days prior to the filing of an application for a new crossing, for changes to an existing crossing, or for closure of an existing crossing. If the railroad, railroad corporation, rail fixed guideway, transit agency, ~~owner of the track,~~ road authority, and Commission staff ~~determine jointly~~agree that a crossing safety diagnostic for a specific project for which an application will be sought is not necessary, Commission staff shall provide written correspondence to the railroad, railroad corporation, rail fixed guideway, transit agency, ~~owner of the track,~~ and road authority memorializing such ~~determination~~agreement for use in any future application within fourteen days of the date of the ~~joint determination~~agreement. Applications may be filed 30 days after receipt of either the written correspondence from Commission staff or from the date by which written correspondence is to be received from Commission staff.

(b) Commission staff will be required to assist and review any proposed simultaneous or advance preemption timings at crossings for which interconnection and preemption exists or will be requested, and with proposed exit gate operations and timings at crossings for which four-quadrant gate systems exist or are proposed to be installed. If Commission staff concurs with the proposal, a letter of concurrence shall be provided. Commission staff's assistance, review and concurrence, if any, must occur more than 30 days prior to the filing date of the application.

(c) During a crossing safety diagnostic held at an at-grade highway-rail crossing or pedestrian crossing, the road authority, with any necessary assistance from Commission staff, shall review, and confer on the following:

(I) the need for and selection of appropriate safety devices;

(II) the appropriate preemption operation and the timing of traffic control signals interconnected with highway-rail grade crossings adjacent to signalized highway intersections; and

(III) the appropriate exit gate operating mode and exit gate clearance time.

(d) A railroad, railroad corporation, rail fixed guideway, or transit agency and their consultants may not require a road authority to accept the results of or pay for the preparation of any study or report not expressly requested by the road authority.

(e) Every railroad, railroad corporation, rail fixed guideway, or transit agency shall provide to a road authority, no more than 90 days after a request, the cost estimate and schematic diagram, with all of the information required to be shown on the schematic diagram as set forth in subparagraph 7204(X)(D), for the specific configuration requested by the road authority.

(f) The signed construction and maintenance agreement or evidence of a signed intergovernmental agreement between any railroad, railroad corporation, rail fixed guideway, or transit agency shall be filed with the Commission within 90 days of the Commission's order authorizing the highway-rail crossing project, or within 30 days before the proposed start date for construction, whichever comes later.

(g) Any consultant of a railroad, railroad corporation, rail fixed guideway, or transit agency shall be afforded up to eight billable hours and limited in scope to preemption calculation verification based on road authority provided traffic signal timings to complete any necessary project review and client report for at-grade highway-rail or pathway-rail grade crossing projects. The railroad, railroad corporation, rail fixed guideway, or transit agency may request from the Commission an extension of the permitted time to complete any necessary project review and client report for good cause including, without limitation, that additional time is necessary to ensure safety considerations are addressed and the scope of the work to be performed. Such request shall be made prior to using additional time or performing such work.

(h) A railroad, railroad corporation, rail fixed guideway, or transit agency may assess costs for new, or the new part of, revised easements but may not assess any costs for existing easements at existing public highway or public pathway crossings.

(i) In the event that a road authority alleges that it has lost funding for completion of a highway-rail or pathway crossing project, due to a delay in the project caused by a railroad, railroad corporation, rail fixed guideway, or transit agency, the road authority may file a formal complaint with the Commission setting forth the alleged cause of delay and amount of lost funding and requesting that the Commission allocate the lost funding to the railroad, railroad corporation, rail fixed guideway, or transit agency, or request other appropriate relief, including the imposition of a civil penalty assessment.

7213. Minimum Crossing Safety Requirements.

(a) All public crossings in the state of Colorado shall have posted, at a minimum, one MUTCD R15-1 crossbuck sign, one MUTCD R15-2P number of tracks sign for crossings with more than one track, ~~and~~ one MUTCD R1-2 yield sign, and one MUTCD I-13 emergency notification sign mounted on the same support, for each direction of vehicle and/or pedestrian traffic that crosses the tracks. Any signage configuration different from these minimum standards require approval from the Commission through the filing and granting of an application.

* * * *

[indicates omission of unaffected rules]

7301. Installation and Maintenance of Crossing Warning Devices.

(a) All passive and active crossing warning devices, whether electrically operated or otherwise, and of whatsoever nature, which have been installed at public crossings in the state of Colorado, shall be installed, and efficiently maintained and kept in good condition or good operating condition by the railroad, railroad corporation, rail fixed guideway, transit agency, or owner the track at the crossing at the railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit ~~agency, or owner of the track's~~agency's expense for the life of the crossing.

Decision No. C21-0737

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0538R

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES REGULATING RAILROADS, RAIL FIXED GUIDEWAYS, TRANSPORTATION BY RAIL, AND RAIL CROSSINGS, 4 CODE OF COLORADO REGULATIONS 723-7.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: November 22, 2021
Adopted Date: November 10, 2021

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the rules governing rail crossings comprising Rules 7001 through 7301 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* (CCR) 723-7. The Commission has statutory authority to adopt these rules under §§ 40-2-108, 40-4-106, 40-7-105, 40-9-108(2), 40-18-102, 40-18-103, 40-29-110, and 40-32-108, C.R.S. Among other updates and revisions, the Commission amends its rules to implement fining authority for noncompliance with rail crossing safety regulations as authorized in Senate Bill (SB) 19-236, effective May 30, 2019, and codified as §§ 40-4-106 and 40-7-105, C.R.S.

2. As discussed below, this is the Commission's second NOPR notice proposing these rule revisions. In March 2021, the Commission issued a NOPR in Proceeding No. 21R-0100R commencing a rulemaking to consider these same proposed revisions. Due to procedural concerns, the rulemaking was closed before reaching a determination on whether to

adopt the rules. The proposed amendments in this NOPR are identical to those proposed in prior Proceeding No. 21R-0100R.

3. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a remote public hearing on the proposed rules at **1:00 p.m. on January 11, 2022**.

4. The proposed rule changes are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment A to this Decision, and in final format in Attachment B to this Decision.

B. Background

1. Fining Authority Granted to Commission in SB 19-236

5. SB 19-236 adds new subsection § 40-4-106(1)(b), C.R.S., which provides:

> If, pursuant to this subsection (1), the commission issues an order or promulgates a rule requiring a railroad company to comply with railroad crossing safety regulations, the commission may impose a civil penalty pursuant to article 7 of this title 40, in an amount not to exceed the maximum amount set forth in section 40-7-105 (1), against a railroad company that fails to comply with the order or rule.

6. As relevant here, § 40-7-105(1), C.R.S., provides:

> Any public utility which violates or fails to comply with any provision of the state constitution or of articles 1 to 7 of this title or which fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such public utility, is subject to a penalty of not more than two thousand dollars for each offense.

2. Relevant Prior Commission Proceedings

a. Pre-Rulemaking Engagement

7. Following the passage of SB 19-236, the Commission opened repository Proceeding No. 19M-0379R on July 16, 2019 by Decision No. C19-0586, to solicit input from

stakeholders and other interested participants on what the Commission should include when it initiates a rulemaking to implement fining authority in its railroad rules. The Commission hosted pre-rulemaking half-day workshops on September 16 and 17, 2019, to engage with stakeholders and other interested participants on the proposed rulemaking. The Commission also received numerous comments from both railroads and municipal entities pertaining to the proposed rulemaking. The Commission has reviewed the numerous comments filed in its pre-rulemaking repository proceeding, Proceeding No. 19M-0379R.

b. Prior Adjudications

8. Subsequent to commencing a formal rulemaking to adopt rules implementing the fining authority provisions enacted through SB 19-236, several proceedings before the Commission presented cases in which certain railroad companies significantly delayed or failed to comply with Commission orders.[1]

9. In those proceedings, the Commission determined that significant delay in complying with Commission decisions, including instances involving delay in filing a signed construction and maintenance agreement as required by a Commission decision, would postpone upgrades and installations that were already approved and ordered to proceed by the Commission. The Commission concluded that failure to comply with these Commission orders constituted violations within the scope of § 40-4-106(1)(b), C.R.S. Citing its broad authority under § 40-4-106(2)(a), C.R.S., to prescribe terms and conditions of installation, operation, maintenance, and warning at public crossings to prevent accidents and promote public safety, the Commission concluded that its jurisdiction is squarely grounded in safety.

[1] *See, e.g.*, Proceeding Nos. 18A-0332R; 18A-0339R; 18A-0629R; 18A-0631R; 18A-0636R; 18A-0809R; 19A-0201R; 19A-0231R; 19A-0413R; 19A-0475R; and 19A-0542R.

10. The Commission noted that § 40-4-106(1)(b), C.R.S., as amended by SB 19-236, provides, if the Commission issues an order or promulgates a rule requiring a railroad company to comply with railroad crossing safety regulations, that the Commission may impose a civil penalty against a railroad company that fails to comply with the order or rule. Pursuant to Rule 4 CCR 723-1-1302(b) of the Commission's Rules of Practice and Procedure, the Commission may impose a civil penalty, when provided by law. The Commission recognized that it had initiated a pre-rulemaking stakeholder engagement in Proceeding No. 19M-0379R to consider adopting rules specific to this new statutory authority. However, the Commission found it necessary to act in individual adjudications before rules could be adopted, and that § 40-4-106(1)(b), C.R.S., does not require that the Commission adopt rules in order to use the fining authority conferred in this statute. These proceedings were ultimately resolved without the Commission assessing a civil penalty.

c. Previous Rulemaking Proceeding

11. On March 15, 2021, the Commission issued a NOPR[2] proposing amendments to the rules governing rail crossing comprising Rules 7001 through 7354 of the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 CCR 723-7. The proposed amendments are identical to those proposed in this NOPR.

12. After the Commission issued the original NOPR, several parties raised concerns regarding whether the Commission should have notified the Colorado Legislature (Legislature) of proposed rules prior to issuing the NOPR pursuant to § 24-4-101 *et seq.*, C.R.S. The ALJ noted ambiguity in the applicability of § 24-4-101 *et seq.*, C.R.S., to the Commission's adoption of proposed rules intending to impose civil penalties on railroad companies in Decision

[2] *See* Decision No. C21-0129 in Proceeding No. 21R-100R.

No. R21-0308 issued in Proceeding No. 21R-100R on May 24, 2021. As such, the ALJ suggested closing the original proceeding and reissuing the NOPR to promote open communication with the Legislature. The Commission has closed the original proceeding.[3]

C. Discussion of Proposed Amendments

13. To best implement SB 19-236, we find it appropriate to open this rulemaking to consider rule changes that implement the General Assembly's directive that the Commission implement fining authority over railroad companies that fail to comply with Commission safety regulations. The Commission has authority to impose civil penalties under the authority vested by § 40-4-106(1)(b), C.R.S., without implementing corresponding rules; however, we anticipate a uniform process through rule considerations will best assist stakeholders in understanding Commission processes and ensure continued compliance with Commission orders with the intent and purpose that accidents may be prevented, and the safety of the public promoted, at crossings throughout the state.

14. While we are encouraged that the railroad companies ultimately complied with Commission orders in recent proceedings, we continue to be dismayed at the pattern of delay. The rule proposals in this NOPR aim to encourage ongoing compliance and avoid delay and unnecessary cost with the singular intent that railroad crossing safety is paramount in all Commission determinations under its jurisdiction.

15. In the discussion below, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comment by rulemaking participants. Where rules are described as "current," they refer to the currently effective

[3] The Commission will provide notice to the Legislature of the proposed rules on the date of issuance of this NOPR.

rules prior to proposed amendments. "Proposed" rules refer to proposed changes, including new or reordered paragraphs, or revisions to language. The proposed changes are shown in Attachment A (redline) and Attachment B (clean) to this Decision. The Commission welcomes comments on the proposed rules as presented in this Section C and Attachments A and B.

1. Basis, Purpose, and Statutory Authority

16. The proposed revisions to the Basis, Purpose, and Statutory Authority section add that these rules address civil penalties.

2. Civil Penalties

17. We propose to add a new section to the rules titled "Civil Penalties." This new section, comprising new Rules 7009 through 7011 contain the substantive provisions implementing the new statute.

a. Rule 7009. Definitions

18. Proposed new Rule 7009 provides definitions for terms used in this Civil Penalties section that arise from the new statutory requirements.

19. ***Rule 7009(a)*** – We propose adding a defined term for "civil penalty" to clarify that a "civil penalty" is a monetary penalty imposed by the Commission for failures to comply with a Commission order or rule, as authorized by § 40-4-106(1)(b), C.R.S.

20. ***Rule 7009(b)*** – We propose adding a defined term for "civil penalty assessment" to clarify that a "civil penalty assessment" is an act by the Commission that imposes a civil penalty.

21. ***Rule 7009(c)*** – We propose adding a defined term for "civil penalty assessment notice" to clarify that a "civil penalty assessment notice" is a written document whereby the

Commission gives initial notice of an alleged failure to comply with a Commission order or rule and sets forth the proposed civil penalty amount.

b. Rule 7010. Civil Penalties

22. This proposed new rule establishes how the Commission will handle alleged violations of a Commission order or rule.

23. ***Rule 7010(a)*** – This rule provides that the Commission has authority to impose a civil penalty against a railroad, railroad corporation, rail fixed guideway, or transit agency for failure to comply with a Commission order or rule, as authorized in § 40-4-106(1)(b), C.R.S. We propose this rule after receiving stakeholder feedback that violations of Commission orders and rules by these entities are widespread. We are concerned that these violations can lead to delays that impair local and municipal governing authorities from maintaining safe rail crossings. To promote safety for the traveling public, we propose this rule to encourage these entities engage in a constructive partnership with local and municipal governing authorities to timely build and maintain safe rail crossings.

24. ***Rule 7010(b)*** – This rule proposes a framework for how the Commission will issue a civil penalty assessment notice for an alleged failure to comply with a Commission order or rule. We propose the civil penalty assessment notice shall identify the alleged individual violation of a Commission order or rule, propose a penalty amount for each alleged violation, propose a percentage-based reduction of the penalty amount, and, where applicable, state the maximum amount of imposable penalty pursuant to § 24-34-108(2), C.R.S.

25. ***Rule 7010(c)*** – This rule proposes procedures for adjudicating alleged individual violations leading to a civil penalty assessment notice. An entity may admit liability or contest the alleged violations identified in the civil penalty assessment notice. Alternatively, an entity

may request a hearing before the Commission to contest alleged violations in the civil penalty assessment notice. We propose the evidentiary standard of a preponderance of the evidence demonstrating a violation and that the burden rests with Commission Trial Staff at the hearing. Consistent with processes in other Commission agency rules,[4] we propose this adjudicatory process will protect the due process rights of alleged violators of Commission rules or orders.

26. ***Rule 7010(d)*** – This rule proposes procedures for assessing civil penalties after an admission or adjudicative finding of liability. Pursuant to § 40-7-105(1), C.R.S., the maximum civil penalty assessment is two thousand dollars. In accordance with § 40-7-105(2), C.R.S., every violation is considered a separate and distinct offense, and each day is deemed a separate and distinct offense. We propose these civil penalty rules to closely match the civil penalty rules for fixed utilities.

c. Rule 7011. Rule Violations, Civil Enforcement, and Civil Penalties

27. We propose that violations of Rules 7204, 7211, 7212, 7213, 7301, 7302, 7324, 7325, 7326, and 7402 may form the basis for a civil penalty assessment notice.

d. Rule 7201. Definitions

28. We propose removing the definition of "owner of the track" in Rule 7201 universally because owner(s) of the track fall under the definition of "Railroad" so use of this term is unnecessary.

[4] *See, e.g.*, §§ 40-7-116 and 40-7-116.5, C.R.S. (detailing Commission standards for enforcement proceedings against public utilities and carriers); Rules 6017 and 6018 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 (stating civil penalty rules related to transportation by motor vehicle).

e. Rule 7202. Necessary Parties to Application Proceeding

29. This rule clarifies that any owner of a track at a railroad crossing be joined as a necessary party in an application proceeding before the Commission. We propose this joinder requirement for the sake of efficiency in the application process.

f. Rule 7204. Application Contents

30. ***Rule 7204(a)(X)(C) and (D)*** – This rule adds new language that requires an entity to provide the road authority the detailed railroad cost estimate of the crossing warning device within the 90-day timeframe outlined in proposed Rule 7212(e). The rule also clarifies that the schematic diagram of the crossing warning devices (commonly referred to as the "front sheet" or "state sketch") shall also be provided within the timeframe outlined in proposed Rule 7212(e).

g. Rule 7211. Crossing Construction and Maintenance

31. We propose amendments to this rule to ensure that delays pertaining to crossing construction and maintenance projects are limited. We propose these amendments to ensure that road authorities can best provide for the safety of the traveling public.

32. ***Rule 7211(k)*** – This rule clarifies that the Commission may determine what obstructions are to be removed from rail crossings. We propose this clarification to ensure reasonable safety measures are in place for rail crossings and that objects obstructing the view of the rail crossing are removed.

33. ***Rule 7211(l)*** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall be required to coordinate with the road authority when a maintenance or crossing construction project leads to the temporary closure of a highway-rail crossing or public pathway crossing. This rule responds to the concern raised by road authorities that local roadways can become closed without notice or coordination with the road authority.

We propose this rule to ensure road authorities are informed and can provide adequate notice to the general public to ensure the safety of the affected crossing.

34. ***Rule 7211(m)*** – This rule requires that a railroad, railroad corporation, rail fixed guideway, or ***transit*** agency cannot not perform construction work at a highway-rail crossing or public pathway crossing prior to obtaining all required road authority permits and coordinating with the road authority to provide public notice of detours. We propose this rule to ensure that railroads obtain the necessary road authority permits and work with road authorities to provide public notice of detours for the period of time when the crossing is temporarily closed.

35. We propose this rule to ensure compliance with local and municipal permitting requirements and to ensure the safety of the traveling public. Road authorities raised the issue in the stakeholder process that, by closing roadways without any notice or permits, drivers have to turn ***around*** and find other ways to travel to their destination. We agree that this can create a safety issue where drivers are making maneuvers that are not normal and where other drivers may be unaware of the intent of the driver making an irregular traffic maneuver. We expect, if road authorities are informed ahead of a proposed closure, they can work with railroads to ensure appropriate permitting, public notice, and signage to avoid these public safety threats. We solicit feedback from rulemaking participants on these concerns and whether this proposed rule adequately addresses those concerns.

36. ***Rule 7211(n)*** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall provide road authorities with the project construction support needed to timely construct and complete any highway-rail or public pathway crossing project. We propose this rule to respond to stakeholder concerns related to the construction of railroad projects, where road authorities stated that they cannot perform portions of construction projects

because the appropriate railroad management and support is not provided when needed. The proposed rule addresses this issue by requiring railroad management and support to be provided to road authorities when needed.

37. ***Rule 7211(o)*** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall replace crossing surfaces within 90 days, starting from the date when a road authority informs the railroad, railroad corporation, rail fixed guideway, or transit agency that the crossing surface is in disrepair. We propose this rule to ensure that crossing surfaces remain in a condition that provides the public a safe crossing.

38. We propose this rule to address stakeholder concerns pertaining to the duration of time it currently takes to repair crossings. For example, on one crossing surface that was in disrepair on South Santa Fe Drive in Denver, vehicles routinely traveled over the crossing at 55 miles per hour for two years. This required the Colorado Department of Transportation to initiate temporary mitigation measures and post signage warning drivers of the unsafe crossing.

39. We propose this rule to address the general untimeliness of repairing or replacing crossing surfaces. We propose that 90 days is a sufficient time to replace the surfaces and allows time for ordering crossing surface planks and allowing the railroad to install the new panels or repair existing ones where possible. This rule also requires that railroads coordinate with road authorities to coordinate required closures, per Rule 7211(l).

40. ***Rule 7211(p)*** – This rule requires a railroad, railroad corporation, rail fixed guideway, or transit agency to obtain the Commission's authority prior to commencing construction of a new crossing or making any changes at a public crossing. We propose this rule after discovering that several public crossings have been opened, closed, or changed without Commission authority. This rule allows for the Commission to grant authority for construction

projects while allowing the Commission to ensure that projects are completed in accordance with public safety measures.

41. We propose that relevant changes to a rail crossing include installing sidewalk panels; installing passive warning devices other than crossbucks, yield signs, and emergency notification signs; installing active warning devices; changing crossing detection circuitry; interconnecting a crossing with a traffic signal or queue cutter signal; and adding or removing additional tracks.

42. We propose this rule to clarify the Commission's authority is needed before any new public crossing changes are made outside maintenance done in the ordinary course of business. We find this rule is necessary to avoid changes being made to rail crossings without the Commission reviewing the changes for safety concerns. Changes made outside of the ordinary course of business and without Commission authorization would subject the railroad, railroad corporation, rail fixed guideway, or transit agency to civil penalties under the updated rules. We propose this rule and potential for civil penalty to better ensure safety is reviewed and paramount to any changes made.

h. Rule 7212. Crossing Safety Diagnostics and Cost Estimates

43. We propose these amendments to ensure that delays pertaining to construction projects of rail crossings are minimized. These rules are intended to provide road authorities with the ability to manage the impact of crossing safety projects and to promote safety for the traveling public.

44. ***Rule 7212(a)*** – We propose minor wording changes to ensure all parties agree for a need to request a crossing safety diagnostic.

45. ***Rule 7212(c)*** – This rule requires a road authority and Commission Staff confer on the need for, and selection of, appropriate safety devices, the appropriate preemption operation and the timing of traffic control signals interconnected with highway-rail grade crossings adjected to signalized highway intersections, and the appropriate exit gate operating mode and clearance times for rail crossings. We propose this rule to assist road authorities in making these decisions with the interest of public safety in mind.

46. ***Rule 7212(d)*** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency cannot require a road authority to accept the results of or pay for the preparation of any study or report not expressly requested by the road authority. We propose this rule to ensure that road authorities are not bound by railroad consultants who prepare traffic studies and then require the road authority to pay for such a study.

47. During the stakeholder process, Douglas County described how a railroad company hired a third-party traffic engineering consultant to provide review and comment on crossing improvement plans. We are concerned that road authorities can be forced to assume the cost of these third-party consultants as an unnecessary expense where they already employ qualified traffic engineering staff to perform the same assessments. We note that pre-rulemaking workshop participants expressed concern that third-party consultants may delay the commencement of safety improvement projects of rail crossings.

48. We propose this rule to clarify that railroads are not to perform any traffic studies or prepare these types of reports for road authorities unless expressly requested by the road authority, and road authorities are not required to pay for such studies unless expressly requested. We seek participant comment on further concerns and clarity in further updating this rule.

49. ***Rule 7212(e)*** – This rule establishes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall provide a road authority with a cost estimate and schematic diagram no more than 90 days after a request by the road authority. The information included in the schematic diagram must include all information as set forth in Rule 7204(X)(D) and adhere to the specific configuration requested by the road authority.

50. During the stakeholder process, railroads proposed a generic schematic and estimate that is modified after Commission approval and after the railroad conducts the field survey for the project. We are concerned this may cause problems for road authorities when construction of a project commences and could lead to delays. Additionally, we are concerned, when railroads design something different from what is applied for by the road authorities as this could create safety issues that railroads then expect road authorities to resolve.

51. We propose this rule to resolve delays in rail crossing and crossing related projects moving forward. We find timely provision of accurate cost estimates based on an actual design of the crossing will help move projects toward timely completion.

52. ***Rule 7212(f)*** – This rule requires that a signed construction and maintenance agreement, or evidence of a signed intergovernmental agreement, shall be filed with the Commission within 90 days of the Commission's order authorizing the highway-rail crossing project, or within 30 days before the proposed start date for construction, whichever comes later.

53. We propose this rule to implement a timeline to ensure the timely commencement of a crossing project. The construction and maintenance agreement must be executed before the construction of a project begins. We find that delays in filing the construction and maintenance agreement may lead to delays in the commencement of projects that improve the safety of rail

crossings. Under the proposed rule, waiver of the timelines is permissible for good cause, where the burden of persuasion rests with the movant.

54. ***Rule 7212(g)*** – This rule proposes that a railroad, railroad corporation, rail fixed guideway, or transit agency shall be afforded up to eight billable hours in scope for preemption calculation verification based on road authority-provided traffic signal timings, and to complete any necessary project review and railroad client report for at-grade highway-rail or pathway-rail grade crossing projects. A railroad, railroad corporation, rail fixed guideway, or transit agency may request an extension of the permitted time, with good cause shown. We anticipate that railroads setting reasonable limitations on the scope of work, subject to expansion for good cause, will assist in avoiding unnecessary cost and delay. Participants are encouraged to comment on whether these limitations are sufficient.

55. We propose this rule to limit the time and scope of the work that railroad consultants provide so as not to delay road authority projects, whereby such a delay can lead to public safety concerns. This rule also clarifies that road authorities need not redesign their projects to conform with railroad specifications when they conflict with what the road authority determines is needed for the safety of the traveling public.

56. ***Rule 7212(h)*** – This rule clarifies that a railroad, railroad corporation, rail fixed guideway, or transit agency may assess costs for new or revised easements but may not assess costs for existing easements at existing public highway or public pathway crossings. An easement fee may be an unnecessary expense on the part of road authorities because these fees have already been paid for in existing easements. When an additional area is needed for an existing easement, this area is fair for a revised assessment.

57. We propose this rule to clarify that payments for easements at existing crossings are prohibited and to ensure minimal delay in projects and construction and maintenance agreements from moving forward. A delay in moving forward with crossing projects and the execution of construction and maintenance agreements can lead to public safety issues.

58. ***Rule 7212(i)*** – This rule allows road authorities to file formal complaints with the Commission against railroads where the railroad delays have caused a loss of third-party funding for the completion of a highway-rail or pathway crossing project. These complaints must contain factual allegations of the cause of delay, state the amount of lost funding, and request that the Commission allocate the lost funding to the railroad, railroad corporation, rail fixed guideway, or transit agency, or otherwise institute appropriate relief, including but not limited to the imposition of a civil penalty assessment.

59. We propose this rule to prevent delays that cause the loss of funding and in turn delay projects from moving toward their completion. Such delays can constitute public safety threats. The loss of funding incurred by road authorities may then be assigned to the railroads.

i. Rule 7213. Minimum Crossing Safety Requirements

60. ***Rule 7213(a)*** – We propose an amendment that adds the requirement of posting an emergency notification sign on each side of the tracks with the crossbucks, yield sign, and number of tracks sign, if necessary. We propose this amendment to ensure conformity with the Federal Railroad Administration's requirements, under the Rail Safety Improvement Act of 2008, that requires all crossings to have posted emergency notification signs on both sides of the crossing. This provides the traveling public information about who to call in case of emergencies and how to identify in these calls where the emergency is occurring. This also

ensures that specific crossing numbers are available to emergency responders, notifying them of the location where an emergency is occurring.

3. Safety

a. Rule 7301. Installation and Maintenance of Crossing Warning Devices

61. ***Rule 7301(a)*** – We propose a clarification that a railroad, railroad corporation, rail fixed guideway, rail fixed guideway system, or transit agency incurs the expense of installing and maintaining the good operating condition or good condition of passive and active crossing warning devices for the life of the crossing.

D. Conclusion

62. Through this NOPR, the Commission solicits comments from interested persons on the amendments proposed in this Decision and its attachments. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. The Commission also welcomes submission of alternative proposed rules, including both consensus proposals joined by multiple rulemaking participants and individual proposals.

63. Participants are encouraged to provide redlines of any specific proposed rule changes. Participants are invited to re-file in this Proceeding any comments that they filed in prior Proceeding No. 21R-0100R.

64. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's E-Filings System at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0538R

65. The Commission refers this matter to an ALJ for a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to

submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

66. Initial written comments on the proposed rule changes are requested by **December 22, 2021**. Any person wishing to file comments responding to the initial comments is requested to file such comments by **January 5, 2022**. These deadlines are set so that the comments and responses may be considered at the public hearing conducted by the ALJ, nonetheless, persons may file written comments into this Proceeding at any time.

67. Throughout this Decision, we have endeavored to explain our proposed rule change in this NOPR, and to provide our reasoning for accepting or not accepting other suggestions at this time. The Commission's intent in these rules is to best ensure public safety through the Commission's rules, consistent with the inclusions of rail fining authority set forth in SB 19-236, and impose fines as necessary to further that cause. This rulemaking is intended to lead to further engagement with stakeholders on proposed rule changes with the ALJ and, if warranted, with the Commission following the ALJ's recommended decision. The Commission therefore encourages continued robust participation from stakeholders including providing written and oral comments and with redlines of specific proposed rule changes.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) shall be filed with the Colorado Secretary of State for publication in the December 10, 2021, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A remote public hearing on the proposed rules and related matters shall be held as follows:

DATE: January 11, 2022

TIME: 1:00 p.m.

PLACE: By video conference using Zoom at a link provided in the calendar of events posted on the Commission's website: https://puc.colorado.gov/

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 December 22, 2021, and any pre-filed comments responsive to the initial comments be submitted no later than January 5, 2022. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission's E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.homepage

6. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 10, 2021.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

Notice of Proposed Rulemaking

Tracking number

2021-00776

Department

1100 - Department of Labor and Employment

Agency

1107 - Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-2

Rule title

REGULATIONS CONCERNING LOCAL GOVERNMENT PARTICIPATION WITH THE PAID FAMILY MEDICAL LEAVE PROGRAM

Rulemaking Hearing

Date

01/06/2022

Time

05:00 PM

Location

Virtual over Zoom

Subjects and issues involved

This regulation will govern the Family and Medical Leave Insurance program pursuant to 8-13.3-522 C.R.S., concerning the processes for local government employers to either participate or decline participation in the program.

Statutory authority

This regulation is adopted pursuant to the authority in section 8-13.3-522 C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the APA), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 through 524 et seq. (the Act), C.R.S.

Contact information

Name

Lydia Waligorski

Title

FAMLI Policy Manager

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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of FAMLI

REGULATIONS CONCERNING LOCAL GOVERNMENT PARTICIPATION WITH THE PAID FAMILY MEDICAL LEAVE PROGRAM

7 CCR 1107-2

2.1 Authority

This regulation is adopted pursuant to the authority in section 8-13.3-522 C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 through 524 et seq. (the "Act"), C.R.S.

2.2 Scope and Purpose

A. This regulation will govern the Family and Medical Leave Insurance program pursuant to 8-13.3-522 C.R.S., concerning the process for local government employers to decline participation in the program.

B. This regulation will govern the process of a local government electing into the FAMLI Program, after initial declination.

C. This regulation will govern the notification requirements of local government employers to their employees regarding any vote to decline FAMLI coverage, the outcome of such a vote, and the ability of local government employees to voluntarily elect coverage as individuals.

D. This regulation does not apply to any other employer classifications within the State of Colorado, including but not limited to people who are self -employed.

2.3 Applicability

The provisions of this section will be applicable to all local government entities within the State of Colorado.

If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

2.4 Definitions

"FAMLI" is defined as the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 through 524 (the "Act"), C.R.S.

"Fund" has the same meaning as in §8-13.3-503 (12) C.R.S.

"Division" has the same definition as 8-13.3-503 (5) C.R.S.

"Governing Body" has the same meaning as in both §31-1-101(4) C.R.S and §32-1-103(8)

C.R.S.

“Local Government” has the same meaning as a county, city and county, city, or town whether home rule or statutory, or any school district or a special district created pursuant to the “Special District Act,” article 1 of title 32, C.R.S. and as outlined in 24-19-102. C.R.S.,authority or other political subdivision of the state.

“Premium” is defined as the money payments required pursuant to 8-13.3-507 C.R.S.,to finance the payment of family and medical leave insurance benefits and administer the family and medical leave insurance program.

2.5 Local Government Employer Participation

A. Pursuant to Regulation 2.6, local government employers are required to formally notify the Division in writing and provide both the date of the vote, and the local government’s decision to decline participation in the FAMLI program.
    1. Local governments which have previously declined participation in the FAMLI program pursuant to 8-13.3-522 C.R.S., may subsequently elect coverage by first registering as an employer with the FAMLI Division prior to the collection of employer premiums.
    2. Local governments which have previously declined participation in the FAMLI program pursuant to 8-13.3-522 C.R.S., may subsequently elect FAMLI Program coverage at the beginning of the annual cycle relevant to the local government’s budgeting cycle.
    3. The ability of a local government to either decline participation in the FAMLI program or elect coverage following a previous declination is subject to a vote of the governing body of each local government entity pursuant to this Regulation and Regulation 2.6 of 7 CCR 1107-2, A local government may not decline participation in the FAMLI program in part. Any such declination of a local government is a full declination of FAMLI program participation for that local government employer.

B. Local government employers which have previously declined coverage and now wish to elect coverage of FAMLI benefits for their employees pursuant to §§8-13.3-522 (3)(b) C.R.S., may subsequently elect coverage by an affirmative vote of a majority of a quorum of the local government’s governing body.

C. A local government which has previously declined coverage must renew the declination through a similar vote process and margin no later than every eight years. In the absence of a vote further declining coverage, the local government will become a covered employer. The local government must inform the Division of a declination vote in writing which includes the date the vote was taken.

D. When a local government employer returns to coverage pursuant to Regulation §§ 2.5 (B) or §§ 2.5 (C) of 7 CCR 1107-2, coverage will begin no later than one quarter after the local government has notified the Division of a change of the vote to elect coverage pursuant to 7 CCR 1107-2, §§ 2.5 (B) or its deadline to renew its declination pursuant to 7 CCR 1107-2, §§ 2.5 (C) and have submitted at least one quarter’s premium amount on behalf of both the employer and its employees into the fund.

E. Local government employees who have individually opted into the benefits program

pursuant to 8-13.3-514 C.R.S., will not pay a double premium amount, and must be given notice by the local government employer of a date corresponding with the beginning of a calendar quarter at which a premium amount will be submitted to the Division on their behalf.

1. The purpose of the notice by the local government employer of the date at which a premium amount will be submitted to the Division on behalf of an employer is to inform the employee of any potential lapses or changes in benefits eligibility.
2. This notice must be delivered in writing and or through electronic communication to the employee by their local government employer no later than 90 days after the vote.
3. The local government employer must also publicly post notice of the date of the first day the employer will begin paying FAMLI premiums and when coverage is expected to start.

F. Eligible employees who have not been previously covered as individual participants employed by a newly participating local government will begin full benefit eligibility the first day of the following quarter after the premiums are received by the Division.

1. Local government employers that have previously declined participation and then subsequently elect or return to coverage under the FAMLI program must remain in the program for a minimum of three fiscal years corresponding to the date the local government elected coverage began.

a.The three year cycle begins on the first day of employee coverage.

b. The notice of the intent to decline future coverage must be delivered in writing to the Division no later than 90 days prior to the end of the three year cycle pursuant to this regulation.

2. Employees must also be notified in writing, both posted and directly notified no later than 180 days of the pending or upcoming return to or withdrawal of coverage pursuant to this regulation.

a. Local government employers will display a notice containing the information required in this regulation in a conspicuous and accessible place in each establishment where employees are employed; provided, however, in cases where the local government employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification will be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform.

b. The written notice and posting will contain an explanation of employee rights under the FAMLI program including but not limited to program requirements, benefits, claims process, payroll deductions and premiums, the right to job protection and

benefit continuation under 8-13.3-509 C.R.S., protection against retaliatory personnel actions or other discrimination, relevant contact information for the Division, and other pertinent information.

c. The notice and poster required by this regulation will be in English and in any language representing the first language spoken by at least five percent of the local governments employer's workplace. The Division will create and make available to local government employers posters and notices containing information required in this regulation, and local government employers may use the posters and notices to comply with the requirements of this section.

2.6 Process and Notification of FAMLI Program Declination

A. Local government employers are permitted to decline to participate in the FAMLI program after a written notice has been delivered to the FAMLI Division memorializing the decision by an affirmative vote of the local government's governing body to decline participation in the program. Such a vote will follow the local government's or special district's procedures for other formal votes of the governing body.

1. A declination vote will not take effect with a resulting change in coverage until after 180 days after the vote, to allow individual employees the opportunity to opt into the benefits program pursuant to 8-13.3-514 C.R.S., should individuals choose to elect coverage.

2. Public notice must be given in the same manner as any other business before the governing body, and the local government will take/hear testimony prior to the vote, pursuant to the procedural rules of the governing body. The local government's employees must also be notified in writing prior to the vote and provided both information regarding the vote process and opportunity to submit comments through a public process to the governing body.

3. Within 30 days following a local government declination vote, the local government must provide its local government employees with a written individual notice of the local government's declination vote and the impact toward FAMLI ,or other paid family and leave insurance coverage. The written notice, must at a minimum, explain the differences between benefits offered by the FAMLI program and any private plan offered by the local government. The notice must also state which employees, if any, are eligible for job protection under the federal Family and Medical Leave Act (FMLA) benefits or other local provisions were applicable.

4. Written notices must contain information regarding the right of local government employees to voluntarily opt into FAMLI benefits pursuant to 8-13.3-514 C.R.S., and the contact information for the Division. Local government employers will display a notice containing the information in a conspicuous and accessible place in each establishment where

employees are employed; provided, however, in cases where the local government employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification will be sent via electronic communication or through a conspicuous posting in the web-based or app-based platform. The notice and poster required in this regulation will be in English and in any language representing the first language spoken by at least five percent of the local government employer's workforce. The Division will create and make available to local government employers posters and notices containing the information required in this regulation, and local government employers may use the posters and notice to comply with the requirements of this section.

(a) It is the responsibility of the local government employers to request printed materials from the Division. Local government employers may be responsible for the printing and mailing costs of such materials.
(b) It is the responsibility of the local government to provide written notification to the Division of the local government employers interpretation needs of printed notices for languages other than English or Spanish.

B. The declination period is not permanent and participation must be reconsidered, and the Division notified at a minimum of every 8 years. The governing body may reconsider and elect coverage annually pursuant to 7 CCR 1107-2, Regulation 2.5.

2.7 Overpayments

Any overpayment by a local government employee whose employer opts back into the program will be repaid to the employee by the Division. The Division will ensure a continuation of coverage for local government employees who have individually opted into the benefits program pursuant to 8-13.3-514 C.R.S., and ensure no lapse in coverage prior to the local government’s reinstatement of coverage.

Notice of Proposed Rulemaking

Tracking number

2021-00756

Department

1505 - Department of State

Agency

1505 - Secretary of State

CCR number

8 CCR 1505-11

Rule title

NOTARY PROGRAM RULES

Rulemaking Hearing

Date

01/06/2022

Time

01:00 PM

Location

Register for the webinar rulemaking hearing at: https://attendee.gotowebinar.com/register/6210479698245127179.

Subjects and issues involved

The Secretary is considering amendments to the Colorado Secretary of State Notary Program Rules in order to ensure the uniform and proper administration, implementation, and enforcement of the Revised Uniform Law on Notarial Acts (RULONA). The Secretary may consider additional rule amendments including revisions necessary to eliminate obsolete provisions; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments. Please see attached Notice of Permanent Rulemaking including a Draft Statement of Basis.

Statutory authority

Sections 24-21-527(1) and 24-21-527(1)(h), C.R.S.

Contact information

Name

Shannon Kenney

Title

Department Rulemaking Program Assistant

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Email

Sos.Rulemaking@coloradosos.gov

Preliminary Draft of Proposed Rules

Office of the Colorado Secretary of State
Notary Program Rules
8 CCR 1505-11

November 29, 2021

Disclaimer:
In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.[1]

This is a preliminary draft of the proposed rules that may be revised before the January 6, 2022 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than January 1, 2022.[2]

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
~~Strikethrough~~	Deletions
[Italic blue font text]	Annotations

Current 8 CCR 1505-11 is amended as follows:

Amendments to Rule 3 concerning vendors and course providers:

[Current Rule 3.6.5 and 3.6.5(a) are amended. New Rule 3.6.5(b). Current Rule 3.6.5(b) is renumbered as New Rule 3.6.5(c).]

3.6.5 Right to ~~appeal termination of~~ RESPOND TO AND CURE NONCOMPLIANCE AND RIGHT TO HEARING BEFORE TERMINATING, SUSPENDING, OR IMPOSING CONDITIONS ON accreditation or approval. ~~If the Secretary of State proposes to terminate an approved vendor's accreditation status or approval of a course provider, the vendor or course provider has the right to request a hearing as provided in the State Administrative Procedure Act, (Article 4 of Title 24, C.R.S.)~~

(a) ~~If the approved vendor or the course provider does not request a hearing, termination will be effective 30 days after the mailing date of the termination notice.~~ EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR OF SUBSTANTIAL DANGER TO THE PUBLIC HEALTH AND SAFETY, THE SECRETARY OF STATE WILL PROVIDE A VENDOR OR COURSE PROVIDER WITH WRITTEN NOTICE, AN OPPORTUNITY TO RESPOND IN WRITING, AND A REASONABLE OPPORTUNITY TO COMPLY WITH ALL LAWFUL REQUIREMENTS THAT MAY WARRANT AGENCY PROCEEDINGS TO TERMINATE, SUSPEND,

[1] Sections 24-4-103(2.5) and (3)(a), C.R.S. (2021). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.
[2] Section 24-4-103(4)(a), C.R.S. (2021). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

OR IMPOSE CONDITIONS ON AN EXISTING ACCREDITATION OF A VENDOR OR APPROVAL OF A COURSE PROVIDER BEFORE INSTITUTING SUCH PROCEEDINGS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

(B) EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRE EMERGENCY ACTION, THE SECRETARY OF STATE WILL NOT TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING ACCREDITATION OF A VENDOR OR APPROVAL OF A COURSE PROVIDER UNTIL AFTER HOLDING A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

~~(b)~~(C) Termination does not bar the Secretary of State from beginning or continuing an investigation concerning the vendor or course provider.

Amendments to Rule 5 concerning remote notarization system and storage providers:

[New Rule 5.3.5. Current Rules 5.3.5, 5.3.6, and 5.3.7 are renumbered as Rules 5.3.6, 5.3.7, and 5.3.8.]

5.3.5 DEFICIENT PROVIDER APPLICATION. IF THE SECRETARY OF STATE DENIES APPROVAL OF AN APPLICANT, THE SECRETARY OF STATE WILL NOTIFY THE APPLICANT OF ANY APPLICATION DEFICIENCIES. A REJECTED APPLICANT MAY REQUEST A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.)

~~5.3.5~~5.3.6 Notifications

(a) If a remote notarization system provider or storage provider becomes aware of a possible security breach involving its data, the provider must give notice to both the Secretary of State and each Colorado remote notary public using its services no later than 30 days after the date of determination that a security breach occurred. The provider must comply with any other notification requirements of Colorado's data privacy laws.

(b) No later than 30 days before making any changes to the remote notarization system or storage system used by Colorado remote notaries that would impact any previously provided answer in its application about its system that would affect the provider's eligibility for approval, a provider must both request approval from the Secretary of State and notify each Colorado remote notary public using its services. Changes to the system or storage must conform to statutory and rule requirements.

(c) For non-system or storage-related changes to the provider's information on file with the Secretary of State, the provider must notify and update information provided to the Secretary of State no later than 30 days after changes to the provider's previously supplied information. This requirement includes changes to the disclosures required by Rule 5.3.2(b)(2).

~~5.3.6~~5.3.7 Complaints. A person may file a complaint with the Secretary of State against an approved provider. The complaint must allege a specific violation of Colorado's Revised Uniform Law on Notarial Acts or these rules. The person must submit the signed and dated complaint on the Secretary of State's standard form.

~~5.3.7~~5.3.8 Grounds for termination of approval. The Secretary of State may terminate approval of a provider for any of the following reasons:

(a) Violation of any provision of Colorado's Revised Uniform Law on Notarial Acts or these rules;

(b) Making representations that the Secretary of State endorses, recommends, or mandates use of any of the provider's products, goods, or services;

(c) If the provider sustains a data breach; and

(d) Failure to timely respond to the Secretary of State's request for information or otherwise cooperate with an investigation, including providing requested information.

[Current Rule 5.3.8 is renumbered as Rule 5.3.9. Current Rule 5.3.9(a) is amended. New Rule 5.3.9(b). Current Rule 5.3.9(b) is renumbered as Rule 5.3.9(c).

~~5.3.8~~5.3.9 Right ~~to appeal denial or termination of~~ RESPOND TO AND CURE NONCOMPLIANCE AND RIGHT TO HEARING BEFORE TERMINATING, SUSPENDING, OR IMPOSING CONDITIONS ON approval. ~~If the Secretary of State denies or proposes to terminate an approved provider's status, the provider has the right to request a hearing as provided in the State Administrative Procedure Act, (Article 4 of Title 24, C.R.S.)~~

(a) ~~If the provider does not request a hearing, termination of approval will be effective 30 days after the mailing date of the termination notice.~~ EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR OF SUBSTANTIAL DANGER TO THE PUBLIC HEALTH AND SAFETY, THE SECRETARY OF STATE WILL PROVIDE A REMOTE NOTARIZATION SYSTEM OR STORAGE PROVIDER WITH WRITTEN NOTICE, AN OPPORTUNITY TO RESPOND IN WRITING, AND A REASONABLE OPPORTUNITY TO COMPLY WITH ALL LAWFUL REQUIREMENTS THAT MAY WARRANT AGENCY PROCEEDINGS TO TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING APPROVAL BEFORE INSTITUTING SUCH PROCEEDINGS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

(B) EXCEPT IN CASES OF DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE IMPERATIVELY REQUIRE EMERGENCY ACTION, THE SECRETARY OF STATE WILL NOT TERMINATE, SUSPEND, OR IMPOSE CONDITIONS ON AN EXISTING APPROVAL OF A REMOTE NOTARIZATION SYSTEM OR STORAGE PROVIDER UNTIL AFTER HOLDING A HEARING IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

~~(b)~~(C) Termination does not bar the Secretary of State from beginning or continuing an investigation concerning the provider.

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State
Christopher P. Beall
Deputy Secretary of State

Notice of Proposed Rulemaking

Office of the Secretary of State
Notary Program Rules
8 CCR 1505-11

Date of Notice: November 29, 2021
Date and Time of Public Hearing: January 6, 2022 at 1:00 p.m.

I. Hearing Notice

As required by the State Administrative Procedure Act,[1] the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for January 6, 2022 at 1:00 p.m. **This meeting will be conducted via webinar; no in-person option is available.** Details regarding how to join the webinar and testify during the hearing are outlined in section VI of this notice.

II. Subject

The Secretary is considering amendments to the Colorado Secretary of State Notary Program Rules[2] in order to ensure the uniform and proper administration, implementation, and enforcement of the Revised Uniform Law on Notarial Acts (RULONA)[3]. The Secretary may consider additional rule amendments including revisions necessary to eliminate obsolete provisions; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory Authority

The Secretary proposes the rule revisions and amendments in accordance with the following statutory provisions:

[1] Section 24-4-103(3)(a), C.R.S. (2021).
[2] 8 CCR 1505-11.
[3] Article 21 of Title 24, Part 5, C.R.S. (2021).

- Section 24-21-527(1), C.R.S., (2021), which authorizes the Secretary of State to "adopt rules to implement this part 5 [the Revised Uniform Law on Notarial Acts] in accordance with article 4 of this title 24 [the State Administrative Procedure Act]."

- Section 24-21-527(1)(h), C.R.S., (2021), which authorizes the Secretary of State to "[p]rescribe requirements for the approval and use of remote notarization systems and storage systems."

IV. Copies of Draft Rules

A preliminary draft of the proposed rules is posted on the Secretary of State's rules and notices of rulemaking website at:
https://coloradosos.gov/pubs/rule_making/hearings/2022/NotaryRulesHearing20220106.html.

You may also contact our office to request an editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,[4] if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by January 1, 2022.

V. Opportunity to Testify and Submit Written Comments

The Secretary values your feedback in our rulemaking process and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comment concerning the rule amendments. You may submit written comments to SoS.Rulemaking@coloradosos.gov any time before and during the hearing. Additional opportunity to comment in writing will be announced at the conclusion of the hearing. Information regarding how to testify during the webinar hearing is provided in section VI of this notice.

As soon as possible after receipt, written comments will be posted online at the Secretary of State website:
https://coloradosos.gov/pubs/rule_making/hearings/2022/NotaryRulesHearing20220106.html.

We will redact apparent personal contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor. All written comments will be added to the official rulemaking record.

VI. Webinar and Audio Recording of Hearing

[4] Section 24-4-103(3)(a), C.R.S. (2021). "Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing…shall be made available to any person at least five days prior to said hearing."

Register for the webinar hearing
To join and listen to the hearing, you must register for the webinar online: https://attendee.gotowebinar.com/register/6210479698245127179.

When you register, you must provide your full name and email address. Please provide additional contact information including your address and telephone number. You may also provide your job title and organization. Lastly, indicate whether you plan to testify during the hearing. When you submit your registration, you should receive a confirmation email including details about how to join the webinar.

Webinar hearing procedures
At the beginning of the webinar, we will mute all public participants. After the introduction and a brief summary of the rulemaking, we will open the hearing to testimony as follows:

- Referencing registration records, we will identify and individually unmute participants who indicated that they plan to testify during the hearing.

- When we exhaust the list, we will ask whether any additional attendees wish to testify. Attendees may raise/lower their hand by clicking the icon in their control panel.

- To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

Before the hearing concludes, we will announce an additional opportunity to submit written comments and the associated deadline.

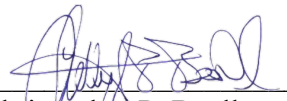
Webinar audio requirements
Please be advised: we strongly encourage attendees to join the webinar through their computer even if they use their telephone to dial in for audio. To testify during the hearing, it is best to use your computer microphone and speakers or a headset. As outlined above, we will first receive testimony from attendees whose registration indicates that they plan to provide testimony and then we will offer attendees the option to raise their hand. If you access the webinar only by telephone, you may not appear in our webinar attendee list meaning we may not be able to unmute you. Moreover, the raise your hand feature is only available to attendees who access the webinar by computer.

Audio recording
After the hearing concludes, a recording will be available on our audio broadcasts page here: https://www.sos.state.co.us/pubs/info_center/audioBroadcasts.html.

VII. Office Contact

If you have any questions or would like to submit written comments, please contact the Department Rulemaking Program Assistant at SoS.Rulemaking@coloradosos.gov.

Dated this 29th Day of November, 2021,



Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State
Christopher P. Beall
Deputy Secretary of State

Draft Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Notary Program Rules
8 CCR 1505-11

November 29, 2021

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Notary Program Rules. The purpose of the changes is to ensure the uniform and proper administration, implementation, and enforcement of the Colorado Revised Uniform Law on Notarial Acts (RULONA)[1] and to answer questions arising under the Act. Specifically, the changes include:

- Amendments to Rule 3.6.5 and 3.6.5(a) clarify that, unless an exception applies, the Secretary of State will provide a vendor or course provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a provider before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).

- Amendments to Rule 3.6.5 and New Rule 3.6.5(b) clarify that, unless an exception applies, the Secretary of State will not terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a course provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).

- Current Rule 3.6.5(b) is renumbered as Rule 3.6.5(c).

- New Rule 5.3.5 clarifies that if the Secretary of State denies approval of the application of a provider (defined in Rule 5.1.2 as a remote notarization system provider or a remote notarization storage provider), the rejected applicant has the right to request a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.)

- Current Rules 5.3.5 and 5.3.6 are renumbered as Rules 5.3.6 and 5.3.7.

[1] Article 21, Title 24 of the Colorado Revised Statutes.

- Current Rule 5.3.7 is renumbered as Rule 5.3.8 and a typographical error is corrected in subsection (a).

- Current Rule 5.3.8 is renumbered as Rule 5.3.9. Rule 5.3.9(a) is amended to clarify that, unless an exception applies, the Secretary of State will provide a remote notarization system or storage provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose condition on an existing approval before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).

- New Rule 5.3.9(b) clarifies that, unless an exception applies, the Secretary of State will not terminate, suspend, or impose conditions on an existing approval of a remote notarization system or storage provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.).

- Current Rule 5.3.9(b) is renumbered as Rule 5.3.9(c).

II. Rulemaking Authority

The statutory authority is as follows:

- Section 24-21-527(1), C.R.S., (2021), which authorizes the Secretary of State to "adopt rules to implement this part 5 [the Revised Uniform Law on Notarial Acts] in accordance with article 4 of this title 24 [the State Administrative Procedure Act]."

- Section 24-21-527(1)(h), C.R.S., (2021), which authorizes the Secretary of State to "[p]rescribe requirements for the approval and use of remote notarization systems and storage systems."

Notice of Proposed Rulemaking

Tracking number

2021-00781

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-3

Rule title

COLORADO REFUGEE SERVICES PROGRAM (CRSP)

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's response to COVID-19. Anticipated to be held entirely online.

Subjects and issues involved

The Afghanistan Supplemental Appropriations Act, 2022 (Public Law 117-43) was authorized on September 30, 2021. The act established immediate eligibility for federal benefit programs for Afghan humanitarian parolees (also known as non-SI parolees). The Colorado Refugee Services Program (CRSP) proposes the inclusion of new Office of Refugee Resettlement (ORR) eligible categories of Afghan population groups into the state rules, in response to the urgent evacuation and resettlement of Afghan population to the State of Colorado. The proposed rule will ensure that the new categories of Afghan population groups and their document types, that are proof of their status, are clearly reflected in the state rules. NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Check here for any updates on location/connection:
https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S.; 26-1-109, C.R.S.; 26-1-111, C.R.S.; 24-76.5-101, C.R.S.; 26-1-105(2)(a), (3), C.R.S.; 26-2-103, C.R.S.; 26-2-106(1.5), C.R.S.; 26-2-111, C.R.S.; 26-2-111.8, C.R.S.; 26-2-137, C.R.S.; 8 U.S.C. Sections 1153(a)(7), 1157, 1158, 1182; Public Law 96-212, as amended

Contact information

Name

Bidur Dahal

Title

Refugee Stabilization Coordinator,

Telephone

303.489.5084

Email

bidur.dahal@state.co.us

Title of Proposed Rule:	**Addition of new eligible categories of Afghan population groups**	
CDHS Tracking #:		
Office, Division, & Program: Office of Economic Security, Employment & Benefits Division, Colorado Refugee Services Program	Rule Author: Bidur Dahal	Phone: 303-489-5084 E-Mail: bidur.dahal@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a.___ [x] Board [ ] Executive Director

b. [ ] Regular [X] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[x] AG Initial Review [x] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
x	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December

What date is being requested for this rule to be effective?	12/03/2021
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates:	1st Board	12/03/2021	2nd Board	01/07/2022	Effective Date 12/03/2021

Title of Proposed Rule:	**Addition of new eligible categories of Afghan population groups**	
CDHS Tracking #:		
Office, Division, & Program: Office of Economic Security, Employment & Benefits Division, Colorado Refugee Services Program	Rule Author: Bidur Dahal	Phone: 303-489-5084 E-Mail: bidur.dahal@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

The Afghanistan Supplemental Appropriations Act, 2022 (Public Law 117-43) was authorized on September 30, 2021. The act established immediate eligibility for federal benefit programs for Afghan humanitarian parolees (also known as non-SI parolees). The Colorado Refugee Services Program (CRSP) proposes the inclusion of new Office of Refugee Resettlement (ORR) eligible categories of Afghan population groups into the state rules, in response to the urgent evacuation and resettlement of Afghan population to the State of Colorado. The proposed rule will ensure that the new categories of Afghan population groups and their document types, that are proof of their status, are clearly reflected in the state rules. Thus, CRSP proposes the addition of the following categories under section 3.321 (CRSP eligible population group):

1) Afghan individuals that have been granted humanitarian parole status, by the U.S. Department of Homeland Security.
2) Afghan individuals granted special immigrant parolee (SQ/SI) or conditional permanent resident (CPR) status by the U.S. Department of Homeland Security.

CRSP also proposed the addition of following documents under section 3.330 (verification of status for program eligibility):

1) Paroled into the United States between July 31, 2021, and September 30, 2022, with form I-94 noting Humanitarian Parole (per INA section 212(d)(5)(A)), or a foreign passport with DHS/CBP admission stamp noting “OAR,” or a foreign passport with DHS/CBP admission stamp noting “OAW” or foreign passport with DHS/CBP admission stamp noting “DT”, or DHS/CBP/ or DHS/USCIS temporary Form I-551 Alien Documentation Identification and Telecommunication (ADIT) stamp.
2) A holder of an I-94 (DHS Arrival/Departure Record) noting Special Immigrant (SQ/SI) Parole, or foreign passport with DHS/CBP admission stamp or DHS Form I-551 (“green card”) noting that the individual has been classified under IV (immigrant visa) Category CQ1, CQ2 or CQ3, or DHS/CBP/ or DHS/USCIS temporary Form I-551 Alien Documentation Identification and Telecommunication (ADIT) stamp.

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

x	to comply with state/federal law and/or
x	to preserve public health, safety and welfare

Justification for emergency:

Title of Proposed Rule:	**Addition of new eligible categories of Afghan population groups**	
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Afghan Humanitarian Parolees were made eligible immediately in the Afghanistan Supplemental Appropriations Act. Current rules do not allow eligibility for this population and are out of alignment with the new federal law. The Afghans population groups prioritized for evacuation, and resettlement in Colorado thus need a rapid response towards initial stability in our state. Ensuring the inclusion of their new categories and types of documents that are proof in the state rules, will bring uniform knowledge of categories, public benefits eligibility and support from all parties involved.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2021)	State Board to promulgate rules
26-1-109, C.R.S. (2021)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2021)	State department to promulgate rules for public assistance and welfare activities

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

Code	Description
24-76.5-101, C.R.S (2021)	Restrictions on public benefits and verification of lawful presence.
26-1-105(2)(a), (3), C.R.S (2021)	Executive director of the department of human services may establish divisions as needed for functions of the department;
26-2-103, C.R.S (2021)	Definitions
26-2-106(1.5), C.R.S (2021)	Application for public assistance
26-2-111, C.R.S (2021)	Eligibility for public assistance
26-2-111.8, C.R.S (2021)	Eligibility of noncitizens for public assistance
26-2-137, C.R.S. (2021)	Emergency services for non-citizens
8 U.S.C. Sections 1153(a)(7), 1157, 1158, 1182	Immigration and Nationality Act and Section 412- Refugee Assistance, Authorization for Programs Domestic Resettlement of and Assistance to Refugees.
Public Law 96-212, as amended	Refugee Act of 1980

Does the rule incorporate material by reference?		Yes	x	No
Does this rule repeat language found in statute?		Yes	x	No

If yes, please explain.

Title of Proposed Rule:	**Addition of new eligible categories of Afghan population groups**	
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REGULATORY ANALYSIS

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

Colorado Department of Human Services, and individual county human services departments will benefit from this rule change because this change, will bring clarity on the categories of the new eligible Afghan population groups, and their documents type, that will be the verification for this population groups to receive public benefits.

Colorado refugee resettlement agencies and other CRSP contactors will benefit due to having state rules regarding Afghan humanitarian parole, Afghan SQ/SI parole, and conditional permanent resident (CPR) status and their program eligibility to match federal program rules. This rule will ensure and confirm the eligibility of public benefits for these new categories of Afghan population groups.

No burdens or adverse impact is known because of this proposed rule.

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

This rule change will preserve and bring clarity to the CRSP rules that are most essential for the efficient and effective provision of benefits and services, to the new Afghan population that are ORR eligible populations. The consequences of this rule would be the benefit to any county worker, supervisor, or director who works with these populations and who are responsible for processing these new case types for public benefits, in the respective counties.

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

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

The fiscal impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado. There is no reason to believe that the cost of providing benefits to newly eligible non-citizens will exceed what can be paid for through existing program allocations.

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County Fiscal Impact

The fiscal impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado. There is no reason to believe that the cost of providing benefits to newly eligible non-citizens will exceed what can be paid for through existing program allocations.

Federal Fiscal Impact
There are no federal fiscal impacts with this change.

Other Fiscal Impact *(such as providers, local governments, etc.)*
There are no other fiscal impacts.

4. Data Description
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?
There are no studies or data needed for these new rules.

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

There were no alternatives considered for the revised rule because these rules are federally defined.

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OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
3.321	Clarity	G. Unaccompanied Refugee Minors (URMs) are minors identified overseas who are eligible for resettlement in the United States, but do not have a parent or a relative available who are committed to providing for the minor's long-term care. Upon arrival in the United States, these refugee youth are placed into the URM program and receive refugee foster care services and benefits. Youth who have an immigration status that enables them to become eligible for ORR services (for verification of status for program eligibility, see section 3.330), who enter the United States with or without family but experience a family breakdown or cannot return home, may also be eligible to participate in the URM program if approved by ORR.	G. AFGHAN INDIVIDUALS THAT HAVE BEEN GRANTED HUMANITARIAN PAROLE STATUS, BY THE U.S. DEPARTMENT OF HOMELAND SECURITY. ~~Unaccompanied Refugee Minors (URMs) are minors identified overseas who are eligible for resettlement in the United States, but do not have a parent or a relative available who are committed to providing for the minor's long-term care. Upon arrival in the United States, these refugee youth are placed into the URM program and receive refugee foster care services and benefits. Youth who have an immigration status that enables them to become eligible for ORR services (for verification of status for program eligibility, see section 3.330), who enter the United States with or without family but experience a family breakdown or cannot return home, may also be eligible to participate in the URM program if approved by ORR.~~ H. AFGHAN INDIVIDUALS GRANTED SPECIAL IMMIGRANT PAROLEE (SQ/SI) OR	To ensure clarity of the new categories of Afghan population groups.	No

		H. An I-551 (“green card”) holder who held one of the previously identified statuses are eligible to apply for both CDHS and CRSP benefits and services.	CONDITIONAL PERMANENT RESIDENT (CPR) STATUS BY THE U.S. DEPARTMENT OF HOMELAND SECURITY. ~~An I-551 (“green card”) holder who held one of the previously identified statuses are eligible to apply for both CDHS and CRSP benefits and services.~~ I. UNACCOMPANIED REFUGEE MINORS (URMS) ARE MINORS IDENTIFIED OVERSEAS WHO ARE ELIGIBLE FOR RESETTLEMENT IN THE UNITED STATES, BUT DO NOT HAVE A PARENT OR A RELATIVE AVAILABLE WHO ARE COMMITTED TO PROVIDING FOR THE MINOR’S LONG-TERM CARE. UPON ARRIVAL IN THE UNITED STATES, THESE REFUGEE YOUTH ARE PLACED INTO THE URM PROGRAM AND RECEIVE REFUGEE FOSTER CARE SERVICES AND BENEFITS. YOUTH WHO HAVE AN IMMIGRATION STATUS THAT ENABLES THEM TO BECOME ELIGIBLE FOR ORR SERVICES (FOR VERIFICATION OF STATUS FOR PROGRAM ELIGIBILITY, SEE SECTION 3.330), WHO ENTER THE UNITED STATES WITH OR WITHOUT FAMILY BUT EXPERIENCE A FAMILY BREAKDOWN OR CANNOT RETURN HOME, MAY ALSO BE ELIGIBLE TO PARTICIPATE IN THE URM PROGRAM IF APPROVED BY ORR. J. AN I-551 (“GREEN CARD”) HOLDER WHO		

			HELD ONE OF THE PREVIOUSLY IDENTIFIED STATUSES ARE ELIGIBLE TO APPLY FOR BOTH CDHS AND CRSP BENEFITS AND SERVICES.		
3.330	Clarity	H. Unaccompanied Refugee Minors (URMs) who meet the definition above will have one of the following statuses: refugee, asylee, Cuban/Haitian Entrant, victim of trafficking, Amerasian, Iraqi or Afghani special immigrant visa holder, Special Immigrant Juvenile Status (SIJS), U visa holder, or has legal permanent resident status that previously held one of the statuses mentioned. If the URM has SIJS status, documentation presented will be one of the following: I-797, notice of action indicating status (i.e., evidence of approved I-360, or evidence of approved I-360 and approved I-485); visa indicating SIJS status with SL class of admission; I-1551 indicating SIJS status with SL class of admission. If the URM has a U-visa, documentation presented will be one of the following: I-797 notice of action indicating U status; a U-visa; or an I-94 arrival/departure record	H. PAROLED INTO THE UNITED STATES BETWEEN JULY 31, 2021, AND SEPTEMBER 30, 2022 WITH FORM I-94 NOTING HUMANITARIAN PAROLE (PER INA SECTION 212(D)(5)(A)), OR A FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP NOTING “OAR,” OR A FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP NOTING “OAW” OR FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP NOTING “DT”, OR DHS/CBP/ OR DHS/USCIS TEMPORARY FORM I-551 ALIEN DOCUMENTATION IDENTIFICATION AND TELECOMMUNICATION (ADIT) STAMP. ~~Unaccompanied Refugee Minors (URMs) who meet the definition above will have one of the following statuses: refugee, asylee, Cuban/Haitian Entrant, victim of trafficking, Amerasian, Iraqi or Afghani special immigrant visa holder, Special Immigrant Juvenile Status (SIJS), U visa holder, or has legal permanent resident status that previously held one of the statuses mentioned.~~ ~~If the URM has SIJS status, documentation presented will be one of the following: I-797, notice of action indicating status (i.e., evidence of approved I-360, or evidence of approved I-360 and approved I-485); visa indicating SIJS~~	To ensure the program rule reflects the new document type that constitutes as a proof of status for the above population groups.	No

		showing admission in U status. Please note: U-visa holders are not considered "qualified aliens" status for federal public benefits. It does qualify the person to be "lawfully present" for potential state benefits. I. An I-551 form ("green card", permanent resident card or resident alien card) with class of admission codes AS-6, AS-7, AS-8, RE-6, RE-7, RE-8, RE-9, CH-6, HA6, HB6, GA6, GA7, GA8, ST6, ST7, ST8, ST0, ST9, SI6, SI7, SI9, SQ6, SQ7, SQ9, AM-1, AM-2, AM-3, AM6, AM-7, or AM8. The unexpired I-551 stamp may be located in a foreign passport. If not eligible for the assistance of TANF/Colorado Works, individuals with this immigration status may be eligible for Refugee Cash Assistance (RCA) through the Colorado Refugee Services Program if income and program eligibility criteria are met. Persons must be enrolled in one of the refugee resettlement agencies in order to access RCA. Individuals admitted to the United States who are classified by	~~status with SL class of admission; I-1551 indicating SIJS status with SL class of admission.~~ ~~If the URM has a U-visa, documentation presented will be one of the following: I-797 notice of action indicating U status; a U-visa; or an I-94 arrival/departure record showing admission in U status. Please note: U-visa holders are not considered "qualified aliens" status for federal public benefits. It does qualify the person to be "lawfully present" for potential state benefits.~~ I. A HOLDER OF AN I-94 (DHS ARRIVAL/DEPARTURE RECORD) NOTING SPECIAL IMMIGRANT (SQ/SI) PAROLE, OR FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP OR DHS FORM I-551 ("GREEN CARD") NOTING THAT THE INDIVIDUAL HAS BEEN CLASSIFIED UNDER IV (IMMIGRANT VISA) CATEGORY CQ1, CQ2 OR CQ3, OR DHS/CBP/ OR DHS/USCIS TEMPORARY FORM I-551 ALIEN DOCUMENTATION IDENTIFICATION AND TELECOMMUNICATION (ADIT) STAMP. ~~An I-551 form ("green card", permanent resident card or resident alien card) with class of admission codes AS-6, AS-7, AS-8, RE-6, RE-7, RE-8, RE-9, CH-6, HA6, HB6, GA6, GA7, GA8, ST6, ST7, ST8, ST0, ST9, SI6, SI7, SI9, SQ6, SQ7, SQ9, AM-1, AM-2, AM-3, AM6, AM-7, or AM 8. The unexpired I-551 stamp may be~~		

		USCIS as "Applicants for Asylum" are not eligible for CRSP benefits. Once granted asylum, those individuals are eligible. The exception to this rule is Cuban and Haitian individuals applying for asylum; however, they must produce documents as described above. For additional federal information regarding CRSP eligible populations, statuses, and documentation, see the Office of Refugee Resettlement State Letter # 16-01, dated 10/1/2015, located on the federal government web site at: http://www.acf.hhs.gov/programs/orr/resource/status-and-documentation-requirements-for-theorr-refugee-resettlement-program#process. No later editions or amendments are incorporated. Copies may be reviewed during normal business hours by contacting the Refugee Services Coordinator in the Office of Economic Security, Colorado Refugee Services Program, 1120 Lincoln Street, Suite 1007, Denver, Colorado 80203. If there is an eligibility	~~located in a foreign passport.~~ ~~If not eligible for the assistance of TANF/Colorado Works, individuals with this immigration status may be eligible for Refugee Cash Assistance (RCA) through the Colorado Refugee Services Program if income and program eligibility criteria are met. Persons must be enrolled in one of the refugee resettlement agencies in order to access RCA. Individuals admitted to the United States who are classified by USCIS as "Applicants for Asylum" are not eligible for CRSP benefits. Once granted asylum, those individuals are eligible. The exception to this rule is Cuban and Haitian individuals applying for asylum; however, they must produce documents as described above.~~ ~~For additional federal information regarding CRSP eligible populations, statuses, and documentation, see the Office of Refugee Resettlement State Letter # 16-01, dated 10/1/2015, located on the federal government web site at:~~ ~~http://www.acf.hhs.gov/programs/orr/resource/status-and-documentation-requirements-for-the orr-refugee-resettlement-program#process. No later editions or amendments are incorporated. Copies may be reviewed during normal business hours by contacting the Refugee Services Coordinator in the Office of Economic Security, Colorado Refugee Services Program, 1120 Lincoln Street, Suite 1007, Denver,~~		

		question, please contact the Colorado Refugee Services Program for assistance.	~~Colorado 80203. If there is an eligibility question, please contact the Colorado Refugee Services Program for assistance.~~ J. UNACCOMPANIED REFUGEE MINORS (URMS) WHO MEET THE DEFINITION ABOVE WILL HAVE ONE OF THE FOLLOWING STATUSES: REFUGEE, ASYLEE, CUBAN/HAITIAN ENTRANT, VICTIM OF TRAFFICKING, AMERASIAN, IRAQI OR AFGHANI SPECIAL IMMIGRANT VISA HOLDER, SPECIAL IMMIGRANT JUVENILE STATUS (SIJS), U VISA HOLDER, OR HAS LEGAL PERMANENT RESIDENT STATUS THAT PREVIOUSLY HELD ONE OF THE STATUSES MENTIONED. IF THE URM HAS SIJS STATUS, DOCUMENTATION PRESENTED WILL BE ONE OF THE FOLLOWING: I-797, NOTICE OF ACTION INDICATING STATUS (I.E., EVIDENCE OF APPROVED I-360, OR EVIDENCE OF APPROVED I-360 AND APPROVED I-485); VISA INDICATING SIJS STATUS WITH SL CLASS OF ADMISSION; I-1551 INDICATING SIJS STATUS WITH SL CLASS OF ADMISSION. IF THE URM HAS A U-VISA, DOCUMENTATION PRESENTED WILL BE ONE OF THE FOLLOWING: I-797 NOTICE OF ACTION INDICATING U STATUS; A U-VISA; OR AN I-94 ARRIVAL/DEPARTURE RECORD SHOWING ADMISSION IN U STATUS.		

			PLEASE NOTE: U-VISA HOLDERS ARE NOT CONSIDERED “QUALIFIED ALIENS” STATUS FOR FEDERAL PUBLIC BENEFITS. IT DOES QUALIFY THE PERSON TO BE “LAWFULLY PRESENT” FOR POTENTIAL STATE BENEFITS. K. AN I-551 FORM (“GREEN CARD”, PERMANENT RESIDENT CARD OR RESIDENT ALIEN CARD) WITH CLASS OF ADMISSION CODES AS-6, AS-7, AS-8, RE-6, RE-7, RE-8, RE-9, CH-6, HA6, HB6, GA6, GA7, GA8, ST6, ST7, ST8, ST0, ST9, SI6, SI7, SI9, SQ6, SQ7, SQ9, AM-1, AM-2, AM-3, AM6, AM-7, OR AM 8. THE UNEXPIRED I-551 STAMP MAY BE LOCATED IN A FOREIGN PASSPORT. IF NOT ELIGIBLE FOR THE ASSISTANCE OF TANF/COLORADO WORKS, INDIVIDUALS WITH THIS IMMIGRATION STATUS MAY BE ELIGIBLE FOR REFUGEE CASH ASSISTANCE (RCA) THROUGH THE COLORADO REFUGEE SERVICES PROGRAM IF INCOME AND PROGRAM ELIGIBILITY CRITERIA ARE MET. PERSONS MUST BE ENROLLED IN ONE OF THE REFUGEE RESETTLEMENT AGENCIES IN ORDER TO ACCESS RCA. INDIVIDUALS ADMITTED TO THE UNITED STATES WHO ARE CLASSIFIED BY USCIS AS "APPLICANTS FOR ASYLUM" ARE NOT ELIGIBLE FOR CRSP BENEFITS. ONCE		

			GRANTED ASYLUM, THOSE INDIVIDUALS ARE ELIGIBLE. THE EXCEPTION TO THIS RULE IS CUBAN AND HAITIAN INDIVIDUALS APPLYING FOR ASYLUM; HOWEVER, THEY MUST PRODUCE DOCUMENTS AS DESCRIBED ABOVE. FOR ADDITIONAL FEDERAL INFORMATION REGARDING CRSP ELIGIBLE POPULATIONS, STATUSES, AND DOCUMENTATION, SEE THE OFFICE OF REFUGEE RESETTLEMENT STATE LETTER # 16-01, DATED 10/1/2015, LOCATED ON THE FEDERAL GOVERNMENT WEB SITE AT: HTTPS://WWW.ACF.HHS.GOV/ORR/POLICY-GUIDANCE/STATUS-AND-DOCUMENTATION-REQUIREMENTS-ORR-REFUGEE-RESETTLEMENT-PROGRAM#PROCESS. NO LATER EDITIONS OR AMENDMENTS ARE INCORPORATED. COPIES MAY BE REVIEWED DURING NORMAL BUSINESS HOURS BY CONTACTING THE REFUGEE SERVICES COORDINATOR IN THE OFFICE OF ECONOMIC SECURITY, COLORADO REFUGEE SERVICES PROGRAM, 1575 SHERMAN ST, DENVER, COLORADO 80203. IF THERE IS AN ELIGIBILITY QUESTION, PLEASE CONTACT THE COLORADO REFUGEE SERVICES PROGRAM FOR ASSISTANCE.		

STAKEHOLDER COMMENT SUMMARY

Title of Proposed Rule:	**Addition of new eligible categories of Afghan population groups**	
CDHS Tracking #:		
Office, Division, & Program: Office of Economic Security, Employment & Benefits Division, Colorado Refugee Services Program	Rule Author: Bidur Dahal	Phone: 303-489-5084 E-Mail: bidur.dahal@state.co.us

Development

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

CDHS Employment and Benefits Division Programs

This Rule-Making Package

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

CDHS Employment and Benefits Division Programs; Food and Energy Assistance Division; Colorado Department of Local Affairs; Colorado Department of Labor and Employment; Colorado Department of Public Health and Environment; Colorado Department of Health Care Policy and Financing; Refugee Resettlement Agencies (Volags): specifically Lutheran Family Services Rocky Mountains, African Community Center, and International Rescue Committee; Colorado Alliance for Refugee Empowerment and Success (CARES) contractors; Counties serving CRSP eligible populations.

Other State Agencies

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

[ ] Yes [X] No

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

No other State Agency is impacted by these rules.

Sub-PAC

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

[ ] Yes [x] No

Name of Sub-PAC	Economic Security
Date presented	11/04/2021
What issues were raised?	

Title of Proposed Rule:	**Addition of new eligible categories of Afghan population groups**	
CDHS Tracking #:		
Office, Division, & Program: Office of Economic Security, Employment & Benefits Division, Colorado Refugee Services Program	Rule Author: Bidur Dahal	Phone: 303-489-5084 E-Mail: bidur.dahal@state.co.us

Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [x] No

Date presented	12/02/2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[ ] Yes [x] No

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

9 CCR 2503-3

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3.321 CRSP ELIGIBLE POPULATIONS

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F. Iraqi and Afghan individuals who have been employed by, or on behalf of, the U.S. military, or on behalf of the U.S. Government, or families of such individuals, who are now in danger; and admitted under a Special Immigrant Visa (SIV). For documentation requirements (refer to section 3.330, G.)

G. AFGHAN INDIVIDUALS THAT HAVE BEEN GRANTED HUMANITARIAN PAROLE STATUS, BY THE U.S. DEPARTMENT OF HOMELAND SECURITY. ~~Unaccompanied Refugee Minors (URMs) are minors identified overseas who are eligible for resettlement in the United States, but do not have a parent or a relative available who are committed to providing for the minor's long-term care. Upon arrival in the United States, these refugee youth are placed into the URM program and receive refugee foster care services and benefits. Youth who have an immigration status that enables them to become eligible for ORR services (for verification of status for program eligibility, see section 3.330), who enter the United States with or without family but experience a family breakdown or cannot return home, may also be eligible to participate in the URM program if approved by ORR.~~

H. AFGHAN INDIVIDUALS GRANTED SPECIAL IMMIGRANT PAROLEE (SQ/SI) OR CONDITIONAL PERMANENT RESIDENT (CPR) STATUS BY THE U.S. DEPARTMENT OF HOMELAND SECURITY. ~~An I-551 ("green card") holder who held one of the previously identified statuses are eligible to apply for both CDHS and CRSP benefits and services.~~

I. UNACCOMPANIED REFUGEE MINORS (URMS) ARE MINORS IDENTIFIED OVERSEAS WHO ARE ELIGIBLE FOR RESETTLEMENT IN THE UNITED STATES, BUT DO NOT HAVE A PARENT OR A RELATIVE AVAILABLE WHO ARE COMMITTED TO PROVIDING FOR THE MINOR'S LONG-TERM CARE. UPON ARRIVAL IN THE UNITED STATES, THESE REFUGEE YOUTH ARE PLACED INTO THE URM PROGRAM AND RECEIVE REFUGEE FOSTER CARE SERVICES AND BENEFITS. YOUTH WHO HAVE AN IMMIGRATION STATUS THAT ENABLES THEM TO BECOME ELIGIBLE FOR ORR SERVICES (FOR VERIFICATION OF STATUS FOR PROGRAM ELIGIBILITY, SEE SECTION 3.330), WHO ENTER THE UNITED STATES WITH OR WITHOUT FAMILY BUT EXPERIENCE A FAMILY BREAKDOWN OR CANNOT RETURN HOME, MAY ALSO BE ELIGIBLE TO PARTICIPATE IN THE URM PROGRAM IF APPROVED BY ORR.

J. AN I-551 ("GREEN CARD") HOLDER WHO HELD ONE OF THE PREVIOUSLY IDENTIFIED STATUSES ARE ELIGIBLE TO APPLY FOR BOTH CDHS AND CRSP BENEFITS AND SERVICES.

3.330 VERIFICATION OF STATUS FOR PROGRAM ELIGIBILITY

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G. Iraqi and Afghan special immigrant visa holders (SIVs), who meet one of the criteria listed below:

1. A holder of an Iraqi or Afghan passport with a Department of Homeland Security visa noting the individual has been approved for admission under one of the Immigrant Visa (IV) categories of SI1, SI2, SI3, SQ1, SQ2, and SQ3, and a Department of Homeland Security admission stamp on the passport or I-94 noting date of entry.

2. A holder of a green card (I-551) showing Iraqi or Afghan nationality, or Iraqi or Afghan passport, showing one of the following immigrant visa categories: SI6, SI7, SI9, SQ6, SQ7, OR SQ9.

H. PAROLED INTO THE UNITED STATES BETWEEN JULY 31, 2021, AND SEPTEMBER 30, 2022 WITH FORM I-94 NOTING HUMANITARIAN PAROLE (PER INA SECTION 212(D)(5)(A)), OR A FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP NOTING “OAR,” OR A FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP NOTING “OAW” OR FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP NOTING “DT”, OR DHS/CBP/ OR DHS/USCIS TEMPORARY FORM I-551 ALIEN DOCUMENTATION IDENTIFICATION AND TELECOMMUNICATION (ADIT) STAMP. ~~Unaccompanied Refugee Minors (URMs) who meet the definition above will have one of the following statuses: refugee, asylee, Cuban/Haitian Entrant, victim of trafficking, Amerasian, Iraqi or Afghani special immigrant visa holder, Special Immigrant Juvenile Status (SIJS), U visa holder, or has legal permanent resident status that previously held one of the statuses mentioned.~~

~~If the URM has SIJS status, documentation presented will be one of the following: I-797, notice of action indicating status (i.e., evidence of approved I-360, or evidence of approved I-360 and approved I-485); visa indicating SIJS status with SL class of admission; I-1551 indicating SIJS status with SL class of admission.~~

~~If the URM has a U-visa, documentation presented will be one of the following: I-797 notice of action indicating U status; a U-visa; or an I-94 arrival/departure record showing admission in U status. Please note: U-visa holders are not considered “qualified aliens” status for federal public benefits. It does qualify the person to be “lawfully present” for potential state benefits.~~

I. A HOLDER OF AN I-94 (DHS ARRIVAL/DEPARTURE RECORD) NOTING SPECIAL IMMIGRANT (SQ/SI) PAROLE, OR FOREIGN PASSPORT WITH DHS/CBP ADMISSION STAMP OR DHS FORM I-551 (“GREEN CARD”) NOTING THAT THE INDIVIDUAL HAS BEEN CLASSIFIED UNDER IV (IMMIGRANT VISA) CATEGORY CQ1, CQ2 OR CQ3, OR DHS/CBP/ OR DHS/USCIS TEMPORARY FORM I-551 ALIEN DOCUMENTATION IDENTIFICATION AND TELECOMMUNICATION (ADIT) STAMP. ~~An I-551 form (“green card”, permanent resident card or resident alien card) with class of admission codes AS-6, AS-7, AS-8, RE-6, RE-7, RE-8, RE-9, CH-6, HA6, HB6, GA6, GA7, GA8, ST6, ST7, ST8, ST0, ST9, SI6, SI7, SI9, SQ6, SQ7, SQ9, AM-1, AM-2, AM-3, AM6, AM-7, or AM-8. The unexpired I-551 stamp may be located in a foreign passport.~~

~~If not eligible for the assistance of TANF/Colorado Works, individuals with this immigration status may be eligible for Refugee Cash Assistance (RCA) through the Colorado Refugee Services Program if income and program eligibility criteria are met. Persons must be enrolled in one of the refugee resettlement agencies in order to access RCA.~~

~~Individuals admitted to the United States who are classified by USCIS as "Applicants for Asylum" are not eligible for CRSP benefits. Once granted asylum, those individuals are eligible. The exception to this rule is Cuban and Haitian individuals applying for asylum; however, they must produce documents as described above.~~

~~For additional federal information regarding CRSP eligible populations, statuses, and documentation, see the Office of Refugee Resettlement State Letter # 16-01, dated 10/1/2015, located on the federal government web site at: http://www.acf.hhs.gov/programs/orr/resource/status-and-documentation-requirements-for-the orr-refugee-resettlement-program#process. No later editions or amendments are incorporated. Copies may be reviewed during normal business hours by contacting the Refugee Services Coordinator in the Office of Economic Security, Colorado Refugee Services Program, 1120 Lincoln Street, Suite 1007, Denver, Colorado 80203. If there is an eligibility question, please contact the Colorado Refugee Services Program for assistance.~~

J. UNACCOMPANIED REFUGEE MINORS (URMS) WHO MEET THE DEFINITION ABOVE WILL HAVE ONE OF THE FOLLOWING STATUSES: REFUGEE, ASYLEE, CUBAN/HAITIAN ENTRANT, VICTIM OF TRAFFICKING, AMERASIAN, IRAQI OR AFGHANI SPECIAL IMMIGRANT VISA HOLDER, SPECIAL IMMIGRANT JUVENILE STATUS (SIJS), U VISA HOLDER, OR HAS LEGAL PERMANENT RESIDENT STATUS THAT PREVIOUSLY HELD ONE OF THE STATUSES MENTIONED.

IF THE URM HAS SIJS STATUS, DOCUMENTATION PRESENTED WILL BE ONE OF THE FOLLOWING: I-797, NOTICE OF ACTION INDICATING STATUS (I.E., EVIDENCE OF APPROVED I-360, OR EVIDENCE OF APPROVED I-360 AND APPROVED I-485); VISA INDICATING SIJS STATUS WITH SL CLASS OF ADMISSION; I-1551 INDICATING SIJS STATUS WITH SL CLASS OF ADMISSION.

IF THE URM HAS A U-VISA, DOCUMENTATION PRESENTED WILL BE ONE OF THE FOLLOWING: I-797 NOTICE OF ACTION INDICATING U STATUS; A U-VISA; OR AN I-94 ARRIVAL/DEPARTURE RECORD SHOWING ADMISSION IN U STATUS. PLEASE NOTE: U-VISA HOLDERS ARE NOT CONSIDERED “QUALIFIED ALIENS” STATUS FOR FEDERAL PUBLIC BENEFITS. IT DOES QUALIFY THE PERSON TO BE “LAWFULLY PRESENT” FOR POTENTIAL STATE BENEFITS.

K. AN I-551 FORM (“GREEN CARD”, PERMANENT RESIDENT CARD OR RESIDENT ALIEN CARD) WITH CLASS OF ADMISSION CODES AS-6, AS-7, AS-8, RE-6, RE-7, RE-8, RE-9, CH-6, HA6, HB6, GA6, GA7, GA8, ST6, ST7, ST8, ST0, ST9, SI6, SI7, SI9, SQ6, SQ7, SQ9, AM-1, AM-2, AM-3, AM6, AM-7, OR AM 8. THE UNEXPIRED I-551 STAMP MAY BE LOCATED IN A FOREIGN PASSPORT.

IF NOT ELIGIBLE FOR THE ASSISTANCE OF TANF/COLORADO WORKS, INDIVIDUALS WITH THIS IMMIGRATION STATUS MAY BE ELIGIBLE FOR REFUGEE CASH ASSISTANCE (RCA) THROUGH THE COLORADO REFUGEE SERVICES PROGRAM IF INCOME AND PROGRAM ELIGIBILITY CRITERIA ARE MET. PERSONS MUST BE ENROLLED IN ONE OF THE REFUGEE RESETTLEMENT AGENCIES IN ORDER TO ACCESS RCA.

INDIVIDUALS ADMITTED TO THE UNITED STATES WHO ARE CLASSIFIED BY USCIS AS "APPLICANTS FOR ASYLUM" ARE NOT ELIGIBLE FOR CRSP BENEFITS. ONCE GRANTED ASYLUM, THOSE INDIVIDUALS ARE ELIGIBLE. THE EXCEPTION TO THIS RULE IS CUBAN AND HAITIAN INDIVIDUALS APPLYING FOR ASYLUM; HOWEVER, THEY MUST PRODUCE DOCUMENTS AS DESCRIBED ABOVE.

FOR ADDITIONAL FEDERAL INFORMATION REGARDING CRSP ELIGIBLE POPULATIONS, STATUSES, AND DOCUMENTATION, SEE THE OFFICE OF REFUGEE RESETTLEMENT STATE LETTER # 16-01, DATED 10/1/2015, LOCATED ON THE FEDERAL GOVERNMENT WEB SITE AT:

HTTPS://WWW.ACF.HHS.GOV/ORR/POLICY-GUIDANCE/STATUS-AND-DOCUMENTATION-REQUIREMENTS-ORR-REFUGEE-RESETTLEMENT-PROGRAM. NO LATER EDITIONS OR

AMENDMENTS ARE INCORPORATED. COPIES MAY BE REVIEWED DURING NORMAL BUSINESS HOURS BY CONTACTING THE REFUGEE SERVICES COORDINATOR IN THE OFFICE OF ECONOMIC SECURITY, COLORADO REFUGEE SERVICES PROGRAM, 1575 SHERMAN ST, DENVER, COLORADO 80203. IF THERE IS AN ELIGIBILITY QUESTION, PLEASE CONTACT THE COLORADO REFUGEE SERVICES PROGRAM FOR ASSISTANCE.

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Notice of Proposed Rulemaking

Tracking number

2021-00780

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-5

Rule title

ADULT FINANCIAL PROGRAMS

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's response to COVID-19. Anticipated to be held entirely online

Subjects and issues involved

The Afghanistan Supplemental Appropriations Act, 2022 (Public Law 117-43) was authorized on September 30, 2021. The act established immediate eligibility for federal benefit programs for Afghan humanitarian parolees (also known as non-SI parolees). An emergency rule change is necessary to add language in order to align with this federal change, remove overly specific language that does not identify currently eligible Afghani Special Immigrants as eligible, and update a citation which was previously incorporated by reference. NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Please check here for any updates on location/connection:
https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S.; 24-4-103, C.R.S.; 26-1-111, C.R.S.; 26-2-709(1)(a), (1.5), C.R.S.; 26-1-109, C.R.S. (2021)

Contact information

Name

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Title

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Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022	
CDHS Tracking #:	21-10-28-02	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [ ] Regular [X] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review [X] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
5	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December, 2021

What date is being requested for this rule to be effective?	December 3, 2021
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates:	1st Board	December 3, 2021	2nd Board	January 7, 2022	Effective Date	December 3, 2021	

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022	
CDHS Tracking #:	21-10-28-02	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

The Afghanistan Supplemental Appropriations Act, 2022 (Public Law 117-43) was authorized on September 30, 2021. The act established immediate eligibility for federal benefit programs for Afghan humanitarian parolees (also known as non-SI parolees). An emergency rule change is necessary to add language in order to align with this federal change, remove overly specific language that does not identify currently eligible Afghani Special Immigrants as eligible, and update a citation which was previously incorporated by reference.

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

- [X] to comply with state/federal law and/or
- [X] to preserve public health, safety and welfare

Justification for emergency:

Afghan Humanitarian Parolees were made eligible immediately in the Afghanistan Supplemental Appropriations Act. Current rules do not allow eligibility for this population and are out of alignment with the new federal law. This rule change will allow this vulnerable population to access cash programs as a safety net immediately.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2021)	State Board to promulgate rules
24-4-103, C.R.S. (2021)	Provides for emergency adoption of rules
26-1-111, C.R.S. (2021)	State department to promulgate rules for public assistance and welfare activities

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

Code	Description
26-2-709(1)(a), (1.5), C.R.S. (2021)	The State Department shall promulgate rules to comply with federal regulations relating to “cash assistance.”
26-1-109, C.R.S. (2021)	State department rules to coordinate with federal programs

Does the rule incorporate material by reference?	[X] Yes	[ ] No
Does this rule repeat language found in statute?	[ ] Yes	[X] No

If yes, please explain.

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022	
CDHS Tracking #:	21-10-28-02	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022	
CDHS Tracking #:	21-10-28-02	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

This rule change will allow humanitarian parolees from Afghanistan to become immediately eligible for cash programs, both Colorado Works and Adult Financial, as directed by the Afghanistan Supplemental Appropriations Act, 2022 (Public Law 117-43).

2. Describe the qualitative and quantitative impact.

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

The impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado, and of those who will apply for or be otherwise eligible for Colorado Works or Adult Financial programs.

3. Fiscal Impact

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

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

The fiscal impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado, and of those who will apply for or be otherwise eligible for Colorado Works or Adult Financial programs. There is no reason to believe that the cost of providing benefits to newly eligible non-citizens will exceed what can be paid for through existing program allocations.

County Fiscal Impact

The fiscal impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado, and of those who will apply for or be otherwise eligible for Colorado Works or Adult Financial programs. There is no reason to believe that the cost of providing benefits to newly eligible non-citizens will exceed what can be paid for through existing program allocations.

Federal Fiscal Impact

There is no federal fiscal impact because these benefits are paid through state block grants, state only funds, and county funds.

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

No impact because there are no other providers or local governments involved.

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022	
CDHS Tracking #:	21-10-28-02	
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4. Data Description

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

On September 30, 2021 the Senate passed an FY 2022 Continuing Resolution to fund the federal government through December 3, 2023. This legislation allows Afghans who entered the U.S. with humanitarian parole to receive refugee resettlement benefits. The legislation authorizes Afghans arriving with humanitarian parole to receive the same services as refugees (admitted under Section 207 of the INA), including ORR assistance, reception and placement, and other entitlement programs like food assistance.

5. Alternatives to this Rule-making

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

Taking no action could adversely impact the health, safety, and welfare of Afghan parolees as they resettle in Colorado.

Title of Proposed Rule: Afghanistan Non-Citizen Updates 2022

CDHS Tracking #: 21-10-28-02

Office, Division, & Program: Office of Economic Security Employment and Benefits Division

Rule Author: Marnie Brandt

Phone: 720-692-6746

E-Mail: marnie.brandt@state.co.us

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
9 CCR 2503-5 3.510 DEFINITIONS		"Qualified non-citizen" also called qualified alien means an individual who is not a citizen or national of the United States and who was lawfully admitted to the United States by the United States Citizenship and Immigration Services (USCIS) as an actual or prospective permanent resident or whose physical presence is known and allowed by the USCIS. A qualified non-citizen is defined as follows, consistent with the provisions of Federal Regulations found at 45 CFR 1626.7 as of December 30, 2016, which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available at no cost at https://www.ecfr.gov/. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	"Qualified non-citizen" also called qualified alien means an individual who is not a citizen or national of the United States and who was lawfully admitted to the United States by the United States Citizenship and Immigration Services (USCIS) as an actual or prospective permanent resident or whose physical presence is known and allowed by the USCIS. A qualified non-citizen is defined as follows, consistent with the provisions of Federal Regulations found at 45 CFR 1626.~~7~~4 AND 1626.5 as of OCTOBER 7, 2021 ~~December 30, 2016~~, which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available at no cost at https://www.ecfr.gov/. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	Federal law change	No
9 CCR	Missing qualified	A. Qualified non-citizens arriving in the	A. Qualified non-citizens arriving in the U.S. on or after	Adding qualified individuals	No

2503-5 3.520.68 FIVE YEAR BAR FROM ELIGIBILITY	individuals and incorrect incorporated reference	U.S. on or after August 22, 1996, are generally barred from receiving Adult Financial programs for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE, unless they meet one of the exceptions consistent with the provisions of Federal Regulations found at 45 CFR 286.5 as of February 18, 2000, herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available for no cost at https://www.ecfr.gov/. Copies of these regulations are available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library.	August 22, 1996, are generally barred from receiving Adult Financial programs for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE, unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613 AS OF JANUARY 24, 2020 ~~Federal Regulations found at 45 CFR 286.5 as of February 18, 2000~~, herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available for no cost at HTTPS://WWW.GOVINFO.GOV/APP/DETAILS/USCODE-2019-TITLE8/USCODE-2019-TITLE8-CHAP14-SUBCHAPI-SEC1613 ~~https://www.ecfr.gov/~~. Copies of these regulations are available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library.	and correcting incorporated reference	
9 CCR 2503-6 3.604.1. N.7. Documentation of Legal Immigrant	Overly specific reference to eligible visa categories and incorrect reference	f. Iraqi and Afghan individuals who worked as translators for the U.S. Military, or on behalf of the U.S. Government, or families of such individuals; and have been admitted under a Special Immigrant Visa (SIV) with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, or SQ9. Eligibility limitations are outlined in Section 3.710.31, H.	f. Iraqi and Afghan individuals who ~~worked as translators for the U.S. Military, or on behalf of the U.S. Government, or families of such individuals; and~~ have been admitted under a Special Immigrant Visa (SIV) ~~with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, or SQ9. Eligibility limitations are outlined in Section 3.710.31, H.~~	Broadening the Visa categories to align with federal regulations.	No
9 CCR 2503-6 3.604.1.	Incorrect eligibility time frame for parolees and missing new qualified	11. Qualified Non-Citizen A qualified non-citizen is defined as follows consistent with the provisions of	11. Qualified Non-Citizen A qualified non-citizen is defined as follows consistent with the provisions of federal regulations found at 45 CFR	Corrected time frame and added qualified individuals	No

N.11 QUALIFIED NON-CITIZEN	individuals	federal regulations found at 45 CFR 1626.7 as of October 1, 2010, herein incorporated. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library: a. A non-citizen lawfully admitted for permanent residence; b. A non-citizen paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act (INA) for a period of at least 1 year; c. A non-citizen granted conditional entry pursuant to Section 203(a)(7) of the INA prior to April 1, 1980; d. A refugee under Section 207 of the INA; e. An asylee under Section 208 of the INA; f. A non-citizen whose deportation is withheld under Section 243(h) or 241(B)(3) of the INA; g. A Cuban or Haitian entrant as defined in Section 501(3) of the Refuge Education Assistance Act of 1980; h. A Victim of Severe Form of Trafficking who has been certified as such by the U.S. Dept. of Health and Human Services (HHS). i. Iraqis and Afghans granted Special Immigrant Visa status under Section 101(A)(27) of the INA. j. A non-citizen who has been battered or	1626.~~74~~ AND 1626.5 as of OCTOBER 7, 2021 ~~October 1, 2010~~, herein incorporated. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library: a. A non-citizen lawfully admitted for permanent residence; b. A non-citizen paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act (INA) for a period of at least 1 year; c. A non-citizen granted conditional entry pursuant to Section 203(a)(7) of the INA prior to April 1, 1980; d. A refugee under Section 207 of the INA; e. An asylee under Section 208 of the INA; f. A non-citizen whose deportation is withheld under Section 243(h) or 241(B)(3) of the INA; g. A Cuban or Haitian entrant as defined in Section 501(3) of the Refuge Education Assistance Act of 1980; h. A Victim of Severe Form of Trafficking who has been certified as such by the U.S. Dept. of Health and Human Services (HHS). i. Iraqis and Afghans granted Special Immigrant Visa status under Section 101(A)(27) of the INA. j. A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a family member; k. A non-citizen admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. No. 100-461);		

		subjected to extreme cruelty in the U.S. by a family member; k. A non-citizen admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. No. 100-461); l. An individual who was born in Canada and possesses at least fifty percent (50%) American Indian blood or is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450B(E).	l. An individual who was born in Canada and possesses at least fifty percent (50%) American Indian blood or is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450B(E). M. A NON-CITIZEN ADMITTED TO THE U.S. AS AN AFGHAN HUMANITARIAN PAROLEE UNTIL MARCH 31, 2023, (OR THE TERM OF PAROLE, WHICHEVER IS LONGER).		
9 CCR 2503-6 3.604.1. N. 12 FIVE YEAR PERIOD	Missing qualified individuals	12. Five Year Period Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from federal programs for five years unless they meet one of the following exceptions consistent with the provisions of federal regulations found at 45 CFR 286.5 as of February 18, 2000, herein incorporated by reference. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library. a. An honorably discharged U.S. veteran or active U.S. military personnel and/or spouse, unmarried children, widow and widower, including a lawfully admitted	12. Five Year Period Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from federal programs for five years unless they meet one of the following exceptions consistent with the provisions of ~~federal regulations found at~~ 8 USC § 1613 AS OF JANUARY 24, 2020 ~~45 CFR 286.5 as of February 18, 2000~~, herein incorporated by reference. This rule does not contain any later amendments or editions. THESE REGULATIONS ARE AVAILABLE FOR NO COST AT HTTPS://WWW.GOVINFO.GOV/APP/DETAILS/USCODE-2019-TITLE8/USCODE-2019-TITLE8-CHAP14-SUBCHAPI-SEC1613. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library. a. An honorably discharged U.S. veteran or active U.S. military personnel and/or spouse, unmarried children, widow and widower, including a lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war;	Adding qualified individuals	No

		permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war; or, b. A refugee, asylee, deportation withheld, or non-citizen granted status as a Cuban or Haitian entrant, a certified Victim of Severe Form of Trafficking (these humanitarian immigrants maintain their original status when adjusting to Legal Permanent Resident (LPR) status and remain exempt from the five year bar); or,	or, b. A refugee, asylee, deportation withheld, or non-citizen granted status as a Cuban or Haitian entrant, AN AFGHAN HUMANITARIAN PAROLEE UNTIL MARCH 31, 2023, (OR THE TERM OF PAROLE, WHICHEVER IS LONGER), a certified Victim of Severe Form of Trafficking (these humanitarian immigrants maintain their original status when adjusting to Legal Permanent Resident (LPR) status and remain exempt from the five year bar); or,		

STAKEHOLDER COMMENT SUMMARY

Development

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

Colorado Refugee Services Program

This Rule-Making Package

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

County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; Single Entry Point agencies; Economic Security Sub-PAC and PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; Colorado Legal Services; All Families Deserve a Chance Coalition and Colorado Department of Health Care Policy and Financing.

Other State Agencies

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022		
CDHS Tracking #:	21-10-28-02		
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us	

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

[ ] Yes [X] No

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

Sub-PAC

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

[ ] Yes [x] No

Name of Sub-PAC	Economic Security		
Date presented	November 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [x] No

Date presented	December 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[ ] Yes [x] No

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022	
CDHS Tracking #:	21-10-28-02	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

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

9 CCR 2503-5

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3.510 DEFINITIONS

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“Qualified non-citizen” also called qualified alien means an individual who is not a citizen or national of the United States and who was lawfully admitted to the United States by the United States Citizenship and Immigration Services (USCIS) as an actual or prospective permanent resident or whose physical presence is known and allowed by the USCIS. A qualified non-citizen is defined as follows, consistent with the provisions of Federal Regulations found at 45 CFR 1626.~~7~~4 AND 1626.5 as of OCTOBER 7, 2021 ~~December 30, 2016~~, which are herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available at no cost at https://www.ecfr.gov/. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

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3.520.68 FIVE YEAR BAR FROM ELIGIBILITY

A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from receiving Adult Financial programs for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE, unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613 AS OF JANUARY 24, 2020 ~~Federal Regulations found at 45 CFR 286.5 as of February 18, 2000~~, herein incorporated by reference. This rule does not contain any later amendments or editions. These regulations are available for no cost at HTTPS://WWW.GOVINFO.GOV/APP/DETAILS/USCODE-2019-TITLE8/USCODE-2019-TITLE8-CHAP14-SUBCHAPI-SEC1613 ~~https://www.ecfr.gov/~~. Copies of these regulations are available for public inspection and copying
at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library.

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9 CCR 2503-6

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3.604.1.

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N. General Requirements for Citizenship and Lawful Presence

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7. Documentation of Legal Immigrant

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f. Iraqi and Afghan individuals who ~~worked as translators for the U.S. Military, or on behalf of the U.S. Government, or families of such individuals; and~~ have been admitted under a Special Immigrant Visa (SIV) ~~with specific visa~~

~~categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, or SQ9. Eligibility limitations are outlined in Section 3.710.31, H.~~

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11. Qualified Non-Citizen

A qualified non-citizen is defined as follows consistent with the provisions of federal regulations found at 45 CFR 1626.~~74~~ AND 1626.5 as of OCTOBER 7, 2021 ~~October 1, 2010~~, herein incorporated. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library:

a. A non-citizen lawfully admitted for permanent residence;

b. A non-citizen paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act (INA) for a period of at least 1 year;

c. A non-citizen granted conditional entry pursuant to Section 203(a)(7) of the INA prior to April 1, 1980;

d. A refugee under Section 207 of the INA;

e. An asylee under Section 208 of the INA;

f. A non-citizen whose deportation is withheld under Section 243(h) or 241(B)(3) of the INA;

g. A Cuban or Haitian entrant as defined in Section 501(3) of the Refugee Education Assistance Act of 1980;

h. A Victim of Severe Form of Trafficking who has been certified as such by the U.S. Dept. of Health and Human Services (HHS)~~.~~;

i. Iraqis and Afghans granted Special Immigrant Visa status under Section 101(A)(27) of the INA~~.~~;

j. A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a family member;

k. A non-citizen admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. No. 100-461);

l. An individual who was born in Canada and possesses at least fifty percent (50%) American Indian blood or is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450B(E)~~.~~;

M. A NON-CITIZEN ADMITTED TO THE U.S. AS AN AFGHAN HUMANITARIAN PAROLEE UNTIL MARCH 31, 2023, (OR THE TERM OF PAROLE, WHICHEVER IS LONGER).

12. Five Year Period

Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from federal programs for five years unless they meet one of the following exceptions consistent with the provisions of ~~federal regulations found at~~ 8 USC § 1613 AS OF JANUARY 24, 2020 ~~45 CFR 286.5 as of February 18, 2000~~, herein incorporated by reference. This rule does not contain any later amendments or editions. THESE REGULATIONS ARE AVAILABLE FOR NO COST AT HTTPS://WWW.GOVINFO.GOV/APP/DETAILS/USCODE-2019-TITLE8/USCODE-2019-TITLE8-CHAP14-SUBCHAPI-SEC1613.

Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library.

a. An honorably discharged U.S. veteran or active U.S. military personnel and/or spouse, unmarried children, widow and widower, including a lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war; or,

b. A refugee, asylee, deportation withheld, or non-citizen granted status as a Cuban or Haitian entrant, AN AFGHAN HUMANITARIAN PAROLEE, UNTIL MARCH 31, 2023, (OR THE TERM OF PAROLE, WHICHEVER IS LONGER), a certified Victim of Severe Form of Trafficking (these humanitarian immigrants maintain their original status when adjusting to Legal Permanent Resident (LPR) status and remain exempt from the five year bar); or,

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Notice of Proposed Rulemaking

Tracking number

2021-00785

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-5

Rule title

ADULT FINANCIAL PROGRAMS

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's Response to COVID-19. Anticipated to be held entirely online

Subjects and issues involved

This rule package makes several changes to modernize the Adult Financial (AF) programs. First, it adds the ability for counties to make supportive payments based on a declared disaster. Second, it increases the Aid to the Needy Disabled State Only (AND-SO) grant payment from $217/month to $248/month. The AND-SO grant payment has not been increased since September 2018. Third, this rule makes Home Care Allowance (HCA) the program of last resort, connecting clients to more robust and partially federally funded waiver services. Fourth, it corrects the treatment of Child Support income to align with federal benefit programs. Finally, it cleans up a technical internal rule citation. NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Please check here for any updates on location/connection: https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S.; 26-1-109, C.R.S.; 26-1-111, C.R.S.; 26-2-119, C.R.S.; 26-2-122.3, C.R.S.

Contact information

Name

Crickett Phelps

Title

Benefits & Services Section Manager

Telephone

303.325.1201

Email

crickett.phelps@state.co.us

Title of Proposed Rule:	**Adult Financial Modernization – Phase II**	
CDHS Tracking #:	**21-10-28-03**	
Office, Division, & Program:	Rule Author: Crickett Phelps	Phone: 303-325-1201
Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

RULEMAKING PACKET

~~Type of~~ Rule: *(complete a and b, below)*

a. [x] Board [ ] Executive Director

b. [x] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

x	AG Initial Review		x	Initial Board Reading			AG 2nd Review		Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
X	Amended Rules
X	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	January 2022

What date is being requested for this rule to be effective?	April 1, 2022
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates: 1st Board 1/2022 2nd Board 2/2022 Effective Date 4/1/2022

Title of Proposed Rule:	**Adult Financial Modernization – Phase II**	
CDHS Tracking #:	**21-10-28-03**	
Office, Division, & Program:	Rule Author: Crickett Phelps	Phone: 303-325-1201
Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

This rule package makes several changes to modernize the Adult Financial (AF) programs. First, it adds the ability for counties to make supportive payments based on a declared disaster. Second, it increases the Aid to the Needy Disabled State Only (AND-SO) grant payment from $217/month to $248/month. The AND-SO grant payment has not been increased since September 2018. Third, this rule makes Home Care Allowance (HCA) the program of last resort, connecting clients to more robust and partially federally funded waiver services. Fourth, it corrects the treatment of Child Support income to align with federal benefit programs. Finally, it cleans up a technical internal rule citation.

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

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

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2021)	State Board to promulgate rules
26-1-109, C.R.S. (2021)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2021)	State department to promulgate rules for public assistance and welfare activities

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

Code	Description
26-2-119, C.R.S. (2021)	State department to adjust the assistance payment to reflect increases in the cost of living
26-2-122.3, C.R.S. (2021)	State department to promulgate rules for HCA

Does the rule incorporate material by reference?		Yes		x	No
Does this rule repeat language found in statute?		Yes		x	No
If yes, please explain.					

REGULATORY ANALYSIS

Title of Proposed Rule:	Adult Financial Modernization – Phase II	
CDHS Tracking #:	21-10-28-03	
Office, Division, & Program:	Rule Author: Crickett Phelps	Phone: 303-325-1201
Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

1. List of groups impacted by this rule.
Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?
This proposed rule will impact clients receiving AND-SO by increasing the amount of funds they have available monthly.

This rule change will impact Adult Financial clients who are experiencing an emergent situation. These rules will allow for these clients to receive assistance to maintain self sufficiency when there is a county, state, or federal disaster. County departments of human services responsible for administering the Adult Financial Programs will also be impacted by this rule change.

This rule will impact clients receiving HCA by requiring that they be evaluated for more robust services offered under Medicaid waivers administered by HCPF. This rule will also impact the Single Entry Points (SEP) that evaluate for both of these services by requiring they evaluate for Home and Community Based Services (HCBS) prior to determining HCA eligibility.

All stakeholders will benefit from the clarity added through the technical clean up of definitions and rule citations.

2. Describe the qualitative and quantitative impact.
How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?
There are approximately 3,000 clients who receive an AND-SO grant monthly. This rule change will increase the maximum amount of funds they receive monthly by $31 (about 14%) and have a positive impact on those clients.

A clarification has been added to the definition of redetermination to make it easier to understand the multiple terms that may be used for this process.

There are approximately 19,997 Adult Financial clients in the State of Colorado. Each of these clients will become eligible to receive supportive payments through the addition of disaster assistance to help with emergent needs.

There are approximately 1,280 clients receiving Home Care Allowance. A clarification has been added to ensure that all HCA eligible clients are evaluated for home and community based services through Colorado Medicaid before the HCA program can be considered to better serve the population's needs. With this rule change, we anticipate that up to 90% of clients currently receiving HCA will transition to HCBS over the next year. This will increase the level of service the clients have access to, supporting increased independence.

There are two clients receiving an Adult Financial grant monthly who receive a Child Support payment for themselves. A clarification has been added that a child support payment made to the client, client's spouse, or sponsor(s) for another person is considered exempt unearned income, and a new rule has been added that child support received for the child is considered countable unearned income. Following adoption of this rule, that child support income will become countable and may impact the amount of assistance these two clients are receiving.

Title of Proposed Rule:	Adult Financial Modernization – Phase II	
CDHS Tracking #:	21-10-28-03	
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Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

3. Fiscal Impact

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

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*
Changes are needed to the Colorado Benefits Management System (CBMS). All changes are being made within current appropriations for system enhancements.

The OAP and AND-SO appropriations are currently underspent. These changes will increase the amount spent in these programs by providing additional direct benefits to clients. The changes will be made within the existing appropriation. We anticipate the State impact for adding supportive payments will be approximately $3.1 million and the approximate impact for increasing the AND-SO grant is $2 million.

Requiring HCA clients to be evaluated for HCBS through Medicaid will reduce the amount spent in that program. HCA is currently appropriated $8.7 million annually and is underspent. We anticipate reducing the spending in this program further, and by 80-90%, in the next year which will free up State general funds.

There is no impact based on the technical changes being made with this rule.

County Fiscal Impact
Counties have a 20% contribution to the AND program. This increase to the grant will increase the amount counties contribute to each AND-SO case by approximately $6.20 monthly.

Counties will also have a contribution to the HCA program which we anticipate will be reduced by 80-90% based on the client's evaluation for and approval of the HCBS program.

Counties contribute to both AND and HCA spending, adding supportive payments will increase county spending in these programs proportionately. The total impact is expected to be $173,000 annually shared across the 64 counties.

There is no impact based on the technical changes being made with this rule.

Federal Fiscal Impact
There are no federal fiscal impacts to the grant increase, supportive payments, or technical clean-up. This is because Adult Financial programs are solely state funded.

Requiring clients to be evaluated for HCBS will cause more clients to move into that program which has a federal match. This will pull on federal funding instead of state funding and provide more robust services.

Other Fiscal Impact *(such as providers, local governments, etc.)*
There are no other fiscal impacts.

Title of Proposed Rule:	Adult Financial Modernization – Phase II	
CDHS Tracking #:	21-10-28-03	
Office, Division, & Program:	Rule Author: Crickett Phelps	Phone: 303-325-1201
Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

4. Data Description

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

Caseload data was pulled from CBMS to project the ongoing caseload trends for this population. In addition, an in-depth analysis of the AND-SO and OAP appropriations and spending were completed through the County Fiscal Management System (CFMS) data.

5. Alternatives to this Rule-making

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

Taking no action means we would continue to pay AND-SO clients $217/month. While this would be less costly, it does not meet the spirit of the Colorado Statute (26-2-119, C.R.S. (2021)) which encourages the State to consider cost of living adjustments for this program. This program appropriation is underspent, and a grant increase has not been made since September 2018.

While the Department could opt to continue to operate the Adult Financial programs without supportive payments, we are missing the opportunity to provide direct cash assistance to the vulnerable population. The recent pandemic has highlighted a need for more flexible and supportive payments to help meet the needs of our Adult Financial clients.

There are no alternatives to the technical clean-up which is necessary to add clarity to the program rules and to align with the federal treatment of Child Support income.

The Department could continue to operate the HCA program as is, however, clients' needs are better met under the Medicaid waivers. This change will ensure clients are connected to more robust services and keep the HCA program as a safety net for those who do not qualify for the waivers.

Title of Proposed Rule:	**Adult Financial Modernization – Phase II**	
CDHS Tracking #:	**21-10-28-03**	
Office, Division, & Program:	Rule Author: Crickett Phelps	Phone: 303-325-1201
Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
3.510	New definition	N/A	"DISASTER ASSISTANCE" MEANS A CASH PAYMENT TO A CLIENT TO COVER NEEDS AND/OR EXPENSES RELATED TO A COUNTY, GOVERNOR, OR FEDERALLY DECLARED DISASTER.	New definition	No
3.510	Clarity	"Redetermination" means a case review/determination of necessary information and verifications to determine ongoing eligibility.	"Redetermination" means a case review/determination of necessary information and verifications to determine ongoing eligibility AND MAY ALSO BE CALLED RENEWAL OR RECERTIFICATION.	Adds clarity to this term which varies by program.	No
3.520.4	Incorrect Rule Reference	2) An explanation that the cash grant payment portion issued on the EBT card may be suspended with identified misuse as outlined in Section 3.520.4.F.1.	2) An explanation that the cash grant payment portion issued on the EBT card may be suspended with identified misuse as outlined in Section 3.520.4.C.4.F~~.520.4.F.1~~.	To ensure the referenced rule reflects the correct program rule.	No
3.520.785	Update section name	UNEARNED INCOME	COUNTABLE UNEARNED INCOME	To ensure clarity of the rule and to be able to distinguish between countable and exempt unearned income.	No
3.520.785	New rule	N/A	25. CURRENT CHILD SUPPORT PAYMENTS RECEIVED FOR THE CLIENT.	To ensure appropriate unearned income is used to determine the grant.	No.
3.520.786	Update section name	EXEMPT INCOME	EXEMPT UNEARNED INCOME	To ensure clarity of the rule and to be able to distinguish between countable and exempt unearned income.	No
3.520.786	Clarity	N. Child support payments made to the client, client's spouse, or sponsor(s).These payments can either be current or arrearage payments.	N. Child support payments made to the client, client's spouse, or sponsor(s) FOR ANOTHER PERSON. These payments can either be current or arrearage payments.	To ensure appropriate unearned income is used to determine grant.	No
3.520.786	New rule	N/A	P. CHILD SUPPORT ARREARS PAYMENTS RECEIVED FOR THE CLIENT.	To ensure appropriate unearned income is used to determine the grant.	No
3.540	Increasing the grant	A. The total AND-SO grant standard is	A. The total AND-SO grant standard is $248.00 ~~$217.00~~,	To ensure the program rule	No

	standard	$217.00, effective September 1, 2018.	effective April 1, 2022 ~~September 1, 2018~~.	reflects the increase in the grant standard.	
3.570.11	Revision and clarity	A. Home Care Allowance (HCA) is a special cash payment made to a client, five (5) years of age or older for the purpose of securing in-home, personal care services. 1. HCA is a non-entitlement program; 2. HCA cannot be received while receiving Home and Community Based Services. ; and, 3. HCA is designed to serve clients with the lowest functional abilities and the greatest need for paid care.	A. Home Care Allowance (HCA) is a special cash payment made to a client, five (5) years of age or older for the purpose of securing in-home, personal care services. 1. HCA is a non-entitlement program; 2. CLIENTS MUST BE EVALUATED FOR HOME AND COMMUNITY BASED SERVICES THROUGH HEALTH FIRST COLORADO (MEDICAID) BEFORE THE HCA PROGRAM CAN BE CONSIDERED AT APPLICATION. IF THE CLIENT IS FINANCIALLY AND FUNCTIONALLY ELIGIBLE FOR HOME AND COMMUNITY BASED SERVICES THROUGH HEALTH FIRST COLORADO (MEDICAID), THE CLIENT IS NOT ELIGIBLE FOR HCA. AT REDETERMINATION ON OR AFTER 05/01/2022, CLIENTS MUST BE EVALUATED FOR HOME AND COMMUNITY BASED SERVICES THROUGH HEALTH FIRST COLORADO (MEDICAID) AND IF FUNCTIONALLY ELIGIBLE ARE NO LONGER ELIGIBLE FOR THE HCA PROGRAM. HCA cannot be received while receiving Home and Community Based Services ; and, 3. HCA is designed to serve clients with the lowest functional abilities and the greatest need for paid care.		
3.570.5	New Rule	N/A	3.570.5 SUPPORTIVE PAYMENTS 3.570.51 PURPOSE A. THE PURPOSE OF THE DISASTER ASSISTANCE PAYMENT IS TO PROVIDE DISASTER ASSISTANCE TO ELIGIBLE CLIENTS TO MITIGATE NEEDS AND/OR EXPENSES DUE TO A COUNTY, GOVERNOR, OR FEDERALLY DECLARED DISASTER. THE PAYMENT SHALL NOT EXCEED $2,000 PER CLIENT, PER DISASTER. B. THE DISASTER ASSISTANCE PAYMENT PERIOD BEGINS		

			WHEN THERE IS: 1. A COUNTY, AND/OR; 2. GOVERNOR, AND/OR; 3. FEDERALLY DECLARED DISASTER. C. THE DISASTER ASSISTANCE PAYMENT PERIOD ENDS WHEN THERE IS NO LONGER: 1. A COUNTY, AND/OR; 2. GOVERNOR, AND/OR; 3. FEDERALLY DECLARED DISASTER. D. IN CASES WHERE LATENT EFFECTS OF THE DISASTER APPEAR AFTER THE DISASTER DECLARATION HAS BEEN RESCINDED THE CLIENT MAY PETITION FOR DISASTER ASSISTANCE AND MAY BE GRANTED AT THE COUNTY DIRECTOR'S OR DIRECTOR DESIGNEE'S DISCRETION. 3.570.52 ELIGIBILITY IN ORDER TO BE ELIGIBLE FOR DISASTER ASSISTANCE, THE CLIENT MUST: A. BE APPROVED FOR OR RECEIVING A GRANT PAYMENT DURING THE TIME OF THE COUNTY, GOVERNOR, OR FEDERALLY DECLARED DISASTER. B. HAVE AN EMERGENT NEED RELATED TO THE DISASTER SUCH AS: A THREAT TO HEALTH OR SAFETY, LACK OF FOOD, CLOTHING, SHELTER, TRANSPORTATION, PERSONAL CARE OR MEDICAL CARE, OR OTHER UNMET EXPENSES. C. REQUEST DISASTER ASSISTANCE EITHER VERBALLY OR		

			IN WRITING TO THE COUNTY DEPARTMENT. COUNTIES HAVE THE OPTION TO UTILIZE A STATE PRESCRIBED FORM FOR A DISASTER ASSISTANCE REQUEST. D. NOTHING PRECLUDES THE COUNTY FROM MAKING ADDITIONAL PAYMENTS FOR THE DISASTER THROUGH A GENERAL ASSISTANCE PROGRAM OR OTHER RESOURCES. THIS PAYMENT SHALL ALSO NOT PRECLUDE AN INDIVIDUAL FROM ACCESSING ADDITIONAL RESOURCES THAT ARE UNRELATED TO THE DISASTER. 3.750.53 COUNTY DEPARTMENT RESPONSIBILITIES WHEN THE COUNTY RECEIVES THE DISASTER ASSISTANCE REQUEST THEY SHALL: A. REVIEW THE DISASTER ASSISTANCE REQUEST AND DETERMINE WHAT THE CLIENT MAY POTENTIALLY BE ELIGIBLE FOR BASED ON THE REQUEST. B. ONLY REQUEST VERIFICATION RELATED TO THE REQUEST IF THE COUNTY CONSIDERS THE REQUEST QUESTIONABLE. C. ASSESS THE CLIENT'S NEEDS RELATED TO THE DISASTER ASSISTANCE REQUEST AND MAKE ADDITIONAL REFERRALS TO THE CLIENT AND INFORM THEM OF OTHER POTENTIAL ASSISTANCE THAT MAY BE AVAILABLE. D. NOT REQUEST DOCUMENTATION TO VERIFY HOW THE CLIENT HAS USED SUCH FUNDS. E. MAKE A DETERMINATION OF ELIGIBILITY FOR DISASTER ASSISTANCE THE SAME DAY AS THE DETERMINATION OF ELIGIBILITY FOR ADULT FINANCIAL IF THE CLIENT IS PENDING FOR ADULT FINANCIAL ASSISTANCE AT THE TIME OF THE REQUEST FOR DISASTER ASSISTANCE. .		

Title of Proposed Rule:	Adult Financial Modernization – Phase II	
CDHS Tracking #:	21-10-28-03	
Office, Division, & Program:	Rule Author: Crickett Phelps	Phone: 303-325-1201
Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

			F. MAKE A DETERMINATION OF DISASTER ASSISTANCE ELIGIBILITY WITHIN FIVE BUSINESS DAYS IF ALREADY ACTIVE ON ADULT FINANCIAL ASSISTANCE. G. NOTIFY THE CLIENT OF APPROVAL OR DENIAL OF DISASTER ASSISTANCE IN WRITING THROUGH THE STATEWIDE AUTOMATED SYSTEM.		

STAKEHOLDER COMMENT SUMMARY

Development

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

Colorado Center on Law and Policy; Economic Security Sub-PAC sanctioned workgroup comprised of county departments; Area Agencies on Aging

This Rule-Making Package

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

County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; PAC & Economic Security Sub-PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing.

Other State Agencies

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

[x] Yes [ ] No

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

Health Care Policy and Financing (HCPF) will be impacted by the changes to the Home Care Allowance rules and have been involved in the discussion leading up to the decision to make this change.

Sub-PAC

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

[ ] Yes [x] No

Title of Proposed Rule:	**Adult Financial Modernization – Phase II**	
CDHS Tracking #:	**21-10-28-03**	
Office, Division, & Program:	Rule Author: Crickett Phelps	Phone: 303-325-1201
Office of Economic Security, Employment & Benefits Division, Adult Financial Programs		E-Mail: crickett.phelps@state.co.us

Name of Sub-PAC	Economic Security		
Date presented	November 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [x] No

Date presented	December 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[ ] Yes [x] No

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

9 CCR 2503-5

3.510 DEFINITIONS

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“Disabling condition” means a medical impairment which prevents an individual from engaging in work.

“DISASTER ASSISTANCE” MEANS A CASH PAYMENT TO A CLIENT TO COVER NEEDS AND/OR EXPENSES RELATED TO A COUNTY, GOVERNOR, OR FEDERALLY DECLARED DISASTER.

“Discontinuation” means that the client who is currently receiving a grant payment is no longer eligible and his or her grant payment will be stopped.

****

“Recovery” means the collection of a valid claim to repay grant payments to which a client was not entitled.

“Redetermination” means a case review/determination of necessary information and verifications to determine ongoing eligibility AND MAY ALSO BE CALLED RENEWAL OR RECERTIFICATION.

“Resources” means real and personal property held as of the first day of a calendar month or as of the date of application if not counted as income in the same month.

****

3.520.4 APPLICATION PROCESSING

C. Schedule an interview with the client if the interview is not taking place immediately.

****

4. The interview must be documented and shall include:

****

f. An explanation provided regarding the process of utilizing the EBT card. This explanation shall include:

****

2) An explanation that the cash grant payment portion issued on the EBT card may be suspended with identified misuse as outlined in Section 3.520.4.C.4.F~~.520.4.F.1~~.

****

3.520.785 COUNTABLE UNEARNED INCOME

****

B. Countable unearned income includes the following and any other payments that could be construed to be a gain or benefit to the client, client’s spouse, or sponsor(s) and which are not earned income.

****

25. CURRENT CHILD SUPPORT PAYMENTS RECEIVED FOR THE CLIENT.

****

3.520.786 EXEMPT UNEARNED INCOME ~~EXEMPT INCOME~~

****

N. Child support payments made to the client, client's spouse, or sponsor(s) FOR ANOTHER PERSON. These payments can either be current or arrearage payments.

****

P. CHILD SUPPORT ARREARS PAYMENTS RECEIVED FOR THE CLIENT.

****

3.540 AID TO THE NEEDY DISABLED STATE ONLY (AND-SO) PROGRAM

The Aid to the Needy Disabled State Only (AND-SO) program provides interim assistance to clients age eighteen (18) through fifty-nine (59) years of age (unless diagnosed with blindness, then age zero (0) through 59 years of age); who are disabled or blind but have not been approved for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Individuals are required to meet the total disability requirements identified in this section, in addition to the non-financial and financial eligibility requirements. Individuals who are partially disabled or have a short-term disability are not eligible.

B. The total AND-SO grant standard is $248.00 ~~$217.00~~, effective April 1, 2022 ~~September 1, 2018~~.

****

3.570.11 PURPOSE OF PROGRAM

****

A. Home Care Allowance (HCA) is a special cash payment made to a client, five (5) years of age or older for the purpose of securing in-home, personal care services.

1. HCA is a non-entitlement program;

2. CLIENTS MUST BE EVALUATED FOR HOME AND COMMUNITY BASED SERVICES THROUGH HEALTH FIRST COLORADO (MEDICAID) BEFORE THE HCA PROGRAM CAN BE CONSIDERED AT APPLICATION. IF THE CLIENT IS FINANCIALLY AND FUNCTIONALLY ELIGIBLE FOR HOME AND COMMUNITY BASED SERVICES THROUGH HEALTH FIRST COLORADO (MEDICAID), THE CLIENT IS NOT ELIGIBLE FOR HCA. AT REDETERMINATION ON OR AFTER 05/01/2022, CLIENTS MUST BE EVALUATED FOR HOME AND COMMUNITY BASED SERVICES THROUGH HEALTH FIRST COLORADO (MEDICAID) AND IF FUNCTIONALLY ELIGIBLE ARE NO LONGER ELIGIBLE FOR THE HCA PROGRAM. HCA cannot be received while receiving Home and Community Based Services; and,

3. HCA is designed to serve clients with the lowest functional abilities and the greatest need for paid care.

****

3.570.5 SUPPORTIVE PAYMENTS

3.570.51 PURPOSE

A. THE PURPOSE OF THE DISASTER ASSISTANCE PAYMENT IS TO PROVIDE DISASTER ASSISTANCE TO ELIGIBLE CLIENTS TO MITIGATE NEEDS AND/OR EXPENSES DUE TO A COUNTY, GOVERNOR, OR FEDERALLY DECLARED DISASTER. THE PAYMENT SHALL NOT EXCEED $2,000 PER CLIENT, PER DISASTER.

B. THE DISASTER ASSISTANCE PAYMENT PERIOD BEGINS WHEN THERE IS:

1. A COUNTY, AND/OR;

2. GOVERNOR, AND/OR;

3, FEDERALLY DECLARED DISASTER.

C. THE DISASTER ASSISTANCE PAYMENT PERIOD ENDS WHEN THERE IS NO LONGER:

1. A COUNTY, AND/OR;

2. GOVERNOR, AND/OR;

3. FEDERALLY DECLARED DISASTER.

D. IN CASES WHERE LATENT EFFECTS OF THE DISASTER APPEAR AFTER THE DISASTER DECLARATION HAS BEEN RESCINDED THE CLIENT MAY PETITION FOR DISASTER ASSISTANCE AND MAY BE GRANTED AT THE COUNTY DIRECTOR'S OR DIRECTOR DESIGNEE'S DISCRETION.

3.570.52 ELIGIBILITY

IN ORDER TO BE ELIGIBLE FOR DISASTER ASSISTANCE, THE CLIENT MUST:

A. BE APPROVED FOR OR RECEIVING A GRANT PAYMENT DURING THE TIME OF THE COUNTY, GOVERNOR, OR FEDERALLY DECLARED DISASTER.

B. HAVE AN EMERGENT NEED RELATED TO THE DISASTER SUCH AS: A THREAT TO HEALTH OR SAFETY, LACK OF FOOD, CLOTHING, SHELTER, TRANSPORTATION, PERSONAL CARE OR MEDICAL CARE, OR OTHER UNMET EXPENSES.

C. REQUEST DISASTER ASSISTANCE EITHER VERBALLY OR IN WRITING TO THE COUNTY DEPARTMENT. COUNTIES HAVE THE OPTION TO UTILIZE A STATE PRESCRIBED FORM FOR A DISASTER ASSISTANCE REQUEST.

D. NOTHING PRECLUDES THE COUNTY FROM MAKING ADDITIONAL PAYMENTS FOR THE DISASTER THROUGH A GENERAL ASSISTANCE PROGRAM OR OTHER RESOURCES. THIS PAYMENT SHALL ALSO NOT PRECLUDE AN INDIVIDUAL FROM ACCESSING ADDITIONAL RESOURCES THAT ARE UNRELATED TO THE DISASTER.

3.750.53 COUNTY DEPARTMENT RESPONSIBILITIES

WHEN THE COUNTY RECEIVES THE DISASTER ASSISTANCE REQUEST THEY SHALL:

A. REVIEW THE DISASTER ASSISTANCE REQUEST AND DETERMINE WHAT THE CLIENT MAY POTENTIALLY BE ELIGIBLE FOR BASED ON THE REQUEST.

B. ONLY REQUEST VERIFICATION RELATED TO THE REQUEST IF THE COUNTY CONSIDERS THE REQUEST QUESTIONABLE.

C. ASSESS THE CLIENT'S NEEDS RELATED TO THE DISASTER ASSISTANCE REQUEST AND MAKE ADDITIONAL REFERRALS TO THE CLIENT AND INFORM THEM OF OTHER POTENTIAL ASSISTANCE THAT MAY BE AVAILABLE.

D. NOT REQUEST DOCUMENTATION TO VERIFY HOW THE CLIENT HAS USED SUCH FUNDS.

E. MAKE A DETERMINATION OF ELIGIBILITY FOR DISASTER ASSISTANCE THE SAME DAY AS THE DETERMINATION OF ELIGIBILITY FOR ADULT FINANCIAL IF THE CLIENT IS PENDING FOR ADULT FINANCIAL ASSISTANCE AT THE TIME OF THE REQUEST FOR DISASTER ASSISTANCE. .

F. MAKE A DETERMINATION OF DISASTER ASSISTANCE ELIGIBILITY WITHIN FIVE BUSINESS DAYS IF ALREADY ACTIVE ON ADULT FINANCIAL ASSISTANCE.

G. NOTIFY THE CLIENT OF APPROVAL OR DENIAL OF DISASTER ASSISTANCE IN WRITING THROUGH THE STATEWIDE AUTOMATED SYSTEM.

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Notice of Proposed Rulemaking

Tracking number

2021-00778

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-5

Rule title

ADULT FINANCIAL PROGRAMS

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's response to COVID-19. Anticipated to be held entirely online.

Subjects and issues involved

These rules react to the increase to the SSI maximum payment by forty-seven dollars ($47) ($794 x 5.9% = $46.85; $794 + $47 = $841) to $841 per month. This rule will increase the OAP grant standard to $879 and the AND-CS grant standard to $841 in order to pass along the $47 COLA increase.

NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Please check here for any updates on location/connection: https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S.; 26-1-109, C.R.S.; 26-1-111, C.R.S.; 24-4-103, C.R.S.; 26-2-111, C.R.S.; 26-2-114, C.R.S.; Colorado Constitution, Article XXIV, Section 6

Contact information

Name

Erin Barajas

Title

Program Manager

Telephone

720.955.1957

Email

erin.barajas@state.co.us

Title of Proposed Rule: Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022

CDHS Tracking #: 21-10-29-01

Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial

Rule Author: Erin Barajas

Phone: 720-955-1957

E-Mail: erin.barajas@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [ ] Regular [X] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review	[X] Initial Board Reading	[ ] AG 2nd Review	[ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
4	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December, 2021

What date is being requested for this rule to be effective?	January 1, 2022
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates:	1st Board	December 3, 2021	2nd Board	January 2022	Effective Date	January 1, 2022	

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022	
CDHS Tracking #:	21-10-29-01	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial	Rule Author: Erin Barajas	Phone: 720-955-1957 E-Mail: erin.barajas@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

On October 13, 2021, the Social Security Administration (SSA) announced a 5.9% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income (SSI) recipients effective January 1, 2022. Colorado has a Maintenance of Effort (MOE) requirement with the SSA that requires the State to "pass through" the COLA increase to recipients in order to spend at least the same amount on these Adult Financial benefits in the current year as in the year prior. This means an increase in the Adult Financial grant payments for those receiving Old Age Pension (OAP) and Aid to the Needy Disabled - Colorado Supplement (AND-CS) assistance.

These rules react to the increase to the SSI maximum payment by forty-seven dollars ($47) ($794 x 5.9% = $46.85; $794 + $47 = $841) to $841 per month. This rule will increase the OAP grant standard to $879 and the AND-CS grant standard to $841 in order to pass along the $47 COLA increase.

The SSA COLA also changes the maximum In-Kind Support and Maintenance (ISM) applied to some Adult Financial clients to align with the federal increase to that maximum unearned income type.

The Federal Poverty Guidelines also known as the Federal Poverty Level (FPL) changes yearly. The FPL is mentioned in the Adult Financial rule and must be updated when these changes are made; the most current version would be added with this rule package.

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

X	to comply with state/federal law and/or
X	to preserve public health, safety and welfare

Justification for emergency:

20 CFR 416 et seq. requires a Maintenance of Effort (MOE) between the State of Colorado and the Social Security Administration (SSA). This MOE requires that Colorado spend at least the same amount in the current year as they did in the previous year for specific categories of assistance, which includes OAP and AND-CS recipients who receive SSI. Failure to pass along the COLA could impact the MOE agreement with the SSA. Failure to comply with the terms of the MOE could jeopardize Medicaid Federal Financial Participation (FFP) funds as the SSA could impose a sanction of no less than one full quarter FFP match (approximately $300-350 million) for every month Colorado does not meet the MOE requirement.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2021)	State Board to promulgate rules
26-1-109, C.R.S. (2021)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2021)	State department to promulgate rules for public assistance and welfare

Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial

Rule Author: Erin Barajas

Phone: 720-955-1957

E-Mail: erin.barajas@state.co.us

	activities.

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

Code	Description
24-4-103, C.R.S. (2021)	Provides for emergency adoption of rules
26-2-111, C.R.S. (2021)	Describes eligibility for Old Age Pension and Aid to the Needy Disabled
26-2-114, C.R.S. (2021)	Provides state board authority to adjust the minimum award of Old Age Pension if living costs have changed sufficiently to justify such adjustment
Colorado Constitution, Article XXIV, Section 6	Provides the state board of public welfare, or such other agency as may be authorized by law power to adjust the basic minimum award for Old Age Pensions if living costs have changed sufficiently to justify that action

Does the rule incorporate material by reference? [ ] Yes [X] No

Does this rule repeat language found in statute? [ ] Yes [X] No

If yes, please explain.

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022	
CDHS Tracking #:	21-10-29-01	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial	Rule Author: Erin Barajas	Phone: 720-955-1957 E-Mail: erin.barajas@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

This rule change will impact all OAP and AND-CS recipients. OAP and AND-CS recipients will receive a maximum forty-seven dollar ($47) increase to their monthly grant. OAP recipients maximum grant will increase to $879 ($832 + $47 = $879). AND-CS recipients maximum grant will increase to $841 ($794 + $47 = $841).

This rule change will also impact OAP and AND-CS recipients that have an In-kind Support Maintenance (ISM) calculation because they are not paying their fair share of shelter and utility costs. The ISM is applied as in-kind income in the calculation of benefits. The new maximum ISM amount is $300 ($841 x 33.33% = $280 + $20 = $300).

2. Describe the qualitative and quantitative impact.

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

The rule will result in an increase of $47 to the OAP Grant Standard $879 ($832 + $47 = $879) and will impact all OAP recipients, approximately 17,687 individuals. The rule will result in an increase of $47 to the AND-CS Grant Standard to $841 ($794 + $47 = $841) and will impact all AND-CS recipients, approximately 436 individuals.

This increase will provide these clients with increased means to meet their basic living needs. This change may impact the food assistance benefits received by these clients. As an approximation, for every three dollars ($3) additional cash assistance received, clients may experience a decrease of their Supplemental Nutrition Assistance Program (SNAP) benefits by one dollar ($1). If an individual receives the full increase of forty-seven dollars ($47), their SNAP benefits may decrease by sixteen dollars ($16).

Long-term, increasing the grant standard will assist the State in meeting the SSA MOE. If the State fails to meet the provisions of the MOE, Medicaid Federal Financial Participation (FFP) funds will be placed in jeopardy.

The ISM adjustment only impacts those individuals who are not currently paying their fair share of shelter costs. Less than two percent (2%) of the combined OAP and AND-CS caseload has any type of in-kind income, and not all of those will have the ISM deduction. In simplified terms, we will assume that the client has no income or resources and, up to this point, would qualify for the full OAP or AND-CS grant. However, the county then looks to see if the client is paying their fair share for shelter, which includes utilities. The total shelter cost is then divided by the number of people living in the home to determine each person's fair share for shelter costs. If the client is not paying a fair share, the ISM deduction may apply. The amount the client is charged as income for unpaid shelter costs is never more than the ISM amount set in rule.

3. Fiscal Impact

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022	
CDHS Tracking #:	21-10-29-01	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial	Rule Author: Erin Barajas	Phone: 720-955-1957 E-Mail: erin.barajas@state.co.us

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

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

The cost to the State for the increase for non-SSI OAP recipients (approximately 7,166) will be a maximum of $47 per client per month. This cost will be paid using 100% OAP cash funds. The increase results in total expenditures by the State to non-SSI OAP clients of an estimated $4,041,624 (plus caseload growth) for 2022 and beyond.

The cost to the State for the increase to OAP clients that are also receiving SSI (approximately 10,521) is estimated to increase the expenditures to $5,933,844 (plus caseload growth) for 2022 and beyond.

The total estimated increased expenditures to the State through the OAP cash fund for SSI and non-SSI OAP recipients is estimated at $9,975,468 (plus caseload growth) for 2022 and beyond.

The cost to the State for the increase for AND-CS recipients (approximately 436) will be a maximum of $47 per client per month. The increase results in total expenditures by the State to AND-CS clients of an estimated $245,904 (plus caseload growth) for 2022 and beyond.

The cost to the State will not increase as a result of changing the ISM calculation. The maximum ISM amount is tied directly to the SSI grant.

County Fiscal Impact

OAP will require no additional appropriation as it is included within existing appropriations for this grant increase. The Aid to the Needy Disabled program has a county contribution of 20%. The $47 grant increase means that counties will contribute a maximum additional $9.40 per month per client. The anticipated county contribution is much lower since all clients on AND-CS receive at least a portion of their income in SSI. The AND-CS grant is reduced based on the SSI amount.

Federal Fiscal Impact

No impact because there are no federal funds utilized.

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

No impact because there are no other providers or local governments involved.

4. Data Description

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

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022	
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The SSA issued a press release on October 13, 2021, announcing the 5.9% cost of living adjustment (COLA). This information can be found at www.ssa.gov/news/press/releases/2021/#10-2021-2

5. Alternatives to this Rule-making

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

Taking no action could adversely impact the health, safety, and welfare of OAP and AND-CS recipients and could potentially cause the State to be unable to meet the MOE requirements as well with the Social Security Administration. Because of the penalties associated with not meeting the MOE, there are no other viable options.

Title of Proposed Rule: Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022

CDHS Tracking #: 21-10-29-01

Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial

Rule Author: Erin Barajas

Phone: 720-955-1957

E-Mail: erin.barajas@state.co.us

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
3.530 OLD AGE PENSION (OAP) PROGRAM	Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2022	The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements. A. The total monthly OAP grant standard, as set by the State Board of Human Services, is $832.00, effective January 1, 2021. B. Effective January 1, 2021, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is $284.00.	The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements. A. The total monthly OAP grant standard, as set by the State Board of Human Services, is ~~$832.00~~ 879.00, effective January 1, 202~~1~~2. B. Effective January 1, 202~~1~~2, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is ~~$284.00~~300.00.	To implement the $47 COLA increase and adjust the ISM amount.	
3.546 AID TO THE NEEDY DISABLED-COLORADO SUPPLEMENT (AND-CS) PROGR	Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2022	The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510. A. The total AND-CS grant standard is $794.00, effective January 1, 2021. B. The grant standard for AND-CS shall be adjusted as needed to remain within available	The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510. A. The total AND-CS grant standard is ~~$794.00~~841.00, effective January 1, 202~~1~~2. B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.	To implement the $47 COLA increase and adjust the ISM amount.	

AM		appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations. C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments. D. Effective January 1, 2021, the maximum ISM amount for shelter costs is $284.00.	C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments. D. Effective January 1, 202~~1~~2, the maximum ISM amount for shelter costs is $~~284.00~~300.00.		
3.510 DEFINITIONS	To update the date of the most current FPL adjustment.	"Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 8 FR 1167, as of January 15, 2020. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	"Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 8 FR 1167, as of ~~January 15, 2020~~January 13, 2021. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	To update the date of the most current FPL adjustment.	

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022	
CDHS Tracking #:	21-10-29-01	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial	Rule Author: Erin Barajas	Phone: 720-955-1957 E-Mail: erin.barajas@state.co.us

STAKEHOLDER COMMENT SUMMARY

Development

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

None

This Rule-Making Package

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

County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; Single Entry Point agencies; PAC & Economic Security Sub-PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing.

Other State Agencies

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

[ ] Yes [X] No

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

Sub-PAC

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

[ ] Yes [x] No

Name of Sub-PAC	Economic Security		
Date presented	November 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2022	
CDHS Tracking #:	21-10-29-01	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division Adult Financial	Rule Author: Erin Barajas	Phone: 720-955-1957 E-Mail: erin.barajas@state.co.us

If not presented, explain why.

PAC

Have these rules been approved by PAC?

[ ] Yes [x] No

Date presented	December 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[ ] Yes [x] No

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

9 CCR 2503-5

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3.510 DEFINITIONS

“Federal Poverty Guidelines” also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 8 FR 1167, as of ~~January 15, 2020~~January 13, 2021. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

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3.530 OLD AGE PENSION (OAP) PROGRAM

The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements.
A. The total monthly OAP grant standard, as set by the State Board of Human Services, is ~~$832.00~~ 879.00, effective January 1, 202~~1~~2.
B. Effective January 1, 202~~1~~2, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is ~~$284.00~~300.00.

****

9 CCR 2503-5

3.546 AID TO THE NEEDY DISABLED-COLORADO SUPPLEMENT (AND-CS) PROGRAM

The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510.
A. The total AND-CS grant standard is $~~794.00~~841.00, effective January 1, 202~~1~~2.
B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.
C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.
D. Effective January 1, 202~~1~~2, the maximum ISM amount for shelter costs is ~~$284.00~~300.00.

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Notice of Proposed Rulemaking

Tracking number

2021-00779

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-6

Rule title

COLORADO WORKS PROGRAM

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's response to COVID-19. Anticipated to be held entirely online

Subjects and issues involved

The Afghanistan Supplemental Appropriations Act, 2022 (Appropriations Act), Division C of Public Law 117-43, Extending Government Funding and Delivering Emergency Assistance Act, was signed into law on September 30, 2021. The act established immediate eligibility for federal benefit programs for Afghan humanitarian parolees (also known as non-Special Immigrant parolees). An emergency rule change is necessary to add language in order to align with this federal change, remove overly specific language that does not identify currently eligible Afghani Special Immigrants as eligible, and update a citation which was previously incorporated by reference.
NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Please check here for any updates on location/connection: https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S.; 24-4-103, C.R.S.; 26-1-111, C.R.S.; 26-2-709 (1.5), C.R.S.; 26-2-138(3), (4), (5), C.R.S.

Contact information

Name

Marnie Brandt

Title

Lead Program Specialist

Telephone

720.692.6746

Email

marnie.brandt@state.co.us

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022 (9 CCR 2503-6)	
CDHS Tracking #:	21-10-28-04	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [ ] Regular [X] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review [X] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
5	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December, 2021

What date is being requested for this rule to be effective?	December 3, 2021
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates:	1st Board	December 3, 2021	2nd Board	January 7, 2022	Effective Date	12/3/2021 (Emergency) 3/2/2021 (Permanent)

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022 (9 CCR 2503-6)	
CDHS Tracking #:	21-10-28-04	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

The Afghanistan Supplemental Appropriations Act, 2022 (Appropriations Act), Division C of Public Law 117-43, Extending Government Funding and Delivering Emergency Assistance Act, was signed into law on September 30, 2021. The act established immediate eligibility for federal benefit programs for Afghan humanitarian parolees (also known as non-Special Immigrant parolees). An emergency rule change is necessary to add language in order to align with this federal change, remove overly specific language that does not identify currently eligible Afghani Special Immigrants as eligible, and update a citation which was previously incorporated by reference.

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

- [X] to comply with state/federal law and/or
- [X] to preserve public health, safety and welfare

Justification for emergency:

Afghan Humanitarian Parolees were made eligible immediately in the Appropriations Act. Current rules do not allow eligibility for this population and are out of alignment with the new federal law. This rule change will allow this vulnerable population to access cash programs as a safety net immediately.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2021)	State Board to promulgate rules.
24-4-103, C.R.S. (2021)	Rule-making procedure, generally. § 24-4-103(6), C.R.S. provides for emergency adoption of rules.
26-1-111, C.R.S. (2021)	State department to promulgate rules for public assistance and welfare activities.

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

Code	Description
26-2-709 (1.5), C.R.S. (2021)	The State Department shall promulgate rules to comply with federal regulations relating to “cash assistance.”
26-2-138(3), (4), (5), C.R.S. (2021)	State department shall adopt rules to provide benefits and services to refugees consistent with federal programs.

Does the rule incorporate material by reference? [ ] Yes [X] No
Does this rule repeat language found in statute? [ ] Yes [X] No

If yes, please explain.

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022 (9 CCR 2503-6)	
CDHS Tracking #:	21-10-28-04	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022 (9 CCR 2503-6)	
CDHS Tracking #:	21-10-28-04	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

This rule change will allow humanitarian parolees from Afghanistan to become immediately eligible for Colorado Works, as directed by the Appropriations Act.

2. Describe the qualitative and quantitative impact.

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

The impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado, or of those who will be eligible for Colorado Works.

3. Fiscal Impact

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

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

The fiscal impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado, or of those who will be eligible for Colorado Works. It is expected that the cost of providing benefits to newly eligible non-citizens will not exceed what can be paid for through existing program allocations.

County Fiscal Impact

The fiscal impact of the change cannot be anticipated at this time as we are unable to predict the number of Afghan humanitarian parolees that will be resettled in the State of Colorado, or of those who will be eligible for Colorado Works. It is expected that the cost of providing benefits to newly eligible non-citizens will not exceed what can be paid for through existing program allocations.

Federal Fiscal Impact

There is no federal fiscal impact because these benefits are paid through state block grants, state only funds, and county funds.

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

No impact because there are no other providers or local governments involved.

4. Data Description

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022 (9 CCR 2503-6)	
CDHS Tracking #:	21-10-28-04	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

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

On October 18, 2021, the U.S. Department of Health and Human Services issued a memorandum regarding Afghanistan parolees now eligible for Temporary Assistance for Needy Families (TANF) in light of the Appropriations Act signed into law on September 30, 2021. The memorandum provides guidance to states regarding administration of TANF to Afghan parolees under the Appropriations Act. The guidance includes ensuring that Afghans arriving with humanitarian parole to receive the same services as refugees (admitted under Section 207 of the INA), including ORR assistance, reception and placement, and other entitlement programs like Food Assistance.

5. Alternatives to this Rule-making

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

There are no alternatives because these rules are required to comply with federal law and preserve the health, safety, and welfare of Afghan parolees as they resettle in Colorado.

Title of Proposed Rule: Afghanistan Non-Citizen Updates 2022 (9 CCR 2503-6)

CDHS Tracking #: 21-10-28-04

Office, Division, & Program: Office of Economic Security Employment and Benefits Division

Rule Author: Marnie Brandt

Phone: 720-692-6746

E-Mail: marnie.brandt@state.co.us

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
Current Effective Rule: 9 CCR 2503-6 3.601 PROGRAM DEFINITIONS	Definition of qualified non-citizen was re-located in adopted rule change effective 3/2022. The change must be made during this rule change to prevent a version control issue.	"Responsibility/exercising responsibility" shall mean the accountability for and obligation to make decisions on behalf of a child(ren).	"Responsibility/exercising responsibility" shall mean the accountability for and obligation to make decisions on behalf of a child(ren). "QUALIFIED NON-CITIZEN" IS THE SAME AS "QUALIFIED ALIEN" IN 8 U.S.C. 1641(B) AND THE LANGUAGE, INCLUDING ALL NOTES, IN 8 U.S.C. § 1101 AND MAY ALSO BE REFERRED TO AS A LEGAL IMMIGRANT.	Definition moved to definition section and correctly identifies the source of definitions.	No
Adopted Rule Effective 3/2022: 9 CCR 2503-6 3.601 Program Definitions	Missing reference to notes in 8 U.S.C. § 1101 which is where handling of new special non-citizen statuses are being identified.	"Qualified non-citizen" is the same as "qualified alien" in 8 U.S.C. 1641(b) and may also be referred to as a legal immigrant.	"Qualified non-citizen" is the same as "qualified alien" in 8 U.S.C. 1641(b) AND THE LANGUAGE, INCLUDING ALL NOTES, IN 8 U.S.C. § 1101 and may also be referred to as a legal immigrant.	Correctly identifies the source of definitions.	No
Current Effective Rule: 9 CCR 2503-6 3.604.1.N.7 Documentation of Legal Immigra	Overly specific reference to eligible visa categories and incorrect reference	f. Iraqi and Afghan individuals who worked as translators for the U.S. Military, or on behalf of the U.S. Government, or families of such individuals; and have been admitted under a Special Immigrant Visa (SIV) with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, or SQ9. Eligibility limitations are outlined in Section 3.710.31, H.	f. Iraqi and Afghan individuals who ~~worked as translators for the U.S. Military, or on behalf of the U.S. Government, or families of such individuals; and~~ have been admitted ~~under~~ AS ~~a~~ Special ImmigrantS ~~Visa~~ (SIV~~) with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, or SQ9. Eligibility limitations are outlined in Section 3.710.31, H.~~	Broadening the Visa categories to align with federal regulations.	No

nt					
Adopted Rule Effective 3/2022: 9 CCR 2503-6 3.604.3.I.5. Verification of Citizenship and Lawful Presence	Overly specific reference to eligible visa categories and incorrect reference	f. Iraqi and Afghan individuals who worked as translators for the U.S. military, or on behalf of the U.S. government, or families of such individuals; and have been admitted under a Special Immigrant Visa (SIV) with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, OR SQ9. Eligibility limitations are outlined in section 3.710.31, H.	f. Iraqi and Afghan individuals who ~~worked as translators for the U.S. military, or on behalf of the U.S. government, or families of such individuals; and~~ have been admitted ~~under~~ AS ~~a~~ Special ImmigrantS ~~Visa~~ (SI~~V~~) ~~with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, OR SQ9. Eligibility limitations are outlined in section 3.710.31, H~~.	Broadening the Visa categories to align with federal regulations.	No
Current Effective Rule: 9 CCR 2503-6 3.604.1.N.11 QUALIFIED NON-CITIZEN	Incorrect eligibility time frame for parolees and missing new qualified individuals. No change will be required to adopted rule Effective 3/2022 as this deletion was already completed in this version.	11. Qualified Non-Citizen A qualified non-citizen is defined as follows consistent with the provisions of federal regulations found at 45 CFR 1626.7 as of October 1, 2010, herein incorporated. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library: a. A non-citizen lawfully admitted for permanent residence; b. A non-citizen paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act (INA) for a period of at least 1 year; c. A non-citizen granted conditional entry pursuant to Section 203(a)(7) of the INA prior to April 1, 1980;	~~11. Qualified Non-Citizen~~ ~~A qualified non-citizen is defined as follows consistent with the provisions of federal regulations found at 45 CFR 1626.7 as of October 1, 2010, herein incorporated. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library:~~ ~~a. A non-citizen lawfully admitted for permanent residence;~~ ~~b. A non-citizen paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act (INA) for a period of at least 1 year;~~ ~~c. A non-citizen granted conditional entry pursuant to Section 203(a)(7) of the INA prior to April 1, 1980;~~ ~~d. A refugee under Section 207 of the INA;~~ ~~e. An asylee under Section 208 of the INA;~~ ~~f. A non-citizen whose deportation is withheld under Section 243(h) or 241(B)(3) of~~	Removed section which included incorrect time frame. Definition moved to definition section.	No

		d. A refugee under Section 207 of the INA; e. An asylee under Section 208 of the INA; f. A non-citizen whose deportation is withheld under Section 243(h) or 241(B)(3) of the INA; g. A Cuban or Haitian entrant as defined in Section 501(3) of the Refuge Education Assistance Act of 1980; h. A Victim of Severe Form of Trafficking who has been certified as such by the U.S. Dept. of Health and Human Services (HHS). i. Iraqis and Afghans granted Special Immigrant Visa status under Section 101(A)(27) of the INA. j. A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a family member; k. A non-citizen admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. No. 100-461); l. An individual who was born in Canada and possesses at least fifty percent (50%) American Indian blood or is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450B(E).	~~the INA;~~ ~~g. A Cuban or Haitian entrant as defined in Section 501(3) of the Refuge Education~~ ~~Assistance Act of 1980;~~ ~~h. A Victim of Severe Form of Trafficking who has been certified as such by the~~ ~~U.S. Dept. of Health and Human Services (HHS).~~ ~~i. Iraqis and Afghans granted Special Immigrant Visa status under Section~~ ~~101(A)(27) of the INA.~~ ~~j. A non-citizen who has been battered or subjected to extreme cruelty in the U.S.~~ ~~by a family member;~~ ~~k. A non-citizen admitted to the U.S. as an Amerasian immigrant pursuant to~~ ~~Section 584 of the Foreign Operations, Export Financing, and Related Programs~~ ~~Appropriations Act of 1988 (as amended by P.L. No. 100-461);~~ ~~l. An individual who was born in Canada and possesses at least fifty percent (50%)~~ ~~American Indian blood or is a member of an Indian tribe as defined in 25 U.S.C.~~ ~~Sec. 450B(E).~~		
Current Effective Rule: 9 CCR 2503-6 3.604.1.	Missing qualified individuals and provides unnecessarily specific list, requiring frequent rule changes when federal changes occur. No	12. Five Year Period Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from federal programs for five years unless they meet one of the	~~12. Five Year Period~~ ~~Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally~~ ~~barred from federal programs for five years unless they meet one of the following~~ ~~exceptions consistent with the provisions of federal~~	Removing unnecessary list of five year bar exemptions from rule.	No

N. 12 FIVE YEAR PERIOD	change will be required to adopted rule effective 3/2022 as this deletion was already completed in this version.	following exceptions consistent with the provisions of federal regulations found at 45 CFR 286.5 as of February 18, 2000, herein incorporated by reference. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library. a. An honorably discharged U.S. veteran or active U.S. military personnel and/or spouse, unmarried children, widow and widower, including a lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war; or, b. A refugee, asylee, deportation withheld, or non-citizen granted status as a Cuban or Haitian entrant, a certified Victim of Severe Form of Trafficking (these humanitarian immigrants maintain their original status when adjusting to Legal Permanent Resident (LPR) status and remain exempt from the five year bar); or, c. An individual who (1) was born in Canada and possesses at least fifty percent (50%) American Indian blood, or (2) is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450 B(e); or, d. An individual admitted to the U.S., as	~~regulations found at 45 CFR 286.5 as of February 18, 2000, herein incorporated by reference. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library.~~ ~~a. An honorably discharged U.S. veteran or active U.S. military personnel and/or spouse, unmarried children, widow and widower, including a lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war;~~ ~~or,~~ ~~b. A refugee, asylee, deportation withheld, or non-citizen granted status as a Cuban or Haitian entrant, a certified Victim of Severe Form of Trafficking (these humanitarian immigrants maintain their original status when adjusting to Legal Permanent Resident (LPR) status and remain exempt from the five year bar); or,~~ ~~c. An individual who (1) was born in Canada and possesses at least fifty percent (50%) American Indian blood, or (2) is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450 B(e); or,~~ ~~d. An individual admitted to the U.S., as an Amerasian immigrant pursuant to Section 584 amended by Public Law No. 100-461; or,~~ ~~e. A lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war.~~ ~~f. An Afghan Special Immigrant Visa (SIV) holder and an Iraqi SIV are exempt for eight months from the five-year bar.~~ 12.~~13.~~ Non-citizens and Temporary Residents Not Eligible for Assistance The following individuals are not eligible for public assistance or social services programs: a. Non-citizens with no status verification from CIS;		

		an Amerasian immigrant pursuant to Section 584 amended by Public Law No. 100-461; or, e. A lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war. f. An Afghan Special Immigrant Visa (SIV) holder and an Iraqi SIV are exempt for eight months from the five-year bar. 13. Non-citizens and Temporary Residents Not Eligible for Assistance The following individuals are not eligible for public assistance or social services programs: a. Non-citizens with no status verification from CIS; b. Non-citizens granted a specific voluntary departure date; c. Non-citizens applying for a status; or, d. Citizens of foreign nations residing temporarily in the United States on the basis of visas issued to permit employment, education, or a visit.	b. Non-citizens granted a specific voluntary departure date; c. Non-citizens applying for a status; or, d. Citizens of foreign nations residing temporarily in the United States on the basis of visas issued to permit employment, education, or a visit.		
Current Effective Rule: 9 CCR 2503-6 3.604.2 L.c Applicant/Participant Criteria	Reference information is incorrect	A Qualified Legal Non-Citizen who entered the United States on or after August 22, 1996, who has been in a qualified non-citizen status for a period of five years or, if less than five years, is in a federal exempt category pursuant to the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", 8 U.S.C. 1613(B); no amendments or editions are included. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Colorado Works Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State publications library.	A Qualified Legal Non-Citizen who entered the United States on or after August 22, 1996, who has been in a qualified non-citizen status for a period of five years ~~or, if less than five years, is in a federal exempt category pursuant to the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", 8 U.S.C. 1613(B); no amendments or editions are included. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Colorado Works Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State publications library.~~ ~~,~~, UNLESS THEY MEET ONE OF THE EXCEPTIONS TO THE FIVE-YEAR BAR CONSISTENT WITH 8 U.S.C. 1613(B).	Corrects and simplifies reference, does not unnecessarily incorporate	No
Adopte	Technical correction	3. A qualified legal non-citizen who	3. A qualified legal non-citizen who entered the United	Removal of unnecessary	No

d Rule Effectiv e 3/2022: 9 CCR 2503-6 3.604.1. B.3. Eligibility Criteria		entered the United States on or after August 22, 1996, who has been in a qualified non-citizen status for a period of five years or, unless they meet one of the exceptions to the five-year bar consistent with 8 U.S.C. 1613(b).	States on or after August 22, 1996, who has been in a qualified non-citizen status for a period of five years ~~or~~, unless they meet one of the exceptions to the five-year bar consistent with 8 U.S.C. 1613(b).	word	

STAKEHOLDER COMMENT SUMMARY

Development

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

Colorado Refugee Services Program

This Rule-Making Package

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

County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; Single Entry Point agencies; Economic Security Sub-PAC and PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; Colorado Legal Services; All Families Deserve a Chance Coalition and Colorado Department of Health Care Policy and Financing.

Other State Agencies

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

[ ] Yes [X] No

Title of Proposed Rule:	Afghanistan Non-Citizen Updates 2022 (9 CCR 2503-6)	
CDHS Tracking #:	21-10-28-04	
Office, Division, & Program: Office of Economic Security Employment and Benefits Division	Rule Author: Marnie Brandt	Phone: 720-692-6746 E-Mail: marnie.brandt@state.co.us

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

Sub-PAC

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

[X] Yes [ ] No

Name of Sub-PAC	Economic Security		
Date presented	November 4, 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
	16		1
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [x] No

Date presented	December 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[ ] Yes [x] No

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

AGENCY NOTE TO PUBLISHER, NOT FOR PUBLICATION WITH RULE:
Revisions below are Effective December 3, 2021. For the sake of brevity, the entirety of the rules are *not* included below. An additional publisher's note is found below as well.

9 CCR 2503-6

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3.601 PROGRAM DEFINITIONS

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"Responsibility/exercising responsibility" shall mean the accountability for and obligation to make decisions on behalf of a child(ren).

"QUALIFIED NON-CITIZEN" IS THE SAME AS "QUALIFIED ALIEN" IN 8 U.S.C. 1641(B) AND THE LANGUAGE, INCLUDING ALL NOTES, IN 8 U.S.C. § 1101 AND MAY ALSO BE REFERRED TO AS A LEGAL IMMIGRANT.

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3.604.1.

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N. General Requirements for Citizenship and Lawful Presence

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7. Documentation of Legal Immigrant

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f. Iraqi and Afghan individuals who ~~worked as translators for the U.S. Military, or on behalf of the U.S. Government, or families of such individuals; and~~ have been admitted ~~under~~ AS ~~a~~ Special ImmigrantS ~~Visa~~ (SIV) ~~with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, or SQ9. Eligibility limitations are outlined in Section 3.710.31, H.~~

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~~11. Qualified Non-Citizen~~
~~A qualified non-citizen is defined as follows consistent with the provisions of federal regulations found at 45 CFR 1626.7 as of October 1, 2010, herein incorporated. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library:~~
~~a. A non-citizen lawfully admitted for permanent residence;~~
~~b. A non-citizen paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act (INA) for a period of at least 1 year;~~
~~c. A non-citizen granted conditional entry pursuant to Section 203(a)(7) of the INA prior to April 1, 1980;~~
~~d. A refugee under Section 207 of the INA;~~
~~e. An asylee under Section 208 of the INA;~~
~~f. A non-citizen whose deportation is withheld under Section 243(h) or 241(B)(3) of the INA;~~
~~g. A Cuban or Haitian entrant as defined in Section 501(3) of the Refugee Education Assistance Act of 1980;~~
~~h. A Victim of Severe Form of Trafficking who has been certified as such by the U.S. Dept. of Health and Human Services (HHS).;~~
~~i. Iraqis and Afghans granted Special Immigrant Visa status under Section 101(A)(27) of the INA.;~~
~~j. A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a family member;~~
~~k. A non-citizen admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. No. 100-461);~~
~~l. An individual who was born in Canada and possesses at least fifty percent (50%) American Indian blood or is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450B(E).;~~

~~12. Five Year Period~~
~~Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from federal programs for five years unless they meet one of the following exceptions consistent with the provisions of federal regulations found at 45 CFR 286.5 as of February 18, 2000, herein incorporated by reference. This rule does not contain any later amendments or editions. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Division of Colorado Works, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library.~~

~~a. An honorably discharged U.S. veteran or active U.S. military personnel and/or spouse, unmarried children, widow and widower, including a lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war; or,~~
~~b. A refugee, asylee, deportation withheld, or non-citizen granted status as a Cuban or Haitian entrant, a certified Victim of Severe Form of Trafficking (these humanitarian immigrants maintain their original status when adjusting to Legal Permanent Resident (LPR) status and remain exempt from the five year bar); or,~~
~~c. An individual who (1) was born in Canada and possesses at least fifty percent (50%) American Indian blood, or (2) is a member of an Indian tribe as defined in 25 U.S.C. Sec. 450 B(e); or,~~
~~d. An individual admitted to the U.S., as an Amerasian immigrant pursuant to Section 584 amended by Public Law No. 100-461; or,~~
~~e. A lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam war.~~
~~f. An Afghan Special Immigrant Visa (SIV) holder and an Iraqi SIV are exempt for eight months from the five-year bar.~~
12.~~13.~~ Non-citizens and Temporary Residents Not Eligible for Assistance The following individuals are not eligible for public assistance or social services programs:
a. Non-citizens with no status verification from CIS;
b. Non-citizens granted a specific voluntary departure date;
c. Non-citizens applying for a status; or, d. Citizens of foreign nations residing temporarily in the United States on the basis of visas issued to permit employment, education, or a visit.
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3.604.2.

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L. Applicant/Participant Criteria

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2. Be:

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c.

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A Qualified Legal Non-Citizen who entered the United States on or after August 22, 1996, who has been in a qualified non-citizen status for a period of five years ~~or, if less than five years, is in a federal exempt category pursuant to the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", 8 U.S.C. 1613(B); no amendments or editions are included. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Colorado Works Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State publications library.~~, UNLESS THEY MEET ONE OF THE EXCEPTIONS TO THE FIVE-YEAR BAR CONSISTENT WITH 8 U.S.C. 1613(B).

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AGENCY NOTE TO PUBLISHER, NOT FOR PUBLICATION WITH RULE:
Revisions below are Effective March 1, 2022

9 CCR 2503-6

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3.601 PROGRAM DEFINITIONS

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"Qualified non-citizen" is the same as "qualified alien" in 8 U.S.C. 1641(b) AND THE LANGUAGE, INCLUDING ALL NOTES, IN 8 U.S.C. § 1101 and may also be referred to as a legal immigrant.

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3.604.3 Program Verifications

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I. Verification of Citizenship and Lawful Presence

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5.

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f. Iraqi and Afghan individuals who ~~worked as translators for the U.S. military, or on behalf of the U.S. government, or families of such individuals; and~~ have been admitted ~~under~~ AS ~~a~~ Special ImmigrantS ~~Visa~~ (SI~~V~~) ~~with specific visa categories of SI1, SI2, SI3, SI6, SI7, SI9, SQ1, SQ2, SQ3, SQ6, SQ7, OR SQ9. Eligibility limitations are outlined in section 3.710.31, H~~.

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3.604.1 Eligibility Criteria

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B. Be lawfully present in the United States as:

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3. A qualified legal non-citizen who entered the United States on or after August 22, 1996, who has been in a qualified non-citizen status for a period of five years ~~or~~, unless they meet one of the exceptions to the five-year bar consistent with 8 U.S.C. 1613(b).

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Notice of Proposed Rulemaking

Tracking number

2021-00753

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

Rulemaking Hearing

Date

01/14/2022

Time

09:00 AM

Location

(VIRTUAL) 303 East 17th Avenue, 11th Floor, Denver, CO 80203

Subjects and issues involved

see attached

Statutory authority

Sections 25.5-1-301 through 25.5-1-303 (2021)

Contact information

Name

Chris Sykes

Title

Medical Services Board Coordinator

Telephone

3038664416

Email

chris.sykes@state.co.us

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, January 14, 2022, beginning at 9:00 a.m., in the eleventh floor conference room at 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303-866-4416 or chris.sykes@state.co.us or the 504/ADA Coordinator hcpf504ada@state.co.us at least one week prior to the meeting.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website at www.colorado.gov/hcpf/medical-services-board.

This notice is submitted pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

MSB 21-11-24-A, Revision to the Medical Assistance Act Rule Concerning Preferred Drug List (PDL) and New Drug Determinations, Section 8.800.16.B

Medical Assistance. This proposed rule change will clarify that when a new drug becomes available and falls into a Drug Class that is already on the PDL, that the Department will determine whether it's Preferred or Non-preferred within a specified timeframe.

The authority for this rule is contained in Section 25.5-1-108, C.R.S. (2021); Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 21-11-24-B, Revision to the Medical Assistance Eligibility Rules concerning General and Citizenship Eligibility Requirements, Section 8.100.3.G

Medical Assistance. On September 30, 2021, Congress singed the Extending Government Funding and Delivering Emergency Assistance Act (HR 5305) into law. Section 2502 of HR 5305 expanded eligibility to entitlement programs such as Medicaid, to include Afghan evacuees as qualified non-citizens not subject to the five-year bar. The resolution states that a citizen or national of Afghanistan who is paroled into the United States between July 31, 2021 and September 30, 2022; or is paroled into the United States after September 30, 2022 and is either a spouse or child (defined under section 101(b) of the Immigration and Nationality Act 8 U.S.C. 4 1101(b); or is the parent or legal guardian of an individual arriving from Afghanistan in the prescribed date range who was determined to be an unaccompanied child (under 6 U.S.C. 279(g)(2), will considered a qualified non-citizen not subject to the 5 year bar. The population is referred to as Afghan humanitarian parolees.

Currently, these statuses are already considered qualified non-citizens not subject to the five-year bar for children under the age of 19 and pregnant women. HR 5305 states that all humanitarian parolees arriving from Afghanistan during the specified date ranges should be considered qualified non-citizens not subject to the five-year bar, as long as their parole has not been terminated by the Department of Homeland Security. Individuals with these statuses are not automatically entitled for Medical Assistance, they will still need to apply and meet all categorical requirements to be

approved. Their status will also be verified electronically through the Verify Lawful Presence (VLP) interface with the Systematic Alien Verification for Entitlements (SAVE) program per current state and federal rule.

The authority for this rule is contained in HR 5305, Section 2502; Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021), Section 25.5-4-205, C.R.S. (2021) and Section 24.4-4-103(6)(a), C.R.S. (2021).

MSB 19-06-25-A, Revision to the Medical Assistance Eligibility Rule Concerning 10-Day Reporting, Section 8.100.3.A

Medical Assistance. The proposed rule will amend 10 CCR 2505-10 8.100.3.A to include requirements for reporting changes. Medical assistance recipients are required to report changes in circumstances that may potentially affect their eligibility for medical assistance programs. 42 C.F.R. §435.916(c) states that the Department must have a procedure in place to ensure that members make timely and accurate reports for any change in circumstance that may affect their eligibility. There is currently information regarding the 10-day reporting rule on the medical assistance application under the "What I Should Know" section, however, there is not an existing rule to reinforce this requirement as specified by 42 C.F.R. §435.916(c). The addition of this rule will better align the Department's policy with federal regulations, and it will ensure that the 10-day reporting rule is enforced.

The authority for this rule is contained in 42 C.F.R §435.916(c), 42 C.F.R §435.907(a), 20 C.F.R §416.708(h) and Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021).

MSB 21-10-08-A, Revision to the Medical Assistance Eligibility Rules Concerning Definitions at Section 8.100.1, General Eligibility Transferring Requirements at Section 8.100.3.C, and Long-Term Care Medical Assistance Requirements at Sections 8.100.A&B

Medical Assistance. For the purposes of eligibility rules, language updates are needed to include the description and referencing of the level of care assessment and level of care determination. There will also be an update to the definition of a long-term care institution as the language is outdated. There will be no effective change to eligibility criteria (increased or decreased) as it is determined in 8.100. The rule change will only add language to more generally describe the level of care assessment and determination. All individuals applying for long-term care services will still need to meet the institutional level of care needed to be approved for services, in addition to all other categorical eligibility requirements such as income, assets, and a determination of disability.

The authority for this rule is contained 42 C.F.R. §§435.217 & 435.225; Section 25.5-4-205, C.R.S. (2021) and Sections 25.5-1-301 through 25.5-1-303, C.R.S..

MSB 21-10-19-B, Revision to the Medical Assistance Health Programs Office Rule Concerning Medicaid Statewide Managed Care System, Section 8.205, 8.209, 8.212 and 8.215

Medical Assistance. The rule establishes an operational component of managed care for Colorado Medicaid, including eligibility, enrollment/disenrollment, covered services, grievances and appeals, and rate setting. Multiple rule sections related to managed care have been revised to align with current statute for the statewide managed care system defined in C.R.S. 25.5-5 Part 4. The

changes also reflect the federally authorized waivers for the Accountable Care Collaborative Phase II and the new inpatient substance use disorder benefit.

The authority for this rule is contained in 42 CFR Part 438; Section 1915(b) waiver for the Colorado Medicaid Accountable Care Collaborative; Substance Use Disorder Continuum 1115(a) Waiver; Sections 25.5-1-301 through 25.5-1-303, C.R.S. 25.5 Article 5 Part 4 (2021).

CHP 21-06-03-B, Revision to the Medical Assistance Rule concerning Changes to the Revision of the Renewal process for Sections 140 and 430

Medical Assistance. The proposed rule change will amend 10 CCR 2505-3 sections 140 and 430 based on 42 C.F.R §457.315, §457.340, and §457.343 as this pertains to the renewal process for medical assistance. All policy revisions will align with federal regulations for the state to be in compliance with completing redeterminations. There will be new changes to the renewal process for both MAGI and Non-MAGI Programs which include the Child Health Plan Plus (CHP+) program. Updates will now allow members to receive an eligibility determination using up-to-date information, before initiating a renewal packet to the head of household. All members must be determined eligible at renewal if so, the household will not receive a renewal packet or be required to submit additional information. These members will receive an approval notice and only be directed to take action if the information used is not accurate. Members who are determined ineligible or if additional information is needed at renewal, will receive a renewal packet and be required to review, update, and sign the renewal. The signature form will be added to the renewal packet including the member's rights and responsibilities, penalty, and perjury language. Changes will also require members who are terminated at renewal to return the signed renewal form or failure to provide requested documentation, to complete a new application after ninety days from the termination date. The new application date will be the first of the month in which it is returned if returned within ninety days from the termination date. Members who are terminated at renewal and turn in their application or missing information within ninety days will have a new application date that starts the first of the month in which the renewal is returned. Members will also be given the option to request retro coverage within the 90-day period for any months in which coverage is reinstated. Policy will be updated to reflect these changes in the Colorado Benefits Management System (CBMS). These updates will be added for all Medical Assistance programs which include the Child Health Plan Plus (CHP+) program to increase accurate and timely eligibility redeterminations ensuring that Colorado provides medical assistance only to members who remain eligible and reduce enrollment of ineligible individuals. In addition, a new unearned income type of Earned Income tax Credits will be added to policy to align with MAGI rules. CBMS updates are not required for this new unearned income type. Lastly, an update to policy language will be made for the Reasonably Opportunity Period (ROP) for income verification that reduced the ROP from 90 days to 30 days. These updates were previously approved, and the updates are to align with policy with no CBMS updates required.

The authority for this rule is contained in 42 C.F.R §457.315, §457.340, §457.343, and §457.380; Sections 25.5-1-301 through 25.5-1-303, C.R.S. § 25.5-6-1102 et seq (2021).

MSB 19-08-21-B, Revision to the Medical Assistance Rule concerning Changes to the renewal process for Sections 8.100.4.G, 8.100.3.K, and 8.100.3.P

Medical Assistance. The proposed rule change will amend 10 CCR 2505-10 sections 8.100.4.G, 8.100.3.K, and 8.100.3.P based on 42 C.F.R §435.915, §435.916, §435.917, and §435.948, and §435.949 as this pertains to the renewal process for medical assistance. All policy revisions will align with federal regulations for the state to be in compliance with completing redeterminations. There will be new changes to the renewal process for both MAGI and Non-MAGI Programs. Updates will now allow members to receive an eligibility determination using up-to-date information, before initiating a renewal packet to the head of household. When we are able to determine eligibility for all members of the home through interfaces or information within the eligibility system, the household will not receive a renewal packet or be required to submit additional information. These members will receive an approval notice and only be directed to take action if the information used is not accurate. Members who are determined ineligible or if additional verifications are needed at renewal, will receive a renewal packet and be required to review, update, sign the renewal. The signature form will be added to the renewal packet including the member's rights and responsibilities, penalty and perjury language. Changes will also require members who are terminated at renewal for failure to return the signed renewal form or failure to provide requested documentation, to complete a new application after ninety days from the termination date. Members who are terminated at renewal and turn in their application or missing information within ninety days will have a new application date that starts the first of the month in which the renewal is returned. Members will also be given the option to request retro coverage within the 90-day period for any gap in coverage when eligibility is reinstated. Policy will be updated to reflect these changes in the Colorado Benefits Management System (CBMS). These updates will be added for Medical Assistance programs to increase accurate and timely eligibility renewals ensuring that Colorado provides medical assistance only to members who remain eligible and reduce enrollment of ineligible individuals.

In addition, a new unearned income type of Earned Income tax Credits will be added to policy to align with Medicaid and Child Health Plan Plus rules, CBMS updates are not required for this new unearned income type. Lastly, an update to policy language will be made for the Reasonably Opportunity Period (ROP) for income verification that reduced the ROP from 90 days to 30 days. These updates were previously approved, and the updates are to align with policy, with no CBMS updates required.

The authority for this rule is contained in 42 C.F.R §435.915, §435.916, §435.917, §435.948, §435.949, and §457.380; Sections 25.5-1-301 through 25.5-1-303, C.R.S. § 25.5-6-1102 et seq (2021).

MSB 21-11-25-A, Revision to the Medical Assistance Act Rule concerning Qualified Residential Treatment Programs, Section 8.765

Medical Assistance. Revises the rules for child-serving residential facilities to include the new Qualified Residential Treatment Program (QRTP) license type. The new license type will take effect October 1, 2021 in accordance with the federal Family First Prevention Services Act (FFPSA) and there will be a grace period until June 30, 2022 for all facilities enrolled with Medicaid to be in compliance. The revision will allow the Department to reimburse new QRTP facilities in compliance with the FFPSA and align Department rule with the Colorado Department of Human Services' new QRTP license type. QRTPs will provide a trauma-informed model of care to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances.

The authority for this rule is contained in Pub.L. 115-123, Div. E, Title VII, § 50734, Feb. 9, 2018, 132 Stat. 252, 42 CFR 440.160 (2021); Sections 25.5-1-301 through 25.5-1-303, CRS § 25.5-5-202(1)(i) (2021).

MSB 21-11-25-B, Revision to the Medical Assistance Act Rule concerning Long-Term Home Health and Private Duty Nursing Prior Authorization Requirements, Sections 8.520.8, 8.540.2 and 8.540.7

Medical Assistance. Update the long-term home health and private duty nursing rules to resume prior authorization on a tiered schedule over the course of ten months. These revisions are required to bring Department regulations in line with the Colorado State Plan. The Department otherwise risks deferral or disallowance from CMS for being out of compliance. A deferral or disallowance would impact the Department's ability to provide adequate services to members.

The authority for this rule is contained in Sections 25.5-1-301 through 25.5-1-303, (2021).

Notice of Proposed Rulemaking

Tracking number

2021-00783

Department

500,1008,2500 - Department of Human Services

Agency

2506 - Food Assistance Program (Volume 4B)

CCR number

10 CCR 2506-1

Rule title

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's response to COVID-19. Anticipated to be held entirely online

Subjects and issues involved

This proposed regulation contains unified terminology based on feedback from SNAP regulation workgroup, improved placement of definitions, removal of revision history, updated sections to align with federal regulation, and removal of obsolete language that is not in alignment with federal regulations. Also included is general technical cleanup of grammar, phrasing, and the update of the program name throughout the entirety of regulation from Food Assistance to SNAP to mirror the federal name of the program. NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Please check here for any updates on location/connection: https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S. (2015); 26-1-109, C.R.S. (2015); 26-1-111, C.R.S. (2015); 26-2-301 (2020), C.R.S. 26-2-302 (2020), C.R.S.; Agricultural Act of 2014 (Public Law 113-79)

Contact information

Name

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Title

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andrea.poole@state.co.us

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review [X] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
209	Amended Rules
0	New Rules
7	Repealed Rules
0	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	July 2021

What date is being requested for this rule to be effective?	October 2021
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board July 2021 2nd Board August 2021 Effective Date October 2021

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

This proposed regulation contains unified terminology based on feedback from SNAP regulation workgroup, improved placement of definitions, removal of revision history, updated sections to align with federal regulation, and removal of obsolete language that is not in alignment with federal regulations. Also included is general technical cleanup of grammar, phrasing, and the update of the program name throughout the entirety of regulation from Food Assistance to SNAP to mirror the federal name of the program.

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

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

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

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

Code	Description
26-2-301 (2020), C.R.S.	Designates the Colorado Department of Human Services as the responsible agency to administer the Food Assistance Program in the State of Colorado.
26-2-302 (2020), C.R.S.	Prohibits any interference that would prevent the Colorado Department of Human Services from complying with federal mandates prescribed under the federal "Food Stamp Act" as amended.
Agricultural Act of 2014 (Public Law 113-79)	Federal program authority

Does the rule incorporate material by reference? [ ] Yes [x] No
Does this rule repeat language found in statute? [ ] Yes [x] No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

SNAP applicants and recipients, CDHS SNAP program area staff, county SNAP administrators and eligibility technicians

2. Describe the qualitative and quantitative impact.

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

The technical corrections made to overall language and improvements to structure enhances state level administration of SNAP by creating uniformity of the terminology used while also improving the searchability of regulation and better uniformity of concepts for county administrators and eligibility technicians who serve SNAP applicants and recipients. Changing the program name of the volume and throughout regulation from Food Assistance to the Supplemental Nutrition Assistance Program (SNAP) better aligns CDHS SNAP regulation with terminology used at the national level to further improve understanding at a county and client level. Also included in this rulemaking are efforts to align with first-person language for persons over aged 60 (formerly known as elderly), persons experiencing homelessness (formerly known as homeless), and undocumented non-citizens (formerly known as illegal aliens). Federal SNAP regulation alignments were necessary in several areas and included a correction of language regarding periodic report, and corrections needed to application processing. The removal of language regarding a household's requirement to prove how they are meeting needs when no income is reported is not supported by and is more restrictive than federal SNAP regulation; this language was improved to include scenarios in which it is possible for a household to have no income and state they are not able to currently meet their needs. Additional removals included language regarding SNAP applications received from the Social Security Administration but Colorado does not have such an agreement as well as removing a section regarding Federal responsibilities which Colorado does not have jurisdiction to mandate.

3. Fiscal Impact

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

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

Improvements to the periodic report are already being incorporated into CBMS and is funded by the Process and Technology Improvement Grant (PTIG). An improvement regarding application processing was already implemented into CBMS as project number 14284- Reopen Functionality.

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County Fiscal Impact

Counties would be fiscally impacted should Colorado receive fiscal sanctions from the Food and Nutrition Service (FNS) because of SB16-190.

Federal Fiscal Impact

If alignments are not made to Federal SNAP regulation and/or Colorado continues to decline in error rates, Colorado could be fiscally sanctioned by not administering SNAP according to Federal SNAP regulation.

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

There are no other fiscal impacts associated with this rule change.

4. Data Description

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

Federal policy letters, regulations, and guidance materials from FNS were used to develop these regulations.

5. Alternatives to this Rule-making

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

There is no other alternative to this rulemaking as improvements to existing regulations were required to better align with Federal SNAP regulation and this is the only mechanism to do so.

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OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
	Program name updates to header	**DEPARTMENT OF HUMAN SERVICES** **Food Assistance Program RULE MANUAL** **VOLUME 4B, FOOD ASSISTANCE** **10 CCR 2506-1** **[Editor's Notes follow the text of the rules at the end of this CCR Document.]**	**DEPARTMENT OF HUMAN SERVICES** **Supplemental Nutrition Program (SNAP)** **RULE MANUAL VOLUME 4, SNAP** **10 CCR 2506-1** **[Editor's Notes follow the text of the rules at the end of this CCR Document.]**	Updating program name	
	Removing revision history	**HISTORICAL RECORD OF STATEMENT OF BASIS AND PURPOSE, FISCAL IMPACT/REGULATORY ANALYSIS AND SPECIFIC STATUTORY AUTHORITY OF REVISIONS MADE TO STAFF MANUAL VOLUME 4B FOOD STAMPS** Revisions to sections B-4223.1, B-4223.4, B-4223.5, B-4230 and B-4515.1 were adopted on an emergency and final basis at the 11/1/85 State Board meeting, with an effective date of 11/1/85 (Document 9). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4216.4, B-4216.41, B-4220.6, B-4223.5, B-4240, and B-4242.12 were finally adopted at the		This information is duplicative to maintain in Volume 4 as it is captured by Secretary of State, SNAP was given approval to remove this section from regulation	

		11/1/85 State Board meeting, with an effective date of 1/1/86 (Document 8). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4225.4 and B-4225.5 were adopted on an emergency basis at the 12/6/85 meeting, with an effective date of 12/6/85 (Document 6). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4213, B-4213.2, and B-4213.32 were adopted at the 12/6/85 meeting, with an effective date of 2/1/86 (Document 5). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4217, B-4217.1, B-4217.2, B-4221.11, B-4221.21, B-4221.24, B-4221.25, B-4222.6, B-4222.7, and B-4310 were finally adopted at the 1/3/86 meeting, with an effective date of 3/1/86 (Document 6). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4225.4 and B-4225.5 were extended as permanent rules at the 1/3/86 meeting, with			

		an effective date of 3/6/86 (Document 5). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to Sections B-4014, B-4014.66, B-4220.4, were finally adopted following publication at the 2/7/86 meeting, with an effective date of 4/1/86 (Document 1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to Sections B-4311.5 - Cont., B-4311.51 - Concl. B-4317, B-4317.1, B-4317.6 - Concl., were emergency adopted at the 4/11/86 meeting, with an effective date of 4/11/86 (Document 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4014 - B-4014.3, B-4014.66 - B-4015.5, B-4220.4 - B-4220.6, were finally adopted following publication at the 5/2/86 meeting, with an effective date of 7/1/86 (Document 8). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4216.4 - Cont. - B-4216.4 - Cont., were emergency adopted at the 5/2/86 meeting, with an			

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		effective date of 7/1/86 (Document 12). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4222.7 - B-4223.2, B-4223.31 - B-4223.5, B-4224 - B-4224.3, B-4225.9 - B-4230.1, B-4242 - B-4242.2, B-4311.51 - Concl., were emergency adopted at the 5/2/86 meeting, with an effective date of 7/1/86 (Document 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4713.1 - B-4714-Concl., B-4742.11 - B-4742.15-Concl., were finally adopted following publication at the 5/2/86 meeting, with an effective date of 7/1/86 (Document 6). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4225.4, B-4242, B-4242.1, B-4242.12, B-4242.13, B-4242.2, B-4242.21, B-4242.3, B-4242.31, B-4242.32, B-4430.1, B-4430.2, B-4515.1, were finally adopted following publication at the 6/6/86 meeting, with an effective date of 8/1/86 (Documents 4, 6, 10, 11). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.			

		Revisions to sections B-4110; B-4220.11 - B-4220.12; were emergency adopted at the 7/11/86 meeting, with an effective date of 7/11/86 (Document 2). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4011.1, B-4011.6, B-4012, B-4015.2, B-4110.1, B-4221, B-4225, B-4243.3, B-4311.5, B-4317, and B-4321, were finally adopted following publication at the 9/5/86 meeting, with an effective date of 11/1/86 (Document 11). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4110, B-4211, B-4217, B-4220, B-4223.51, B-4223.52, B-4240.1, and B-4311.5, were finally emergency adopted at the 9/5/86 meeting, with an effective date of 9/5/86 (Document 15). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4011.1, B-4011.2, B-4011.3, B-4209, B-4211.1, B-4213, B-4220, B-4223, B-4224, B-4230, and B-4242.2 were emergency adopted at the 10/3/86 meeting, with an effective date of 10/3/86 (Documents 12 and 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board			

		Administrator, Department of Social Services. Revisions to sections B-4011.1, B-4011.22, B-4011.3, B-4209, B-4211.1, B-4213, B-4220, B-4220.1, B-4223.31, B-4223.1, B-4223.4, B-4223.5, B-4224, B-4230, and B-4242.2, were finally adopted emergency at the 11/7/86 meeting, with an effective date of 10/3/86 (Documents 9, 10). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions, additions, and deletions to sections B-4217, B-4221.24, B-4222.6, B-4242.2, B-4242.3, B-4430.1, B-4430.22, B-4430.25, B-4714, and B-4742.11, were finally adopted at the 12/5/86 State Board meeting, with an effective date of 2/1/87 (Document 4). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4213 and B-4223.4 were emergency adopted at the 1/21/87 State Board meeting, with an effective date of 1/21/87 (Document 2). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4014.2, B-4014.3, B-4220.6, B-4220.7, B-4222.6, B-4242.2, B-4311.4, B-4317.3, and B-4515.1 were finally adopted following publication at the 2/6/87 State Board meeting, with an effective date of 4/1/87 (Documents 10, 11). Statement of Basis and			

		Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4213 and B-4223.4 were finally adopted emergency at the 2/6/87 State Board meeting, with an effective date of 1/21/87 (Document 12). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4212, B-4216.2 and B-4222.6 were adopted emergency at the 3/6/87 State Board meeting, with an effective date of 3/6/87 (Documents 6 and 16). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4212, B-4216.2 and B-4222.6 were finally adopted emergency at the 4/3/87 State Board meeting, with an effective date of 3/6/87 (Document 14). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4500, B-4511 and applicable forms were finally adopted following publication at the 4/3/87			

		State Board meeting, with an effective date of 6/1/87 (Document 12). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to section B-4316 were emergency adopted at the 4/3/87 State Board meeting, with an effective date of 4/3/87 (Document 15). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4216 and B-4316 were finally adopted emergency at the 5/1/87 State Board meeting, with an effective date of 3/6/87 (Document 15) and 4/3/87 (Document 14). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4215 through B-4216 were finally adopted following publication at the 6/5/87 State Board meeting, with an effective date of 8/1/87 (Document 1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4110, B-4220, and B-4223.5 were emergency adopted at the 6/5/87 State Board meeting, with an effective date of 6/5/87 (Documents 5 and 7).			

		Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4110, B-4220, and B-4223.5 were finally adopted emergency at the 7/10/87 State Board meeting, with an effective date of 6/5/87 (Documents 14 and 16). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4010, B-4011, B-4013, B-4014, B-4214, B-4215 through B-4216, B-4220 through B-4221, B-4430, and B-4821 through B-4832 were finally adopted following publication at the 7/10/87 State Board meeting, with an effective date of 9/1/87 (Documents 12 and 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to section B-4212 were adopted emergency at the 7/10/87 State Board meeting, with an effective date of 7/10/87 (Document 17). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to section B-4212 were finally adopted emergency at the 8/7/87 State Board meeting, with an			

		effective date of 7/10/87 (Document 17). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to section B-4010, B-4011, B-4213, B-4220, B-4221, B-4222, and B-4225 were finally adopted following publication at the 9/11/87 State Board meeting, with an effective date of 11/1/87 (Document 8 and 17). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to section B-4212, B-4222, B-4223, and B-4225 were emergency adopted at the 9/11/87 State Board meeting, with an effective date of 9/11/87 (Documents 12 and 27). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4223 and B-4230 were finally adopted emergency at the 10/2/87 State Board meeting, with an effective date of 10/1/87 (Document 3). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4111 through B-4121, B-4216			

		through B-4217, B-4224, B-4400 through B-4410, B-4514 through B-4515, and B-4723 through B-4740 were finally adopted following publication at the 10/2/87 State Board meeting, with an effective date of 12/1/87 (Documents 1 and 2). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4100 through B-4110.2 were adopted emergency at the 10/2/87 State Board meeting, with an effective date of 10/1/87 (Document 4). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4100 through B-4110.2 were finally adopted emergency at the 11/6/87 State Board meeting, with an effective date of 10/1/87 (Document 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4212 were emergency and final adopted at the 11/6/87 State Board meeting, with an effective date of 11/6/87 (Document 15). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.			

		Revisions to sections B-4013, B-4111 through B-4121, B-4224, B-4318 through B-4319, B-4321 through B-4322, B-4410 through B-4425, B-4430, and B-4524 were finally adopted following publication at the 11/6/87 State Board meeting, with an effective date of 1/1/88 (Document 10). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4011 and B-4220 were emergency adopted at the 11/6/87 State Board meeting, with an effective date of 11/6/87 (Documents 16 and 23). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4011 and B-4220 were finally adopted emergency at the 12/4/87 State Board meeting, with an effective date of 11/6/87 (Documents 8 and 9). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4212, B-4221, B-4222 and B-4223 were finally adopted following publication at the 12/4/87 State Board meeting, with an effective date of 2/1/88 (Document 6). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during			

		normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4011, B-4014, B-4200, B-4220 - B-4221, B-4223, B-4242, B-4425, B-4427 - B-4428, B-4430, and B-4540 were finally adopted following publication at the 1/8/88 State Board meeting, with an effective date of 3/1/88 (Documents 6 and 7). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4222.7 through B-4223.2 were adopted emergency at the 2/5/88 State Board meeting (CSPR# 87-12-21-1), with an effective date of 2/5/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4222.7 through B-4223.2 were finally adopted emergency at the 3/4/88 State Board meeting (CSPR# 87-12-21-1), with an effective date of 2/5/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to section B-4222.7 through B-4223 were adopted emergency at the 3/4/88 State Board meeting (CSPR# 88-1-20-1), with an effective date of 3/4/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials			

		are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4222.7 through B-4223 were final adoption of emergency at the 4/1/88 State Board meeting, with an effective date of 3/4/88 (CSPR# 88-1-20-1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services. Revisions to sections B-4014, B-4015, B-4215, B-4216, B-4220, B-4221, B-4222, B-4225 and B-4319 were finally adopted following publication at the 5/6/88 State Board meeting, with an effective date of 7/1/88 (CSPR# 88-2-12-1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4713 - B-4714 and B-4742 were finally adopted following publication at the 6/3/88 State Board meeting, with an effective date of 8/1/88 (CSPR# 88-3-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4316 were adopted emergency at the 6/3/88 State Board meeting, with an effective date of 6/3/88 (CSPR# 88-4-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These			

		materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4316 were final adoption of emergency at the 7/8/88 State Board meeting, with an effective date of 6/3/88 (CSPR# 88-4-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4011 were finally adopted following publication at the 7/8/88 State Board meeting, with an effective date of 9/1/88 (CSPR# 88-4-20-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4212, B-4215, and B-4222 were final adoption following publication at the 8/5/88 State Board meeting, with an effective date of 10/1/88 (CSPR#'s 88-1-15-2, 88-3-8-1 and 88-5-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services Revisions to sections B-4100 - B-4110, B-4220, B-4222, B-4223, and B-4225 - B-4230 were emergency adopted at the 9/9/88 State Board meeting, with an effective date of 9/1/88 (CSPR# 88-8-12-2) and effective date of 10/1/88 (CSPR# 88-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal			

		working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 - B-4110, B-4220, B-4222, B-4223, and B-4225 - B-4230 were final adoption of emergency at the 10/7/88 State Board meeting, with an effective date of 9/1/88 (CSPR# 88-8-12-2) and effective date of 10/1/88 (CSPR# 88-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections Table of Contents, B-4215, B-4216 and Form. FS-4J were final adoption following publication at the 11/4/88 State Board meeting, with an effective date of 1/1/89 (CSPR#'s 88-6-28-2 and 88-8-24-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4013, B-4215, and B-4216 were emergency adopted at the 12/2/88 State Board meeting, with an effective date of 12/2/88 (CSPR# 88-9-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4013, B-4215, and B-4216 were final adoption of emergency at the 1/6/89 State Board meeting, with an effective date of 12/2/88 (CSPR# 88-9-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for			

		review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4014 and B-4220 - B-4221 were adopted emergency at the 1/6/89 State Board meeting, with an effective date of 1/6/89 (CSPR# 88-11-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4014 and B-4220 - B-4221 were final adoption of emergency at the 2/3/89 State Board meeting, with an effective date of 1/6/89 (CSPR# 88-11-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4110 - B-4121 and B-4221 were adopted emergency at the 2/3/89 State Board meeting, with an effective date of 2/1/89 (CSPR# 88-12-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4110 - B-4121 and B-4221 were final adoption of emergency at the 3/3/89 State Board meeting, with an effective date of 2/1/89 (CSPR# 88-12-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for			

		review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010, B-4011, B-4111 - B-4121, B-4212, B-4222, B-4223, B-4318 - B-4319, and forms following section B-4515 were adopted emergency at the 3/3/89 State Board meeting, with an effective date of 3/3/89 (CSPR#'s 88-12-5-1 and 89-1-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010, B-4011, B-4111 - B-4121, B-4212, B-4222, B-4223, B-4318 - B-4319, and forms following section B-4515 were final adoption of emergency at the 4/7/89 State Board meeting, with an effective date of 3/3/89 (CSPR#'s 88-12-5-1 and 89-1-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011, B-4230, and B-4410 were adopted emergency at the 4/7/89 State Board meeting, with an effective date of 5/1/89 (CSPR# 89-3-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011, B-4230, and B-4410 were final adoption of emergency at the 5/5/89 State Board meeting, with an effective date of 5/1/89 (CSPR# 89-3-10-1). Statement of Basis and Purpose and specific statutory			

		authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4642 through B-4644, B-4713 through B-4716, and B-4812 through B-4820 were adopted emergency at the 6/2/89 State Board meeting, with an effective date of 6/2/89 (CSPR# 89-5-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4642 through B-4644, B-4713 through B-4716, and B-4812 through B-4820 were final adoption of emergency at the 7/7/89 State Board meeting, with an effective date of 6/2/89 (CSPR# 89-5-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4400 through B-4428 and B-4430 were adopted emergency at the 7/7/89 State Board meeting, with an effective date of 7/1/89 (CSPR# 89-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4400 through B-4428 and B-4430 were adopted emergency and final at the 8/4/89 State Board meeting, with an effective date of 7/1/89 (CSPR#			

		89-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010, B-4011, B-4100 - B-4110, B-4222 - B-4223, B-4225, B-4242 and B-4518 - B-4519 were adopted emergency at the 8/4/89 State Board meeting, with an effective date of 8/4/89 (CSPR#'s 89-7-14-1 and 89-7-19-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010, B-4011, B-4100 - B-4110, B-4222 - B-4223, B-4225, B-4242 and B-4518 - B-4519 were final adoption of emergency at the 9/8/89 State Board meeting, with an effective date of 8/4/89 (CSPR#'s 89-7-14-1 and 89-7-19-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 - B-4110, B-4220, B-4222 - B-4223, and B-4225 - B-4230 were adopted emergency at the 9/8/89 State Board meeting, with an effective date of 10/1/89 (CSPR# 89-8-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 - B-4110, B-4220, B-4222 -			

		B-4223, and B-4225 - B-4230 were final adoption of emergency at the 10/6/89 State Board meeting, with an effective date of 10/1/89 (CSPR# 89-8-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4740 - B-4742 were adopted emergency at the 10/6/89 State Board meeting, with an effective date of 10/6/89 (CSPR# 89-8-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4330 - B-4331 and B-4740 - B-4742 were adopted emergency and final at the 11/3/89 State Board meeting, with effective dates of 10/6/89 and 11/3/89 (CSPR# 89-8-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011, B-4012, B-4014, B-4015, B-4218 - B-4220 - B-4221, B-4222 - B-4223, B-4230 - B-4242, B-4243 - B-4311, B-4330, B-4331, B-4410, B-4430, and B-4600 - B-4834 were final adoption following publication at the 12/1/89 State Board meeting, with effective dates of 2/1/90 (CSPR#'s 89-7-20-1, 89-9-8-1, and 89-9-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.		

		Revisions to sections B-4110 through B-4111, B-4213, and B-4311 were adopted emergency at the 1/5/90 State Board meeting, with effective dates of 1/5/90 (CSPR#'s 89-11-7-1 and 89-12-5-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4110 through B-4111, B-4213, and B-4311 were final adoption of emergency at the 2/2/90 State Board meeting, with effective dates of 1/5/90 (CSPR#'s 89-11-7-1 and 89-12-5-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010 - B-4011, B-4221 - B-4223, B-4225, B-4230 - B-4240, B-4242 - B-4311, B-4317, B-4430, and B-4625 - B-4651 were final adoption following publication at the 7/6/90 State Board meeting, with an effective date of 9/1/90 (CSPR# 90-4-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4222 and B-4225 were final adoption following publication at the 8/3/90 State Board meeting, with an effective date of 10/1/90 (CSPR# 90-5-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social			

		Services. Revisions to sections B-4100 - B-4110, B-4220, B-4222 - B-4223, and B-4225 - B-4230 were adopted emergency at the 10/5/90 State Board meeting, with an effective date of 10/5/90 (CSPR# 90-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 through B-4110, B-4220, B-4222 through B-4223, and B-4225 through B-4230 were final adoption of emergency at the 11/2/90 State Board meeting, with an effective date of 10/5/90 (CSPR# 90-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4013, B-4111 through B-4121, B-4215, and B-4318 through B-4319 were adopted emergency at the 12/7/90 State Board meeting, with an effective date of 12/7/90 (CSPR# 90-10-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4013, B-4111 through B-4121, B-4215, and B-4318 through B-4319 were final adoption of emergency at the 1/4/91 State Board meeting, with an effective date of 12/7/90 (CSPR# 90-10-4-1). Statement of Basis and Purpose and specific statutory authority for			

		these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4430 were adopted emergency at the 1/4/91 State Board meeting, with an effective date of 1/4/91 (CSPR# 90-12-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4430 were final adoption of emergency at the 2/1/91 State Board meeting, with an effective date of 1/4/91 (CSPR# 90-12-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4213, B-4222, B-4223, B-4225, B-4242, B-4425, and B-4712 through B-4760 were final adoption following publication at the 2/1/91 State Board meeting, with an effective date of 4/1/91 (CSPR# 90-11-6-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4223.61 were adopted emergency at the 2/1/91 State Board meeting, with an effective date of 3/1/91 (CSPR# 90-12-28-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during			

		normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4223.61 were final adoption of emergency at the 3/8/91 State Board meeting, with an effective date of 3/1/91 (CSPR# 90-12-28-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4222, B-4225, and B-4430 were adopted emergency at the 5/3/91 State Board meeting, with an effective date of 5/3/91 (CSPR# 91-3-26-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4222, B-4225, and B-4430 were final adoption of emergency at the 6/7/91 State Board meeting, with an effective date of 5/3/91 (CSPR# 91-3-26-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4430 were final adoption following publication at the 7/12/91 State Board meeting, with an effective date of 9/1/91 (CSPR# 91-4-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.			

		Revisions to section B-4222 were adopted emergency at the 7/12/91 State Board meeting, with an effective date of 7/12/91 (CSPR# 91-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4222 were final adoption of emergency at the 8/2/91 State Board meeting, with an effective date of 7/12/91 (CSPR# 91-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4430 were final adoption following publication at the 8/2/91 State Board meeting, with an effective date of 10/1/91 (CSPR# 91-6-5-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011, B-4221, B-4223, and B-4318 through B-4319 were adopted emergency at the 8/2/91 State Board meeting, with an effective date of 8/2/91 (CSPR# 91-6-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011, B-4221, B-4223, and B-4318 through B-4319 were final adoption of emergency at the			

		9/6/91 State Board meeting, with an effective date of 8/2/91 (CSPR# 91-6-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 through B-4110, B-4220, B-4222, B-4223, and B-4225 through B-4230 were adopted emergency at the 9/6/91 State Board meeting, with an effective date of 10/1/91 (CSPR# 91-8-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 through B-4110, B-4220, B-4222, B-4223, and B-4225 through B-4230 were final adoption of emergency at the 10/4/91 State Board meeting, with an effective date of 10/1/91 (CSPR# 91-8-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4215 were final adoption following publication at the 10/4/91 State Board meeting, with an effective date of 12/1/91 (CSPR# 91-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4240 were adopted emergency at the 11/1/91 State Board meeting, with an effective date of			

		11/1/91 (CSPR# 91-8-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4240 were final adoption of emergency at the 12/6/91 State Board meeting, with an effective date of 11/1/91 (CSPR# 91-8-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4420 were final adoption following publication at the 2/7/92 State Board meeting, with an effective date of 4/1/92 (CSPR# 91-11-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011, B-4212, B-4213 - B-4214, B-4221, B-4222, B-4223, B-4225 - B-4230 and B-4318 were adopted emergency at the 2/7/92 State Board meeting, with an effective date of 2/1/92 (CSPR# 91-12-17-1); to sections B-4215 and B-4222, with an effective date of 2/7/92 (CSPR# 91-12-10-1); and, to section B-4223, with an effective date of 3/1/92 (CSPR# 91-12-30-3). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4215 and B-4222 were final adoption of emergency at the 3/6/92 State Board meeting,			

		with an effective date of 2/7/92 (CSPR# 91-12-10-1); and, to section B-4223, with an effective date of 3/1/92 (CSPR# 91-12-30-3). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4430 were final adoption following publication at the 3/6/92 State Board meeting, with an effective date of 5/1/92 (CSPR# 91-12-16-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4111 through B-4121, B-4216 through B-4217, B-4222, B-4225, and B-4430 were adopted emergency at the 3/6/92 State Board meeting, with an effective date of 3/6/92 (CSPR# 92-1-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011, B-4212, B-4214, B-4221, B-4222, B-4223, B-4230 and B-4318 were adopted emergency and final at the 4/3/92 State Board meeting, with an effective date of 2/1/92 and 4/3/92 (CSPR# 91-12-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.			

		Revisions to sections B-4111 through B-4121, B-4216 through B-4217, B-4222, B-4225, and B-4430 were final adoption of emergency at the 4/3/92 State Board meeting, with an effective date of 3/6/92 (CSPR# 92-1-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4013, B-4222 through B-4223, and B-4225 were adopted emergency at the 6/5/92 State Board meeting, with an effective date of 6/5/92 (CSPR#'s 92-4-9-1 and 92-4-29-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4013, were final adoption of emergency at the 7/10/92 State Board meeting, with an effective date of 6/5/92 (CSPR# 92-4-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4430 were final adoption following publication at the 8/7/92 State Board meeting, with an effective date of 10/1/92 (CSPR# 92-5-6-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State			

		Board Liaison, Department of Social Services. Revisions to sections B-4215 and B-4222 were final adoption following publication at the 9/4/92 State Board meeting, with an effective date of 11/1/92 (CSPR# 92-6-18-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 through B-4110, B-4220, and B-4222 through B-4223 were adopted emergency at the 10/2/92 State Board meeting, with an effective date of 10/1/92 (CSPR# 92-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 through B-4110, B-4220, and B-4222 through B-4223 were final adoption of emergency at the 11/6/92 State Board meeting, with an effective date of 10/1/92 (CSPR# 92-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010, B-4213, B-4215, B-4222, and B-4223 were final adoption following publication at the 3/5/93 State Board meeting, with an effective date of 5/1/93 (CSPR# 92-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board		

		Liaison, Department of Social Services. Revisions to section B-4240.1 were adopted emergency at the 4/2/93 State Board meeting, with an effective date of 4/2/93 (CSPR# 93-2-23-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4240.1 were final adoption of emergency at the 5/7/93 State Board meeting, with an effective date of 4/2/93 (CSPR# 93-2-23-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4215 through B-4216 were final adoption following publication at the 5/7/93 State Board meeting, with an effective date of 7/1/93 (CSPR# 93-2-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011 and B-4220 were adopted emergency at the 6/4/93 State Board meeting, with an effective date of 6/4/93 (CSPR# 93-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011 and B-4220 were final			

		adoption of emergency at the 7/9/93 State Board meeting, with an effective date of 6/4/93 (CSPR# 93-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4011 were final adoption following publication at the 7/9/93 State Board meeting, with an effective date of 9/1/93 (CSPR# 93-3-25-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4222 were adopted emergency at the 7/9/93 State Board meeting, with an effective date of 7/1/93 (CSPR# 93-6-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4222 were final adoption of emergency at the 8/6/93 State Board meeting, with an effective date of 7/1/93 (CSPR# 93-6-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010, B-4013, B-4213, B-4215, B-4216, B-4221, B-4223, B-4230 - B-4240, B-4242, B-4318 - B-4319, B-4410, B-4430, B-4612 - B-4651, B-4660 - B-4662, and B-4712 - B-4760 were final adoption following			

		publication at the 8/6/93 State Board meeting, with an effective date of 10/1/93 (CSPR# 93-5-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011 and B-4632 were adopted emergency at the 9/10/93 State Board meeting, with an effective date of 9/10/93 (CSPR# 93-7-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4011 and B-4632 were final adoption of emergency at the 10/1/93 State Board meeting, with an effective date of 9/10/93 (CSPR# 93-7-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4218 through B-4220 were final adoption following publication at the 10/1/93 State Board meeting, with an effective date of 12/1/93 (CSPR# 93-8-18-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4400 through B-4410 and B-4425 were adopted emergency and final at the 10/1/93 State Board meeting, with an effective date of 10/1/93 (CSPR#			

		93-6-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 through B-4110, B-4220, B-4222 through B-4223, and B-4225 through B-4230 were adopted emergency at the 10/1/93 State Board meeting, with an effective date of 10/1/93 (CSPR# 93-8-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4100 through B-4110, B-4220, B-4222 through B-4223, and B-4225 through B-4230 were adopted emergency and final at the 11/5/93 State Board meeting, with effectives date of 10/1/93 and 11/5/93 (CSPR# 93-8-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to section B-4430 were final adoption following publication at the 2/4/94 State Board meeting, with an effective date of 4/1/94 (CSPR# 93-11-16-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4222, B-4224, B-4672 through B-4676, B-4694, and B-4704 through B-4760 were adopted			

		emergency at the 2/4/94 State Board meeting, with an effective date of 4/1/94 (CSPR# 93-10-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4222, B-4224, B-4672 through B-4676, B-4694, and B-4704 through B-4760 were adopted emergency and final at the 3/4/94 State Board meeting, with an effective date of 4/1/94 (CSPR# 93-10-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4000 - B-4010, B-4011, B-4013, B-4216 - B-4218, B-4220, B-4221, B-4222, B-4230 - B-4240, and B-4242 were final adoption following publication at the 3/4/94 State Board meeting, with an effective date of 5/1/94 (CSPR# 93-10-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Revisions to sections B-4010 and B-4223 were final adoption following publication at the 5/6/94 State Board meeting, with an effective date of 7/1/94 (CSPR#'s 94-1-20-1 and 94-3-3-3). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.			

		Revisions to sections B-4215, B-4222 - B-4223, B-4225, and B-4430 were final adoption following publication at the 6/3/94 State Board meeting, with an effective date of 8/1/94 (CSPR# 94-2-23-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services. Deletion of forms, including sections B-4500 and B-4900, were final adoption following publication at the 7/8/94 State Board meeting, with an effective date of 9/1/94 (CSPR# 94-3-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4011, B-4012, B-4100 - B-4110, B-4213 - B-4214, B-4215, B-4222, B-4223, B-4225, B-4317, and B-4427 were adopted emergency at the 8/5/94 State Board meeting, with an effective date of 9/1/94 (CSPR# 94-6-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4011, B-4012, B-4100 - B-4110, B-4213 - B-4214, B-4215, B-4222, B-4223, B-4225, B-4317, and B-4427 were adopted emergency and final at the 9/9/94 State Board meeting, with an effective date of 9/1/94 (CSPR# 94-6-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.			

		Revisions to sections B-4110, B-4220, B-4222, and B-4225 through B-4230 were adopted emergency at the 9/9/94 State Board meeting, with an effective date of 10/1/94 (CSPR# 94-7-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4110, B-4220, B-4222, and B-4225 through B-4230 were final adoption of emergency at the 10/7/94 State Board meeting, with an effective date of 10/1/94 (CSPR# 94-7-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4010, B-4011, B-4222, B-4225, B-4318 - B-4319, B-4425, B-4430, and B-4695 - B-4711 were final adoption following publication at the 11/4/94 State Board meeting, with an effective date of 1/1/95 (CSPR#'s 94-7-21-1, and 94-8-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4010 - B-4214, B-4216 - B-4220, B-4222, B-4223 - B-4225, B-4230 - B-4240, B-4242, B-4314 - B-4316, B-4318 - B-4410, B-4425 - B-4428, and B-4430 - B-4770 were final adoption following publication at the 3/3/95 State Board meeting, with an effective date of 5/1/95 (CSPR# 94-12-1-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These			

		materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to section B-4223 were final adoption following publication at the 5/5/95 State Board meeting, with an effective date of 7/1/95 (CSPR# 95-2-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to section B-4100 - B-4110, B-4220, and B-4223 - B-4230 were adopted emergency at the 10/6/95 State Board meeting, with an effective date of 10/1/95 (CSPR# 95-8-31-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4100 - B-4110, B-4220, and B-4223 - B-4230 were adopted emergency and final at the 11/3/95 State Board meeting, with effective dates of 10/1/95 and 12/1/95 (CSPR# 95-8-31-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4215 through B-4220, B-4240 through B-4242, B-4321 through B-4322, B-4410, B-4425, B-4633 through B-4640, B-4660 through B-4662, and B-4695 through B-4698 were final adoption following publication at the 1/5/96 State Board meeting, with an effective date of 3/1/96 (CSPR# 95-10-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the			

		rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4425 through B-4427 were final adoption following publication at the 2/2/96 State Board meeting, with an effective date of 4/1/96 (CSPR# 95-11-29-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4222 and B-4225 were final adoption following publication at the 7/12/96 State Board meeting, with an effective date of 9/1/96 (CSPR# 96-4-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4011, B-4100 through B-4110, B-4214, B-4220, B-4222 through B-4230, and B-4317 through B-4318 were adopted emergency at the 10/4/96 State Board meeting, with an effective date of 10/1/96 (CSPR# 96-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4011, B-4100 through B-4110, B-4214, B-4220, B-4222 through B-4230, and B-4317 through B-4318 were final adoption of emergency at the 11/8/96 State Board meeting, with an effective date of 10/1/96 (CSPR# 96-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These			

		materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions/additions to sections B-4010, B-4430, B-4600 through B-4612, B-4625 through B-4651, and B-4800 were final adoption following publication at the 12/6/96 State Board meeting, with an effective date of 2/1/97 (CSPR# 96-9-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to section B-4215 were adopted emergency at the 12/6/96 State Board meeting, with an effective date of 12/6/96 (CSPR# 96-10-21-1) and sections B-4010, B-4012, B-4111 through B-4121, B-4212, B-4222 through B-4223, B-4321 through B-4322, B-4425, and B-4430 were adopted emergency at the 12/6/96 State Board meeting, with an effective date of 1/1/97 (CSPR#'s 96-10-7-1 and 96-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to section B-4215 were adopted emergency and final at the 1/3/97 State Board meeting, with an effective date of 12/6/96 (CSPR# 96-10-21-1) and sections B-4010, B-4012, B-4111 through B-4121, B-4212, B-4222 through B-4223, B-4321 through B-4322, B-4425, and B-4430 were adopted emergency and final at the 1/3/97 State Board meeting, with an effective date of 1/1/97 (CSPR#'s 96-10-7-1 and 96-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.			

		Revisions to sections B-4010, B-4430, B-4600 to B-4612, B-4625 through B-4651, and B-4800 were re-promulgated as final adoption following publication at the 3/7/97 State Board meeting, with an effective date of 5/1/97 (CSPR# 96-9-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4011, B-4013, B-4215, B-4216, B-4223 through B-4225, and B-4430 were final adoption following publication at the 6/6/97 State Board meeting, with an effective date of 8/1/97 (CSPR# 97-4-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4400 through B-4410 were adopted emergency at the 6/20/97 State Board meeting, with an effective date of 7/1/97 (CSPR# 97-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4400 through B-4410 were adopted emergency and final at the 8/1/97 State Board meeting, with effective dates of 7/1/97 and 8/1/97 (CSPR# 97-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4010, B-4215, B-4222, B-4225,			

		and B-4427 through B-4430 were final adoption following publication at the 10/3/97 State Board meeting, with an effective date of 12/1/97 (CSPR# 97-7-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4100 through B-4111, B-4220, and B-4225 through B-4230 were adopted emergency at the 10/3/97 State Board meeting, with an effective date of 10/1/97 (CSPR# 97-9-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4100 through B-4111, B-4220, and B-4225 through B-4230 were final adoption of emergency at the 11/7/97 State Board meeting, with an effective date of 10/1/97 (CSPR# 97-9-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4212 and B-4321 were adopted emergency at the 11/7/97 State Board meeting, with an effective date of 11/7/97 (CSPR# 97-9-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.			

		Revisions to sections B-4212 and B-4321 were final adoption of emergency at the 12/5/97 State Board meeting, with an effective date of 11/7/97 (CSPR# 97-9-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4111 - B-4121, B-4212 - B-4213, B-4215, B-4222, B-4225, B-4321 through B-4322, and B-4430 were final adoption following publication at the 2/6/98 State Board meeting, with an effective date of 4/1/98 (CSPR# 97-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to section B-4430 were final adoption following publication at the 5/1/98 State Board meeting, with an effective date of 7/1/98 (CSPR# 98-1-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4100, B-4220, B-4223 and B-4230 were adopted emergency at the 10/2/98 State Board meeting, with an effective date of 10/1/98 (CSPR# 98-8-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to section B-4212 were adopted emergency at			

		the 10/2/98 State Board meeting, with an effective date of 11/1/98 (CSPR# 98-8-24-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4100, B-4220, B-4223 and B-4230 were final adoption of emergency at the 11/6/98 State Board meeting, with an effective date of 10/1/98 (CSPR# 98-8-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to section B-4212 were final adoption of emergency at the 11/6/98 State Board meeting, with an effective date of 11/1/98 (CSPR# 98-8-24-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4011, B-4111, B-4212, B-4215 through B-4217, B-4220, B-4222 - B-4225, and B-4240 were final adoption following publication at the 11/6/98 State Board meeting, with an effective date of 1/1/99 (CSPR# 98-8-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4100, B-4220, and B-4230 were adopted emergency at the 9/3/99 State Board meeting, with an effective date of 10/1/99 (CSPR# 99-8-17-1).			

		Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4100, B-4220, and B-4230 were final adoption of emergency at the 10/1/99 State Board meeting, with an effective date of 10/1/99 (CSPR# 99-8-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services. Revisions to sections B-4011, B-4214, B-4220, B-4221, B-4223, B-4240, B-4242, B-4321 B-4672, B-4694, B-4704, B-4733, and B-4770 were final adoption following publication at the 4/7/2000 State Board meeting, with an effective date of 6/1/2000 (CSPR# 99-12-6-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of Public Affairs, Department of Human Services. Revisions to sections B-4100, B-4220, B-4223, and B-4230 were adopted emergency at the 9/8/2000 State Board meeting, with an effective date of 10/1/2000 (CSPR# 00-8-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to sections B-4100, B-4220, B-4223, and B-4230 were final adoption of emergency at the 10/6/2000 State Board meeting, with an effective date of 10/1/2000			

		(CSPR# 00-8-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to sections B-4242.11 to B-4242.12 were final adoption following publication at the 11/3/2000 State Board meeting, with an effective date of 1/1/2001 (CSPR# 00-8-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to sections B-4224.4 and B-4225 were final adoption following publication at the 12/1/2000 State Board meeting, with an effective date of 2/1/2001 (CSPR# 00-9-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revision to section B-4223.5 was adopted as emergency at the 2/2/2001 State Board meeting, with an effective date of 3/1/2001 (CSPR# 01-1-10-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement,			

		Boards and Commissions Division, State Board Administration. Revision to section B-4223.5 was final adoption of emergency rule at the 3/2/2001 State Board meeting, with an effective date of 3/1/2001 (CSPR# 01-1-10-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4224.4 through B-4225.6 were final adoption following publication at the 4/6/2001 State Board meeting, with an effective date of 6/1/2001 (CSPR# 01-1-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4011.2, B-4242.11, B-4242.21 and B-4242.33 were final adoption following publication at the 5/4/2001 State Board meeting, with an effective date of 7/1/2001 (CSPR# 01-2-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4224, B-4225 and B-4430 were final adoption following publication at the 7/6/2001 State Board meeting, with an effective date of 9/1/2001 (CSPR#			

		01-4-16-1 and 01-4-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Section B-4223.51 were adopted emergency at the 7/6/2001 State Board meeting, with an effective date of 7/6/2001 (CSPR# 01-5-22-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Section B-4223.51 were final adoption of emergency rule at the 8/3/2001 State Board meeting, with an effective date of 7/6/2001 (CSPR# 01-5-22-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4010 - B-4012, B-4100 - B-4112, B-4212 - B-4213, B-4221 - B-4223, B-4230 - B-4240, B-4243 - B-4316, and B-4321 - B-4322 were final adoption following publication at the 9/7/2001 State Board meeting, with an effective date of 11/1/2001 (CSPR# 01-2-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of			

		Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4100, B-4220, B-4223.5, and B-4230 were adopted on an emergency basis at the 9/7/2001 State Board meeting, with an effective date of 10/1/2001 (CSPR# 01-8-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4100, B-4220, B-4223.5, and B-4230 were adopted on as emergency and final at the 10/5/2001 State Board meeting, with an effective date of 10/5/2001 (CSPR# 01-8-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4224.2, B-4224.4, Br4225.11, B-4225.4 through B-4225.63, B-4225.9, and addition of B-4242.34 through B-4242.343 were final adoption following publication at the 4/5/2002 State Board meeting, with an effective date of 6/1/2002 (CSPR#s 01-12-20-1 and 01-12-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4011.3, B-4011.4, B-4011.52, B-			

		4215.45, B-4215.6, B-4217.1, B-4221.13, B-4222.7, B-4240.1, B-4242.2, B-4314.1, B-4318, B-4318.4, B-4319.1, B-4330.1, 3-4430.21, and B-4430.22 were adopted following publication at the 7/12/2002 State Board meeting, with an effective date of 9/1/2002 (CSPR# 01-12-28-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, and B-4230 were adopted as emergency at the 9/6/2002 State Board meeting, with an effective date of 10/1/2002 (CSPR#01-8-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4212.3, B-4223.1, B-4223.6, B-4224, B-4242.342, and B-4242.343 were adopted as emergency at the 10/4/2002 State Board meeting, with an effective date of 10/1/2002 (CSPR# 01-7-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, and B-4230 were final adoption of emergency rules at the 11/1/2002 State Board meeting, with an			

		effective date of 10/1/2002 (CSPR# 01-8-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4212.3, B-4223.1, B-4223.6, B-4224, B-4242.342, and B-4242.343 were adopted as emergency and final at the 11/1/2002 State Board meeting, with an effective date of 10/1/2002 (CSPR# 01-7-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4215.42, B-4215.72, B-4215.73, and B-4242.11 were adopted following publication at the 2/7/2003 State Board meeting, with an effective date of 4/1/2003 (Rule-making #02-11-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4111.2, B-4111.6, B4212.3, B-4215.2, B-4222.3, B-4240, B-4240.1, B-4242.11, B-4314.1, B-4319, B-4319.1, and B-4321.1 were adopted following publication at the 6/6/2003 State Board meeting, with an effective date of 8/1/2003 (Rule-making #03-2-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by			

		reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4215.45, B-4242, and B-4242.11 were adopted following publication at the 9/5/2003 State Board meeting, with an effective date of 11/1/2003 (Rule-making# 03-6-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, and B-4230 were adopted as emergency at the 10/3/2003 State Board meeting, with an effective date of 10/1/2003 (Rule-making# 03-8-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement Boards and Commissions Division, State Board Administration. Revisions to Section B-4223.51 were final adoption of emergency at the 1/9/2004 State Board meeting, with an effective date of 1/1/2004 (Rule-making# 03-11-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.			

		Revisions to Section B-4230.1 were adopted following publication at the 3/5/2004 State Board meeting, with an effective date of 5/1/2004 (Rule-making# 03-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, B-4223.51, and B-4230 were adopted as emergency at the 10/1/2004 State Board meeting, with an effective date of 10/1/2004 (Rule-making# 04-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, B-4223.51, and B-4230 were adopted as final emergency rules at the 11/5/2004 State Board meeting, with an effective date of 10/1/2004 (Rule-making# 04-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Section B-4223.51 were adopted as emergency at the 2/3/2006 State Board meeting, with an effective date of 3/1/2006 (Rule-making# 06-1-10-2). Statement of Basis and Purpose and specific statutory			

		authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Section B-4223.51 were final (permanent) adoption of emergency rules at the 3/3/2006 State Board meeting, with an effective date of 3/1/2006 (Rule-making# 06-1-10-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4010, B-4010.1, B-4010.11, B-4011.21, B-4100, B-4220.11, B-4220.12, B-4222.7, B-4223, B-4223.1, B-4223.4, B-4223.5, B-4223.51, B-4224.1, B-4224.2, B-4224.3, B-4225.5, B-4230, and B-4242.11 were adopted as emergency at the 9/5/2008 State Board meeting, with an effective date of 10/1/2008 (Rule-making# 08-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4010, B-4010.1, B-4010.11, B-4011.21, B-4100, B-4220.11, B-4220.12, B-4222.7, B-4223, B-4223.1, B-4223.4, B-4223.5, B-4223.51, B-4224.1, B-4224.2, B-4224.3, B-4225.5, B-4230, and B-4242.11 were final (permanent) adoption of emergency rules at the at the 10/3/2008 State Board meeting, with an effective date of 12/1/2008 (Rule-making# 08-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the			

		rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration. Revisions to Sections B-4010.11 and B-4230 were adopted on an emergency basis at the 3/6/2009 State Board meeting, with an effective date of 4/1/2009 (Rule-making# 09-3-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4010.11 and B-4230 were final (permanent) adoption of emergency rules at the 5/1/2009 State Board meeting, with an effective date of 7/1/2009 (Rule-making# 09-3-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4242 through B-4242.1 and B-4242.12 through B-4242.13 were final adoption following publication at the 1/8/2010 State Board meeting, with an effective date of 3/2/2010 (Rule-making# 09-10-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4011.1 through B-4011.11, B-4011.131 through B-4011.136, B-4011.22 through B-			

		4011.23, B-4011.3, B-4220 through B-4220.12, B-4224, B-4230.1, B-4242.11 through B-4242.13, B-4430.11, B-4430.2 through B-4430.22 were final adoption following publication at the 12/3/2010 State Board meeting, with an effective date of 2/1/2011 (Rule-making# 10-7-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4222.8, B-4223, and B-4225.7 were adopted on an emergency basis at the 6/10/2011 State Board meeting, with an effective date of 6/10/2011 (Rule-making# 11-4-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4222.8, B-4223, and B-4225.7 were final (permanent) adoption of prior emergency rules at the 7/8/2011 State Board meeting, with an effective date of 9/1/2011 (Rule-making# 11-4-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions to Section B-4224 were adopted on an emergency basis at the 9/9/2011 State Board meeting, with an effective date of 10/1/2011 (Rule-making# 11-8-30-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for			

		review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions to Section B-4224 were adopted as final (permanent) at the 11/4/2011 State Board meeting, with an effective date of 1/1/2012 (Rule-making# 11-8-30-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration. Revisions and/or repeals of Sections B-4225.62 through B-4225.63, B-4230.11 through B-4230.12, B-4230.2 through B-4230.21, B-4240, B-4242.34 through B-4242.343, B-4242.35 through B-4242.36, B-4315, B-4315.2, B-4317.4, B-4317.6, B-4600 through B-4611.1, B-4640 through B-4653, B-4691.1 through B-4697.2, B-4698 through B-4698.3, B-4730 through B-4733, B-4740 through B-4760, and B-4800.1 through B-4800.3 were final adoption following publication at the 3/2/2012 State Board meeting (Rule-making# 11-11-16-2), with an effective date of 5/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions of Sections B-4430.22 and B-4430.32 were final adoption following publication at the 5/4/2012 State Board meeting (Rule-making# 12-1-27-1), with an effective date of 7/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of			

		Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions of Sections B-4010.42 through B-4010.424 were final adoption following publication at the 6/1/2012 State Board meeting (Rule-making# 11-8-11-2), with an effective date of 8/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions of Sections B-4011.31 through B-4011.32 and B-4110.1 through B-4110.2 were final adoption following publication at the 9/7/2012 State Board meeting (Rule-making# 11-12-23-1), with an effective date of 11/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions to Section B-4224 were final adoption following publication at the 2/1/2013 State Board meeting (Rule-making# 12-12-3-1), with an effective date of 4/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4100, B-4220.11 and B-4220.12, B-4223.1, B-4223.5 and B-4223.51 were adopted on an emergency basis at the 9/6/2013 State Board meeting			

		(Rule-making# 13-5-14-2), with an effective date of 10/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4100, B-4220.11 and B-4220.12, B-4223.1, B-4223.5 and B-4223.51 were final (permanent) adoption of prior emergency rules at the 10/4/2013 State Board meeting (Rule-making# 13-5-14-2), with an effective date of 12/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4010.12, B-4230 through B-4230.1, and B-4430.4 were adopted as emergency at the 10/4/2013 State Board meeting (Rule-making# 13-8-19-1), with an effective date of 11/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Revisions to Sections B-4010.12, B-4230 through B-4230.1, and B-4430.4 were adopted as final (permanent) following publication at the 11/8/2013 State Board meeting (Rule-making# 13-8-19-1), with an effective date of 1/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for			

		review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration. Sections B-4000 through B-4800.4 were repealed in entirety and rewritten as Sections 4.000 through 4.906 and adopted as final following publication at the 7/11/14 State Board meeting (Rule-making# 12-1-3-2), with an effective date of 9/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration. Revisions to Sections 4.207.3, 4.401.1, 4.407.1, and 4.407.3 through 4.407.31 were adopted on an emergency basis at the 9/5/2014 State Board meeting (Rule-making# 14-8-12-1), with an effective date of 10/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration. Revisions to Sections 4.207.3, 4.401.1, 4.407.1, and 4.407.3 through 4.407.31 were final (permanent) adoption of prior emergency rules at the10/3/2014 State Board meeting (Rule-making# 14-8-12-1), with an effective date of 12/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration. Revisions to Sections 4.207.3, 4.401.1, 4.401.2, 4.407.1,			

		4.407.3, and 4.407.31 were adopted as emergency at the10/2/2015 State Board meeting (Rule-making# 15-9-1-1), with an effective date of 10/1/2015. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration. Revisions to Sections 4.207.3, 4.401.1, 4.401.2, 4.407.1, 4.407.3, and 4.407.31 were adopted as final (permanent) at the11/6/2015 State Board meeting (Rule-making# 15-9-1-1), with an effective date of 1/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration. Revisions to Sections 4.704.1, 4.801.2 through 4.801.43, 4.803 through 4.803.41, 4.803.43, 4.803.5, 4.803.7, and 4.804.1 were adopted as final following publication at the11/6/2015 State Board meeting (Rule-making# 15-2-9-1), with an effective date of 1/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration. Addition of Sections 4.609 through 4.609.6 were final adoption following publication at the12/4/2015 State Board meeting (Rule-making# 15-9-30-1), with an effective date of 2/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the			

		Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration. Revisions to Sections 4.208.1 and 4.603 were adopted as final following publication at the 2/5/2016 State Board meeting (Rule-making# 15-10-23-1), with an effective date of 4/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration. Revisions to Section 4.609.1 were adopted on an emergency basis at the 2/5/2016 State Board meeting (Rule-making# 16-1-14-1), with an effective date of 2/5/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration. Revisions to Section 4.609.1 were final (permanent) adoption of prior emergency rules at the 3/4/2016 State Board meeting (Rule-making# 16-1-14-1), with an effective date of 5/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.			
4.100	Moving definitions	**4.100 DEFINITIONS** “Able-Bodied Adult Without Dependent (ABAWD)” means an	**4.000.1 SNAP DEFINITIONS** “Able-Bodied Adult Without Dependents (ABAWD)” means	Moving definitions from 4.100 to 4.000.1	

		individual between the ages of eighteen (18) and forty-nine (49) without a physical or mental disability, who is not pregnant, and who lives in a Food Assistance household with no one under the age of eighteen (18). "Administrative disqualification hearing (ADH)" means a disqualification hearing against an individual accused of wrongfully obtaining or attempting to obtain assistance. "Administrative law judge (ALJ)" means the person that presides over fair hearings and administrative disqualification hearings at the state level. "Adverse action" means any action taken by a local office that causes a household's benefits to be reduced or terminated. "Adverse action period" means the period of time that elapses prior to the adverse action becoming effective during the certification period. "Agency error claim" means that a debt has been established for the household to repay due to an overpayment of benefits that was issued to the household resulting from an error made by the local office. "Allotment" means the total amount of Food Assistance benefits a household is authorized to receive in a particular month. "Appeal" means a request made by a household to have a decision about its case reviewed by an impartial third party to determine whether the decision was correct. "Application filing date" means the date an application for assistance is received by the county office. "Application" means a request on a state-approved form for benefits, which can include the electronic State-prescribed form." "Application for redetermination/recertification (RRR)" means	an individual between the ages of eighteen (18) and fifty (50) without a physical or mental disability, who is not pregnant, and who lives in a SNAP household with no one under the age of eighteen (18). "Administrative disqualification hearing (ADH)" means a disqualification hearing against an individual accused of wrongfully obtaining or attempting to obtain assistance. "Administrative law judge (ALJ)" means the person that presides over fair hearings and administrative disqualification hearings at the state level. "Adverse action" means any action taken by a local office that causes a household's benefits to be reduced or terminated. "Adverse action period" means the period of time that elapses prior to the adverse action becoming effective during the certification period. "Agency error claim" means that a debt has been established for the household to repay due to an over-issuance of benefits that was issued to the household resulting from an error made by the local office. "Allotment" means the total amount of SNAP benefits a household is authorized to receive in a particular month. "Appeal" means a request made by a household to have a decision about its case reviewed by an impartial third party to determine whether the decision was correct. "Application filing date" means the date an application for assistance is received by the county office. "Application" means a request on a state-approved form for benefits, which can include the electronic State-prescribed form. "Application for recertification" means an application submitted prior to the last month of the certification period to		

		an application submitted prior to the last month of the certification period to determine a household's continued eligibility for the next certification period. "Application process" means the required process a household must complete for purposes of determining eligibility for benefits. "Authorized representative" means an individual who has been designated in writing by a responsible member of the household to act on behalf of or assist the household with the application process, obtaining benefits, and/or in using benefits at authorized retailers. "Automated Child Support Enforcement System (ACSES)" means the automated computer system used by Child Support Services to record child support payments. "Basic Categorical Eligibility (BCE)" means the status granted to any household that is not eligible for Expanded Categorical Eligibility and contains only members who receive, or are eligible to receive, benefits from Colorado Works, Supplemental Security Income, Old Age Pension, Aid to the Needy and Disabled, Aid to the Blind, or a combination of these benefits. "Basic Utility Allowance (BUA)" means a fixed deduction applied to a household that does not pay for heating or cooling and incurs at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone. "Boarder" means an individual residing with others and paying reasonable compensation to others for lodging and meals. "Boarding house" means an establishment that is licensed as a commercial enterprise and which offers meals and lodging for compensation. "Case payee" means the person appointed to receive the	determine a household's continued eligibility for the next certification period. "Application process" means the required process a household must complete for purposes of determining eligibility for benefits. "Authorized representative" means an individual who has been designated in writing by a responsible member of the household to act on behalf of or assist the household with the application process, obtaining benefits, and/or in using benefits at authorized retailers. "Automated Child Support Enforcement System (ACSES)" means the automated computer system used by Child Support Services to record child support payments. "Available for inspection" means copies of documents can be viewed during normal working hours or by contacting: Food and Energy Assistance Division Director, Colorado Department of Human Services, 1575 Sherman Street, 3rd Floor, Denver, Colorado 80203; or a state publications depository library. "Basic Categorical Eligibility (BCE)" means the status granted to any household that is not eligible for Expanded Categorical Eligibility and contains only members who receive, or are eligible to receive, benefits from Colorado Works, Supplemental Security Income, Old Age Pension, Aid to the Needy and Disabled, Aid to the Blind, or a combination of these benefits. "Basic Utility Allowance (BUA)" means a fixed deduction applied to a household that does not pay for heating or cooling and incurs at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone. "Boarder" means an individual residing with others and paying reasonable compensation to others for lodging and		

		household's benefits. "Case record" means a combination of the physical case file that contains documents pertinent to a household's case; similar documents maintained in an electronic database; and information about the household that is contained within the statewide automated system. "Certification period" means the period of time for which a household has been certified to receive benefits. "Civil union" means a legally binding partnership between two individuals without the legal recognition of these individuals as spouses. "Claim" means a debt resulting from an overpayment of benefits that a household is obligated to repay. "Clear and convincing evidence" means evidence which is stronger than a preponderance of evidence and which is unmistakable and free from serious or substantial doubt. "Collateral contact" means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted or by telephone. "Colorado Benefits Management System (CBMS)" means the computer system used to determine food assistance eligibility. "Colorado Electronic Benefit Transfer System (CO/EBTS)" means the electronic system that enables Food Assistance participants or their authorized representatives to redeem their Food Assistance benefits at point-of-sale terminals. "Colorado Unemployment Benefits System (CUBS)" means the electronic system by which Unemployment Insurance Benefits (UIB) are determined by Colorado Department of	meals. "Boarding house" means an establishment that is licensed as a commercial enterprise and which offers meals and lodging for compensation. "Case record" means a combination of the physical case file that contains documents pertinent to a household's case; similar documents maintained in an electronic database; and information about the household that is contained within the statewide automated system. "Certification period" means the period of time for which a household has been certified to receive benefits. "Civil union" means a legally binding partnership between two individuals without the legal recognition of these individuals as spouses. "Claim" means a debt resulting from an over-issuance of benefits that a household is obligated to repay. "Clear and convincing evidence" means evidence which is stronger than a preponderance of evidence and which is unmistakable and free from serious or substantial doubt. "Collateral contact" means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted or by telephone. "Colorado Electronic Benefit Transfer System (CO/EBTS)" means the electronic system that enables SNAP participants or their authorized representatives to redeem their SNAP benefits at point-of-sale terminals. "Colorado Unemployment Benefits System (CUBS)" means the electronic system by which Unemployment Insurance Benefits (UIB) are determined by the Colorado Department of Labor and Employment. "Communal dining facility" means an establishment approved		

		Labor and Employment. "Communal dining facility" means an establishment approved by FNS that prepares and serves meals for elderly persons, or for Supplemental Security Income (SSI) recipients, and their spouses. This also includes federally subsidized housing for elderly persons at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses. "Compromise" means the decision to reduce the amount of a claim that is owed by a household. "Countable month" means a month in which an ABAWD received full Food Assistance allotment but did not meet work requirements or have an exemption from those requirements. "County Assistance Office" means the county social or human services office that is responsible for administering the Food Assistance Program. "Demand letter", see "Notice of Overpayment." "Disaster Supplemental Nutrition Assistance Program (D-SNAP) means the food assistance provided to the affected areas when a Presidential disaster declaration for individual assistance is declared and the decision to implement this Program after a Presidential declaration shall be at the affected county's discretion in coordination with the State Food Assistance Office and FNS. "Dispute resolution conference (DRC)" means an informal meeting between a household and the local office to review an action taken on a case and the relevant facts pertaining to such action. "Disqualification Consent Agreement (DCA)" means the form that allows the individual(s) suspected of intentional Program	by FNS that prepares and serves meals for persons aged 60 and older, or for Supplemental Security Income (SSI) recipients, and their spouses. This also includes federally subsidized housing for persons aged 60 and older at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to persons aged 60 and older or SSI recipients, and their spouses. "Compromise" means the decision to reduce the amount of a claim that is owed by a household. "Countable month" means a month in which an ABAWD received a full SNAP allotment but did not meet work requirements or have an exemption from those requirements. "Demand letter", see "Notice of Overpayment." "Disaster Supplemental Nutrition Assistance Program (D-SNAP) means the assistance provided to the affected areas when a Presidential disaster declaration for individual assistance is declared and the decision to implement this Program after a Presidential declaration shall be at the affected county's discretion in coordination with the State SNAP Office and FNS. "Dispute resolution conference (DRC)" means an informal meeting between a household and the local office to review an action taken on a case and the relevant facts pertaining to such action. "Disqualification Consent Agreement (DCA)" means the form that allows the individual(s) suspected of intentional Program violation/fraud to consent to his/her disqualification in cases of deferred adjudication. "Disqualified individuals" means any individual who is ineligible to receive SNAP due to having been disqualified for an Intentional Program Violation/fraud, failure to provide or		

		violation/fraud to consent to his/her disqualification in cases of deferred adjudication. "Disqualified individuals" means any individual who is ineligible to receive Food Assistance due to having been disqualified for an Intentional Program Violation/fraud, failure to provide or obtain a SSN, ineligible non-citizens, individuals disqualified for failure to cooperate with work requirements, individuals disqualified for failure to cooperate with the State quality assurance division, and ABAWDs who already received three countable months of Food Assistance within thirty-six (36) months without meeting an exemption or ABAWD work requirements. "Documentary evidence" means written information used to verify the income, expenses, and other circumstances of a household. "Documentation" means the collection of documentary evidence, verification, case notes, and other information related to a household's case upon which eligibility determinations and other decisions are based. "Drug and Alcohol Treatment Center (DAA)" means any residential facility run by a private, nonprofit organization or institution, or a publicly operated community mental health center, under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) that provides rehabilitative treatment to persons participating in a drug or alcohol treatment program. "Dual participation" means the receipt of benefits in more than one Food Assistance household or state in the same calendar month. "Elderly" means an individual that is sixty (60) years of age or older. "EBT" means Electronic Benefit Transfer.	obtain a SSN, ineligible non-citizens, individuals disqualified for failure to cooperate with work requirements, individuals disqualified for failure to cooperate with the State quality assurance division, and ABAWDs who already received three countable months of SNAP within thirty-six (36) months without meeting an exemption or ABAWD work requirements. "Documentary evidence" means written information used to verify the income, expenses, and other circumstances of a household. "Documentation" means the collection of documentary evidence, verification, case notes, and other information related to a household's case upon which eligibility determinations and other decisions are based. "Drug and Alcohol Treatment Center (DAA)" means any residential facility run by a private, nonprofit organization or institution, or a publicly operated community mental health center, under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) that provides rehabilitative treatment to persons participating in a drug or alcohol treatment program. "Dual participation" means the receipt of benefits in more than one SNAP household or state in the same calendar month. "EBT" means Electronic Benefit Transfer. "Eligibility has been determined" means a required interview was completed and all required verifications were received for a valid SNAP application and a determination of eligibility or ineligibility was made with a resulting Notice of Action. "EBT card" means the card issued to persons authorized to receive SNAP to which the household's allotment is credited. Used for SNAP purposes to purchase eligible foods at approved retailers.		

		"EBT card" means the card issued to persons authorized to receive Food Assistance to which the household's allotment is credited. Used for Food Assistance purposes to purchase eligible foods at approved retailers. "Employment and Training Program" means a program operated by the Department of Human Services consisting of work, training, education, work experience, and/or job search activities designed to help recipients obtain gainful employment. "Employment First (EF)" means Colorado's Employment and Training program. "Excess medical deduction" means a deduction from a household's total gross income applied when a person with a disability or a person who is elderly has medical expenses over a specified monthly amount. "Exempt income" means income that is exempt from consideration when determining eligibility for Food Assistance. "Expanded Categorical Eligibility (ECE)" means households that are exempt from having resources considered when determining eligibility for Food Assistance. "Expedited service" means the method by which an application for Food Assistance is processed to ensure that the neediest households have access to Food Assistance benefits no later than the seventh (7th) calendar day following the date of application. "Fair Hearing" means a hearing conducted in person or on the telephone by the Office of Administrative Courts to provide an impartial decision on a household's appeal of a local office's decision or action. "Financial criteria" means the set of rules governing gross and net income and resource standards and the proper methods for computing a household's income and resources.	"Employment and Training Program" means a program operated by the Department of Human Services consisting of work, training, education, work experience, and/or job search activities designed to help recipients obtain gainful employment. "Employment First (EF)" means Colorado's Employment and Training program. "Excess medical deduction" means a deduction from a household's total gross income applied when a person with a disability or a person aged 60 and older has medical expenses over a specified monthly amount. "Exempt income" means income that is exempt from consideration when determining eligibility for SNAP. "Expanded Categorical Eligibility (ECE)" means households that are exempt from having resources considered when determining eligibility for SNAP. "Expedited service" means the method by which an application for SNAP is processed to ensure that the neediest households have access to benefits no later than the seventh (7th) calendar day following the date of application. "Expungement" is a process by which the Colorado Department of Human Services removes SNAP benefits from EBT cards when SNAP benefits are considered as unused or the EBT account is considered as inactive. "Fair Hearing" means a hearing conducted in person or on the telephone by the Office of Administrative Courts to provide an impartial decision on a household's appeal of a local office's decision or action. "Financial criteria" means the set of rules governing gross and net income and resource standards and the proper methods for computing a household's income and resources.		

		"Fleeing felon" means an individual who is fleeing to avoid prosecution or arrest for a felony under a state or federal law. "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture. "Fraud" means the act committed by a person when obtaining, attempting to obtain, or aiding and abetting another to obtain assistance benefits through intentionally false statements, representations, or the withholding of material information. "Full-time student" means a person who has a school schedule equivalent to a full-time curriculum as defined by the institute of higher education the person is attending. "Good cause" means a waiver granted to a person or household a) excusing them from complying with a specific eligibility requirement because compliance could cause adverse consequences to the person or household, or b) providing the household with more time to comply with a specific eligibility requirement. "G-845" means the form submitted to the U.S. Citizenship and Immigration Services to request immigration status verification for a Food Assistance applicant or participant. "Gross Income" means the total of all non-exempt earned and unearned income added together before any deduction or disregard is considered. "Group Living Arrangement (GLA)" means a public or private non-profit facility certified under Section 1616(e) of the Social Security Act which serves no more than sixteen (16) people. "Head of household (HOH)" means the person who is generally regarded as the person with the most knowledge of the household's circumstances. The head of household is the person to whom the local office addresses correspondence and notices about the household's case. This person is	"Fleeing felon" means an individual who is fleeing to avoid prosecution or arrest for a felony under a state or federal law. "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture. "Fraud" means the act committed by a person when obtaining, attempting to obtain, or aiding and abetting another to obtain assistance benefits through intentionally false statements, representations, or the withholding of material information. "Full-time student" means a person who has a school schedule equivalent to a full-time curriculum as defined by the institution of higher education the person is attending. "G-845" means the form submitted to the U.S. Citizenship and Immigration Services to request immigration status verification for a SNAP applicant or participant. "Good cause" means a waiver granted to a person or household a) excusing them from complying with a specific eligibility requirement because compliance could cause adverse consequences to the person or household, or b) providing the household with more time to comply with a specific eligibility requirement. "Gross Income" means the total of all non-exempt earned and unearned income added together before any deduction or disregard is considered. "Group Living Arrangement (GLA)" means a public or private non-profit facility certified under Section 1616(e) of the Social Security Act which serves no more than sixteen (16) people. "Head of household (HOH)" means the person who is generally regarded as the person with the most knowledge of the household's circumstances. The head of household is the person to whom the local office addresses correspondence		

		generally the individual who completes the application process and is responsible for obtaining and using the household's EBT card. "Heating/Cooling Utility Allowance (HCUA)" means a fixed deduction applied to any household that incurs a heating or cooling expense. "Homeless" means an individual who lacks a fixed and regular nighttime residence or whose primary residence is: a supervised shelter designed for temporary accommodations, a halfway house or similar facility that provides temporary residence, a place not designed for or ordinarily used as regular sleeping accommodations for human beings, or a temporary accommodation in the residence of another individual for ninety (90) days or less. "Homeless meal provider" means: A. A public or private nonprofit establishment that feeds homeless persons; or, B. A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons. "Household" means a group of individuals who live together and customarily purchase and prepare food together. "Household income" means all earned and unearned income received or anticipated to be received by household members from all sources, unless specifically exempted for Food Assistance eligibility purposes. "Inadvertent Household Error Claim" means a debt that has been established for the household to repay due to an overpayment of benefits that was issued to a household due to a misunderstanding or unintentional error on the part of the household. "Income and Eligibility Verification System (IEVS)" means a system used to match applicants' and participants' Social	and notices about the household's case. This person is generally the individual who completes the application process and is responsible for obtaining and using the household's EBT card. "Heating/Cooling Utility Allowance (HCUA)" means a fixed deduction applied to any household that incurs a heating or cooling expense. "Homeless" means an individual who lacks a fixed and regular nighttime residence or whose primary residence is: a supervised shelter designed for temporary accommodations, a halfway house or similar facility that provides temporary residence, a place not designed for or ordinarily used as regular sleeping accommodations for human beings, or a temporary accommodation in the residence of another individual for ninety (90) days or less. "Homeless meal provider" means: 1. A public or private nonprofit establishment that feeds persons experiencing homelessness; or, 2. A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to persons experiencing homelessness. "Household" means a group of individuals who live together and customarily purchase and prepare food together. "Household income" means all earned and unearned income received or anticipated to be received by household members from all sources, unless specifically exempted for SNAP eligibility purposes. "Inadvertent Household Error (IHE) Claim" means a debt that has been established for the household to repay due to an over-issuance of benefits that was issued to a household due to a misunderstanding or unintentional error on the part of the household.		

		Security Numbers with the Social Security Administration, Internal Revenue Service, and the Department of Labor and Employment to obtain information about household income. "Initial application" means a household's first application for assistance or an application for assistance that is received after the household has been off of the Program for any period following the end of a certification period. "Initial month of application" means the first month for which the household is certified for participation in the Program for those who have not received food benefits in the State previously or following any break after the end of the certification period where the household was not certified for participation. If the household submits an application for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, that month shall not be an initial month. "Indigent non-citizen" means a sponsored non-citizen who, after considering all income and contributions provided by the sponsor and other sources in conjunction with the non-citizen's own income, is unable to obtain food and shelter amounting to one hundred thirty percent (130%) of the federal poverty level for the non-citizen's household size. When a non-citizen is declared indigent, only the amount provided by the sponsor shall be deemed to the non-citizen. A declaration of indigence may last up to twelve (12) months, but may be renewed at the end of such a period, if necessary. The local office must notify the U.S. Attorney General of each indigence determination, including the name of the sponsor and the sponsored non-citizen. "Institution of higher education" means institutions that normally require a high school diploma or equivalency certificate for a student to enroll, such as colleges, universities, and vocational or technical schools. "Intentional Program Violation (IPV)" means when an	"Income and Eligibility Verification System (IEVS)" means a system used to match applicants' and participants' Social Security Numbers with the Social Security Administration, Internal Revenue Service, and the Department of Labor and Employment to obtain information about household income. "Indigent non-citizen" means a sponsored non-citizen who, after considering all income and contributions provided by the sponsor and other sources in conjunction with the non-citizen's own income, is unable to obtain food and shelter amounting to one hundred thirty percent (130%) of the federal poverty level for the non-citizen's household size. When a non-citizen is declared indigent, only the amount provided by the sponsor shall be deemed to the non-citizen. A declaration of indigence may last up to twelve (12) months but may be renewed at the end of such a period, if necessary. The local office must notify the U.S. Attorney General of each indigence determination, including the name of the sponsor and the sponsored non-citizen. "Initial application" means a household's first application for assistance or an application for assistance that is received after the household has been off the Program for any period following the end of a certification period. "Initial month of application" means the first month for which the household is certified for participation in the Program for those who have not received food benefits in the State previously or following any break after the end of the certification period where the household was not certified for participation. If the household applies for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, that month shall not be an initial month. "Institution of higher education" means institutions that normally require a high school diploma or equivalency certificate for a student to enroll, such as colleges, universities, and vocational or technical schools.		

		individual has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts, or committed or intended to commit any act that constitutes a violation of the Food and Nutrition Act of 2008, the Food Assistance Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Assistance benefits. "Intentional" means a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission. "IPV hearing", see "Administrative disqualification hearing." "IPV hearing waiver", see "Waiver of administrative disqualification hearing." "Issuance month" means the calendar month for which a benefit allotment is issued. "Lawful Permanent Resident" means a non-citizen legally admitted into the United States to reside on a permanent basis. "Level sanction" means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for Food Assistance. "Liquid resources" means assets such as cash on hand or assets that can be easily converted to cash such as money in checking or savings accounts, saving certificates, or stocks and bonds. "Live-in attendants" means individuals who reside with a household to provide medical, housekeeping, child care, or other personal services. "Local-level Dispute Resolution Conference", see "Dispute Resolution Conference."	"Intentional" means a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission. "Intentional Program Violation (IPV)" means when an individual has intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts, or committed or intended to commit any act that constitutes a violation of the Food and Nutrition Act of 2008, the SNAP regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits. "IPV hearing", see "Administrative disqualification hearing." "IPV hearing waiver", see "Waiver of administrative disqualification hearing." "Issuance month" means the calendar month for which a benefit allotment is issued. "Lawful Permanent Resident" means a non-citizen legally admitted into the United States to reside on a permanent basis. "Level sanction" means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for SNAP. "Liquid resources" means assets such as cash on hand or assets that can be easily converted to cash such as money in checking or savings accounts, saving certificates, or stocks and bonds. "Live-in attendants" means individuals who reside with a household to provide medical, housekeeping, childcare, or other personal services. "Local office" means the county department of social/human		

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Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		"Local office" means the county department of social/human services that is responsible for administering the Food Assistance Program. In those counties that have more than one office that administers the Food Assistance Program, "local office" shall be inclusive of all local offices within the county that administer the Program. "Low-Income Home Energy Assistance Program (LEAP)" means the Colorado program designed to help low-income applicants pay a portion of their winter heating costs. "Management Evaluation (ME) reviews" means state or federal reviews of each county's administration of the Food Assistance Program to determine each county's adherence to federal- and state-mandated requirements. Such reviews are mandated by the Food and Nutrition Service of the USDA. "Mandatory Work Registrant" means an individual age sixteen (16) to sixty (60) who has not met any Federal exemptions from SNAP work requirements and is therefore required to register for work or be registered by the State agency. "Mass update" means a change in data or policy that affects the entire state-wide caseload or a portion of the caseload. "Material information" means information to which a reasonable person would attach importance when determining a course of action. "Migrant farm worker" means a person who travels away from home on a regular basis to follow the flow of seasonal agricultural work. "Minimum benefit" means the minimum amount of benefits issued to one- and two-person households that are eligible for assistance, but whose issuance calculates to less than the federally prescribed minimum allotment.	services that is responsible for administering SNAP. In those counties that have more than one office that administers SNAP, "local office" shall be inclusive of all local offices within the county that administer the Program. "Low-Income Home Energy Assistance Program (LEAP)" means the Colorado program designed to help low-income applicants pay a portion of their winter heating costs. "Management Evaluation (ME) reviews" means state or federal reviews of each county's administration of SNAP to determine each county's adherence to federal- and state-mandated requirements. Such reviews are mandated by the Food and Nutrition Service of the USDA. "Mass update" means a change in data or policy that affects the entire state-wide caseload or a portion of the caseload. "Material information" means information to which a reasonable person would attach importance when determining a course of action. "Migrant farm worker" means a person who travels away from home on a regular basis to follow the flow of seasonal agricultural work. "Minimum benefit" means the minimum amount of benefits issued to one- and two-person households that are eligible for assistance, but whose issuance calculates to less than the federally prescribed minimum allotment. "Net income test" means the one hundred percent (100%) federal poverty level under which a household's income must fall after all allowable deductions are considered in order to be considered eligible. This level is specific to the household size as defined by USDA, FNS. "Non-financial criteria" means the set of rules governing elements not related to the gross and net income and resource standards.		

		"Net income test" means the one hundred percent (100%) federal poverty level under which a household's income must fall after all allowable deductions are considered in order to be considered eligible. This level is specific to the household size as defined by USDA, FNS. "Non-liquid resources" means assets which cannot be easily converted into cash such as vehicles and real property. "Non-financial criteria" means the set of rules governing elements not related to the gross and net income and resource standards. "Notice of Action (NOA)" means the state-prescribed form sent to a household every time an action is taken to increase, decrease, suspend, deny, terminate, or otherwise affect a household's benefits. This form describes the action taken upon a household's case and the resulting effect. "Notice of overpayment" means a notice sent to a household upon the establishment of a claim against the household for an overpayment of benefits. "On-the-job training (OJT)" means training provided to an employee after he or she is hired. Such training is designed for individuals who do not have the necessary work experience required for the job. "One Utility Allowance (OUA)" means a fixed deduction given to any household that is not eligible to receive the HCUA or BUA and incurs only one (1) non-heating or non-cooling utility expense, such as electricity, water, sewer, trash, or cooking fuel. The OUA is not allowed if the household's only utility expense is a telephone. "Over-issuance" means the amount of Food Assistance benefits issued to a household that exceeds the amount it was eligible to receive. "Parolee" means a non-citizen allowed into the United States	"Non-liquid resources" means assets which cannot be easily converted into cash such as vehicles and real property. "Notice of Action (NOA)" means the state-prescribed form sent to a household every time an action is taken to increase, decrease, suspend, deny, terminate, or otherwise affect a household's benefits. This form describes the action taken upon a household's case and the resulting effect. "Notice of overpayment" means a notice sent to a household upon the establishment of a claim against the household for an overpayment of benefits. "On-the-job training (OJT)" means training provided to an employee after he or she is hired. Such training is designed for individuals who do not have the necessary work experience required for the job. "One Utility Allowance (OUA)" means a fixed deduction given to any household that is not eligible to receive the HCUA or BUA and incurs only one (1) non-heating or non-cooling utility expense, such as electricity, water, sewer, trash, or cooking fuel. The OUA is not allowed if the household's only utility expense is a telephone. "Over-issuance" means the amount of SNAP benefits issued to a household that exceeds the amount it was eligible to receive. "PA households" means households that contain only persons who receive TANF or Adult Financial cash grants. "Parolee" means a non-citizen allowed into the United States for urgent humanitarian reasons or when the non-citizen's entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States and confers temporary status only, requiring parolees to leave when the conditions supporting their parole cease to exist.		

		for urgent humanitarian reasons or when the non-citizen's entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States and confers temporary status only, requiring parolees to leave when the conditions supporting their parole cease to exist. "Payment Error Rate (PER)" means the sum of the overpayment error rate and the underpayment error rate, which is the value of all over and underpaid allotments expressed as a percentage of all allotments issued to the cases reviewed, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS. "Period of ineligibility" means the period of time a person is ineligible to receive Food Assistance benefits as a result of a failure to cooperate with either a state or federal QA review. "Periodic Report Form (PRF)" means the report that must be submitted by the household during the twelfth (12th) month of a twenty four (24) month certification period. The purpose of this form is to allow the household to report any changes that occurred during the first half of the twenty four (24) month certification period and for the local office to determine the household's continued eligibility for the remaining twelve (12) months of the household's certification period. "Person with disabilities" means a person who: 1. Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid To The Needy And Disabled-Supplemental Security Income- Colorado Supplement (AND-SSI-CS), or Aid To The Blind-Supplemental Security Income-Colorado Supplement (AB-SSI-CS); or Disability Or Blindness Payments under Title I, II, X, or IXV of the Social Security Act; 2. Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service	"Payment Error Rate (PER)" means the sum of the overpayment error rate and the underpayment error rate, which is the value of all over and underpaid allotments expressed as a percentage of all allotments issued to the cases reviewed, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS. "Period of ineligibility" means the period of time a person is ineligible to receive SNAP benefits as a result of a failure to cooperate with either a state or federal QA review. "Periodic Report Form (PRF)" means the report that must be submitted by the household during the twelfth (12th) month of a twenty-four (24) month certification period. The purpose of this form is to allow the household to report any changes that occurred during the first half of the twenty-four (24) month certification period and for the local office to determine the household's continued eligibility for the remaining twelve (12) months of the household's certification period. "Person with disabilities" means a person who: 1. Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid to the Needy And Disabled- Supplemental Security Income- Colorado Supplement (AND-SSI-CS), or Aid To The Blind-Supplemental Security Income- Colorado Supplement (AB-SSI-CS); or Disability Or Blindness Payments under Title I, II, X, or IXV of the Social Security Act; 2. Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service connected disability; 3. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound		

		connected disability; 3. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the Code; 4. Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code; 5. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. "Entitled", as used in this definition, refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not yet receiving them; 6. Is a person who has a disability considered permanent under Section 221(i) of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension; 7. Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered AS A disabled person with disabilities by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board; or 8. Is a recipient of interim assistance benefits pending the receipt of the Supplemental Security Income (SSI), disability-related medical assistance under Title XIX of the Social Security Act, or disability-based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act. "Post high school education" means colleges, universities, and post-high school level technical and vocational schools.	under Title 38 of the Code; 4. Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code; 5. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. "Entitled", as used in this definition, refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not yet receiving them; 6. Is a person who has a disability considered permanent under Section 221(i) of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension; 7. Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered AS A disabled person with disabilities by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board; or 8. Is a recipient of interim assistance benefits pending the receipt of the Supplemental Security Income (SSI), disability-related medical assistance under Title XIX of the Social Security Act, or disability-based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.		

		"Prospective budgeting" means the method of computing a household's monthly allotment by using current circumstances and reasonably anticipated income for the month in which the allotment will be issued. "Prudent Person Principle (PPP)" means a worker's reasonable judgment when determining the proper course of action in a given situation in order to make an eligibility determination. "Public Assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old Age Pension, TANF, Aid to the Blind, Aid to the Permanently and Totally Disabled, and Aid to the Aged, Blind, or Disabled. "PA households" means households that contain only persons who receive TANF or adult financial cash grants. "Quality Assurance (QA)" means the division responsible for reviewing Food Assistance cases to determine if the proper eligibility determination was made and if the correct amount of benefits were issued to a household in a given month. "QA active case" means cases where a household was certified prior to or during the sample month and issued Food Assistance benefits for the sample month. "QA negative case" means cases where a household was denied certification to receive Food Assistance benefits in the sample month or which had its participation in the Program terminated during a certification period effective for the sample month. "Qualified non-citizen" means an individual who meets the specific definition of "qualified alien" as defined by the Food and Nutrition Service, United States Department of Agriculture, which includes lawful permanent residents, asylees, refugees, parolees, individuals granted withholding	"Post high school education" means colleges, universities, and post-high school level technical and vocational schools. "Prospective budgeting" means the method of computing a household's monthly allotment by using current circumstances and reasonably anticipated income for the month in which the allotment will be issued. "Prudent Person Principle (PPP)" means a worker's discretion to apply reasonable judgment when determining the proper course of action in specific situations in order to make an eligibility determination. "Public Assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old Age Pension, TANF, Aid to the Blind, Aid to the Permanently and Totally Disabled, and Aid to the Aged, Blind, or Disabled. "Quality Assurance (QA)" means the division responsible for reviewing SNAP cases to determine if the proper eligibility determination was made and if the correct amount of benefits were issued to a household in a given month. "QA active case" means cases where a household was certified prior to or during the sample month and issued SNAP benefits for the sample month. "QA negative case" means cases where a household was denied certification to receive SNAP benefits in the sample month or which had its participation in the Program terminated during a certification period effective for the sample month. "Qualified non-citizen" means an individual who meets the specific definition of "qualified alien" as defined by the Food and Nutrition Service, United States Department of Agriculture, which includes lawful permanent residents, asylees, refugees, parolees, individuals granted withholding of deportation or removal, conditional entrants, Cuban or		

		of deportation or removal, conditional entrants, Cuban or Haitian entrants, battered aliens, and non-citizen victims of a severe form of trafficking. This term is not itself an immigration status, but rather includes a collection of immigration statuses. It is a term used solely for Federal public benefits purposes. Qualified non-citizens are not automatically eligible for assistance, but rather must meet all other eligibility requirements. "Quality Control review" means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the Food Assistance allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct. "QUEST card" means Colorado's specific version of the EBT card. "Questionable" means inconsistent or contradictory information, statements, documents or case documentation that requires verification from the household to determine eligibility. "Recoupment" means the withholding of a portion of a household's monthly allotment to pay back an over-issuance. "Repayment agreement" means the form sent to a household upon the establishment of a claim that outlines the household's responsibility and options for repayment. "Restoration" means a payment of benefits made to a household who was eligible to receive the amount in a past month but did not receive the payment. "Roomer" means an individual to whom a household furnishes lodging, but not meals, for compensation. "Sanction" means a specified period of ineligibility imposed against an individual who failed to take a required action as	Haitian entrants, battered aliens, and non-citizen victims of a severe form of trafficking. This term is not itself an immigration status, but rather includes a collection of immigration statuses. It is a term used solely for Federal public benefits purposes. Qualified non-citizens are not automatically eligible for assistance, but rather must meet all other eligibility requirements. "Quality Control review" means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving SNAP allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct. "QUEST card" means Colorado's specific version of the EBT card. "Questionable" means inconsistent or contradictory information, statements, documents, or case documentation that requires verification from the household to determine eligibility. "Recoupment" means the withholding of a portion of a household's monthly allotment to pay back an over-issuance. "Repayment agreement" means the form sent to a household upon the establishment of a claim that outlines the household's responsibility and options for repayment. "Restoration" means a payment of benefits made to a household who was eligible to receive the amount in a past month but did not receive the payment. "Roomer" means an individual to whom a household furnishes lodging, but not meals, for compensation. "Sanction" means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for either SNAP or Colorado Works.		

		part of his or her eligibility for either Food Assistance or Colorado Works. "Self-employment" means a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered and assumes the necessary business risks and expenses connected with the operation of the business. "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. "Simplified Reporting" means the reporting status granted to households receiving either a six (6) or twenty-four (24) month certification period. Households considered simplified reporting households are not required to report any changes to household circumstances throughout the course of the certification period unless the change that occurred causes the household's combined gross income to rise above one hundred thirty percent (130%) of the federal poverty level for the applicable household size. Households receiving a twenty four (24) month certification period have the additional requirement of completing and submitting a periodic report form (PRF) (see "Periodic report form") at the twelve (12) month point of the certification period on which all changes that have occurred since initial application must be reported. "SNAP" means Supplemental Nutrition Assistance Program, which is referred to as the Food Assistance Program in Colorado. "Sponsor" means a person who has executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen's entry or admission to the US as a permanent resident. "Sponsored non-citizen" means those non-citizens lawfully	"Self-employment" means a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered and assumes the necessary business risks and expenses connected with the operation of the business. "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. "Simplified Reporting" means SNAP households are required to report mid-certification changes that cause the household's combined gross income to rise above one hundred thirty percent (130%) FPL for the applicable household size, when a member of the household wins substantial lottery or gambling winnings, and if an ABAWD's work/volunteer hours fall below twenty (20) hours per week. "SNAP" means Supplemental Nutrition Assistance Program, formerly known as the Food Assistance Program in Colorado. "Sponsor" means a person who has executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizens entry or admission to the US as a permanent resident. "Sponsored non-citizen" means those non-citizens lawfully admitted for permanent residence into the United States who have been sponsored by an individual for entry into the country. "Standard Eligibility" means the set of rules applicable to households that do not fall under "Expanded categorical eligibility" or "Basic categorical eligibility." Households considered under standard eligibility rules are subject to resource limits as a condition of eligibility.		

		admitted for permanent residence into the United States who have been sponsored by an individual for entry into the country. "Standard Eligibility" means the set of rules applicable to households that do not fall under "Expanded categorical eligibility" or "Basic categorical eligibility." Households considered under standard eligibility rules are subject to resource limits as a condition of eligibility. "State Department" means the Colorado Department of Human Services. "State office or Division" means the agency of the state government that has the responsibility for the oversight and monitoring of each county department's administration of the Food Assistance Program. "State-level fair hearing" means a review requested by an applicant or recipient which is held before an Administrative Law Judge (ALJ) to establish whether an action or eligibility determination taken was correct. "Striker" means an individual who is involved in a strike or other concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement and any concerted slowdown or other concerted interruption of operations by employees. "Substantial lottery or gambling winnings" is a cash prize won in a single game before taxes or other amounts are withheld that is equal to or greater than the resource limit for elderly and persons with disabilities. "Supplement" means a payment of additional allowable benefits made for the current issuance month. "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) Section 1616(A) of the Social Security Act; or (3) Section 212(A) of Pub. L. 93-66.	"State Department" means the office/division within the Colorado Department of Human Services that administers SNAP. Currently, this is the Food and Energy Assistance Division within the Office of Economic Security. "State-level fair hearing" means a review requested by an applicant or recipient which is held before an ALJ to establish whether an action or eligibility determination taken was correct. "Striker" means an individual who is involved in a strike or other concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement and any concerted slowdown or other concerted interruption of operations by employees. "Substantial lottery or gambling winnings" is a cash prize won in a single game, before taxes or other amounts are withheld, that is equal to or greater than the resource limit for persons aged 60 and older and persons with disabilities. "Supplement" means a payment of additional allowable benefits made for the current issuance month. "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind, and disabled; (2) Section 1616(A) of the Social Security Act; or (3) Section 212(A) of Pub. L. 93-66. "Systematic Alien Verification for Entitlements (SAVE)" means the system allowing for the validation of immigration statuses of non-citizen applicants and participants through access to centralized U.S. Citizenship and Immigration Service (USCIS) data. "Telephone allowance" means a fixed deduction given to any household not incurring utility expenses other than the expense for a telephone.		

		"Systematic Alien Verification for Entitlements (SAVE)" means the system allowing for the validation of immigration statuses of non-citizen applicants and participants through access to centralized U.S. Citizenship and Immigration Service (USCIS) data. "Telephone allowance" means a fixed deduction given to any household not incurring utility expenses other than the expense for a telephone. "Temporary Assistance for Needy Families (TANF) or Colorado Works (CW)" means the cash assistance program also known as Title IV-A of the Social Security Act. "Temporary emergency" means an emergency caused by any natural or human-caused disaster, other than a major disaster declared by the President of the United States under the Disaster Relief Act of 1974, which is determined by FNS to have disrupted commercial channels of food distribution. "Thrifty Food Plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty (50) years of age, a child six (6) through eight (8) years of age, and a child nine (9) through eleven (11) years of age, determined in accordance with the U.S. Department of Agriculture. The cost of such a diet shall be the basis for uniform allotments for all households regardless of their actual composition. "Trafficking" means attempting to buy, sell, steal, or otherwise affect an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and Personal Identification Numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Trafficking also includes (1) the exchange of food assistance benefits for firearms, ammunition, explosives, or controlled substances, (2) the resale of a product purchased	"Temporary Assistance for Needy Families (TANF) or Colorado Works (CW)" means the cash assistance program also known as Title IV-A of the Social Security Act. "Temporary emergency" means an emergency caused by any natural or human-caused disaster, other than a major disaster declared by the President of the United States under the Disaster Relief Act of 1974, which is determined by FNS to have disrupted commercial channels of food distribution. "Thrifty Food Plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty (50) years of age, a child six (6) through eight (8) years of age, and a child nine (9) through eleven (11) years of age, determined in accordance with the U.S. Department of Agriculture. The cost of such a diet shall be the basis for uniform allotments for all households regardless of their actual composition. "Trafficking" means attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and Personal Identification Numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Trafficking also includes (1) the exchange of SNAP benefits for firearms, ammunition, explosives, or controlled substances, (2) the resale of a product purchased with SNAP benefits in exchange for cash or consideration other than eligible food, and (3) the purchase of a product that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount. "Unclear information" Unclear information is information that is not verified, or information that is verified but the local office needs additional information to act on the change.		

		with food assistance benefits in exchange for cash or consideration other than eligible food, and (3) the purchase of a product that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount. "Under-issuance" means the difference between the allotment the household was eligible to receive and the allotment the household actually received, which was lower than what the household was eligible to receive. "Valid application" means a state-prescribed form completed with name, address, and signature. "Vendor payments" means money payments that are not payable directly to a household, but are paid to a third party for a household expense. "Verification" means confirmation of a household's statements through written, verbal, or electronic means "Verified upon receipt (VUR)" means information that is provided directly from the primary source and which is not questionable. "Voluntary quit" means when a Food Assistance recipient voluntarily quit a job of 30 or more hours a week or reduced work effort to less than 30 hours a week without good cause. "Voluntary Work Registrant" means an individual who chooses to participate in the program and is not mandated to participate by the State or Federal regulations. "Waiver of Administrative Disqualification Hearing" means a waiver sent to individuals suspected of intentional Program violation which presents the individual with the option of waiving his or her right to an administrative hearing, essentially accepting the appropriate disqualification without necessarily admitting the violation.	"Under-issuance" means the difference between the allotment the household was eligible to receive and the allotment the household received, which was lower than what the household was eligible to receive. "Valid application" means a state-prescribed form completed with name, address, and signature. "Vendor payments" means money payments that are not payable directly to a household but are paid to a third party for a household expense. "Verification" means confirmation of a household's statements through written, verbal, or electronic means. "Verified upon receipt (VUR)" means information that is provided directly from the primary source and which is not questionable. "Voluntary quit" means when a SNAP recipient voluntarily quit a job of 30 or more hours a week or reduced work effort to less than 30 hours a week without good cause. "Voluntary Work Registrant" means an individual who chooses to participate in the program and is not mandated to participate by the State or Federal regulations. "Waiver of Administrative Disqualification Hearing" means a waiver sent to individuals suspected of intentional Program violation which presents the individual with the option of waiving his or her right to an administrative hearing, essentially accepting the appropriate disqualification without necessarily admitting the violation.		

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

4.010	Renumbering; and program name update	**4.010 PROGRAM INTRODUCTION** This material sets forth rules, policies, and procedures concerned with eligibility determination and certification of persons who apply to participate in the Food Assistance Program, and, if determined eligible, the requirements concerning the use of Food Assistance benefits. The rules and regulations herein are promulgated in accordance with Program regulations of the United States Department of Agriculture (USDA), 7 CFR 271–274 (2012), as amended, and the State Plan of Operation. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of 7 CFR Parts 271 through 274 are available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203. Electronic copies of 7 CFR parts 271 through 274 may be found by accessing the electronic code of federal regulations at http://www.ecfr.gov.	**4.100 SNAP INTRODUCTION** This material sets forth rules, policies, and procedures concerned with eligibility determination and certification of persons who apply to participate in SNAP, and, if determined eligible, the requirements concerning the use of SNAP benefits. The rules and regulations herein are promulgated in accordance with Program regulations of the United States Department of Agriculture (USDA), 7 CFR 271–274 (2012), as amended, and the State Plan of Operation. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of 7 CFR Parts 271 through 274 are available for inspection. Electronic copies of 7 CFR parts 271 through 274 may be found by accessing the electronic code of federal regulations at http://www.ecfr.gov.	Renumbering section due to moving section 4.100; and updating Food Assistance to SNAP	
4.020	Renumbering; and program name update	**4.020 USE OF THE FOOD ASSISTANCE MANUAL** Below is a summary of the information contained in each section: Section 4.000 contains general Program information, confidentiality requirements, and complaint procedures, including complaints regarding alleged discrimination. Section 4.100 contains Program-specific definitions. Section 4.200 sets forth policies and procedures for the application and recertification processes. Information contained in this section includes the process of filing an application and recertification, interview requirements,	**4.110 USE OF THE SNAP MANUAL** Below is a summary of the information contained in each section: Section 4.000 contains SNAP specific definitions. Section 4.100 contains general program information, confidentiality requirements, and complaint procedures (including complaints regarding alleged discrimination). Section 4.200 sets forth policies and procedures for the application and recertification processes. Information contained in this section includes the process of filing an application and recertification, interview requirements, timely processing	Renumbering section due to moving section 4.100; and updating Food Assistance to SNAP	

		timely processing standards, determination of certification periods, and initial month allotment proration. Section 4.300 outlines the non-financial criteria a household must meet in order to be eligible for the Program. Non-financial criteria include identity of applicant, Social Security Number (SSN) requirement, residency, household composition, citizenship and non-citizenship status, and work program requirements. Section 4.400 sets forth the financial criteria a household must meet in order to be eligible for the Program. Financial criteria include gross and net income standards, resource standards, and deductions from income. Section 4.500 sets forth policies and procedures regarding the verification and documentation of a household's circumstances. Section 4.600 outlines a household's obligation to report changes during the certification period, and how certain changes are handled by the county department. Section 4.700 sets forth policies and procedures for issuing Food Assistance benefits, including restoration and replacement of issuances. Section 4.800 outlines the rules and processes regarding claims, appeals, and fraud. Section 4.900 outlines state and county administrative requirements.	standards, determination of certification periods, and initial month allotment proration. Section 4.300 outlines the non-financial criteria a household must meet to be eligible for the Program. Non-financial criteria include identity of applicant, Social Security Number (SSN) requirement, residency, household composition, citizenship and non-citizenship status, and work program requirements. Section 4.400 sets forth the financial criteria a household must meet to be eligible for SNAP. Financial criteria include gross and net income standards, resource standards, and deductions from income. Section 4.500 sets forth policies and procedures regarding the verification and documentation of a household's circumstances. Section 4.600 outlines a household's obligation to report changes during the certification period, and how certain changes are handled by the local. Section 4.700 sets forth policies and procedures for issuing SNAP benefits, including restoration and replacement of issuances. Section 4.800 outlines the rules and processes regarding claims, appeals, and fraud. Section 4.900 outlines state and county administrative requirements.		
4.030	Renumbering; and program name update	**4.030 PURPOSE OF THE FOOD ASSISTANCE PROGRAM** The purpose of the Food Assistance Program is expressed by the United States Congress in Section 2 of the Food and Nutrition Act of 2008, Public Law No. 110-246	**4.120 PURPOSE OF SNAP** The purpose of SNAP is expressed by the United States Congress in Section 2 of the Food and Nutrition Act of 2008, Public Law No. 110-246 (codified at 7 USC 2012). The rules contained in this manual do not include any later amendments	Renumbering section due to moving section 4.100; and updating Food Assistance to SNAP	

		(codified at 7 USC 2012). The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203. The Food Assistance Program is designed to promote the general welfare and to safeguard the health and well-being of the nation's population by raising the levels of nutrition among low-income households.	to or editions of the incorporated material. Copies of the federal laws are available for inspection. SNAP is designed to promote the general welfare and to safeguard the health and well-being of the nation's population by raising the levels of nutrition among low-income households.		
4.040	Renumbering; and program name updates	**4.040 USING FOOD ASSISTANCE BENEFITS** Food assistance benefits received by an eligible household may be used at any time by the household or other persons whom the household selects to purchase eligible food for the household. Food Assistance benefits are issued through an Electronic Benefit Transfer (EBT) system in which benefit allotments are stored on an electronic benefit transfer card and used to purchase authorized items at a point-of-sale (POS) terminal. EBT cards shall be presented only to retailers authorized by USDA/FNS to accept food benefit payment for food purchases. Food Assistance benefits must be used to pay for food currently purchased and cannot be used to pay for foods previously or subsequently secured or to pay back bills owed the grocer. The only exceptions are that Food Assistance benefits may be used to pay for food items such as milk or bakery goods that are delivered to the home on a regular basis, or for advance payment to a non-profit cooperative food venture when food purchased is to be delivered at a later date.	**4.130 USING SNAP BENEFITS** SNAP benefits received by an eligible household may be used at any time by the household or other persons whom the household selects to purchase eligible food for the household. SNAP benefits are issued through an Electronic Benefit Transfer (EBT) system in which benefit allotments are stored on an electronic benefit transfer card and used to purchase authorized items at a point-of-sale (POS) terminal. EBT cards shall be presented only to retailers authorized by USDA/FNS to accept food benefit payment for food purchases. SNAP benefits must be used to pay for food currently purchased and cannot be used to pay for foods previously or subsequently secured or to pay back bills owed the grocer. The only exceptions are that SNAP benefits may be used to pay for food items such as milk or bakery goods that are delivered to the home on a regular basis, or for advance payment to a non-profit cooperative food venture when food purchased is to be delivered later. A. Expungement 1. Upon approval of benefits, SNAP recipients are	Renumbering section due to moving section 4.100; and updating Food Assistance to SNAP	

			provided information in writing that any SNAP benefits issued to the EBT card that are unused after 9 months (274 days) will be considered as an expungement and removed from the account. 2. Upon approval of benefits, SNAP recipients are provided information in writing that if the EBT account goes inactive (no food purchases or returns) after 9 months (274 days), the inactive SNAP benefits will be considered as an expungement and removed from the account.		
4.040.1	Renumbering; and non-standardized language; and program name updates	**4.040.1 WHERE HOUSEHOLDS CAN USE FOOD ASSISTANCE BENEFITS** A. Specified persons may use their Food Assistance benefits to purchase meals from the following: 1. A meal delivery service approved by the USDA, Food and Nutrition Service (FNS); 2. A communal dining facility for elderly persons and/or SSI households; 3. An authorized drug or alcoholic treatment and rehabilitation center; 4. An authorized public or private, nonprofit group living arrangement facility; and 5. A shelter for battered women and children. B. Homeless households shall be permitted to use their benefits to purchase prepared meals from an authorized public or private nonprofit provider for homeless persons. A meal provider for homeless persons means a public or private non-profit establishment, including, but not limited to, soup kitchens and temporary shelters which feed homeless persons. In order to be considered a homeless meal	**4.130.1 WHERE HOUSEHOLDS CAN USE SNAP BENEFITS** A. Specified persons may use their SNAP benefits to purchase meals from the following: 1. A meal delivery service approved by the USDA, Food and Nutrition Service (FNS); 2. A communal dining facility for persons aged 60 and older and/or SSI households; 3. An authorized drug or alcoholic treatment and rehabilitation center; 4. An authorized public or private, nonprofit group living arrangement facility; and 5. A shelter for battered women and children. B. Households containing persons experiencing homelessness shall be permitted to use their benefits to purchase prepared meals from an authorized public or private nonprofit provider for persons experiencing homelessness. A meal provider for persons experiencing homelessness means a public or private non-profit establishment, including, but not limited to, soup kitchens and temporary shelters which feed persons experiencing homelessness. To be considered a meal provider to	Renumbering section due to moving section 4.100; standardizing language; and updating Food Assistance to SNAP	

		provider, the meal provider must be approved as such by the USDA, FNS. Homeless households may also purchase meals from restaurants if the restaurant offers discounts to homeless households or serves food to homeless households at concessional (reduced) prices, and the restaurant is authorized by the USDA, FNS as a retailer.	persons experiencing homelessness, the meal provider must be approved as such by the USDA, FNS. Households containing persons experiencing homelessness may also purchase meals from restaurants if the restaurant offers discounts or serves food to persons experiencing homelessness at concessional (reduced) prices, and the restaurant is authorized by the USDA, FNS as a retailer.		
4.040.2	Renumbering; and program name update	**4.040.2 ELIGIBLE FOODS** Households can only purchase eligible foods with Food Assistance benefits. Eligible foods include: A. Any food or food product intended for human consumption, except for alcoholic beverages, tobacco, and hot food, including hot food products prepared by the retailer and sold at above room temperature for immediate consumption. B. Seeds and plants to grow foods for the personal consumption by eligible household members.	**4.130.2 ELIGIBLE FOODS** Households can only purchase eligible foods with SNAP benefits. Eligible foods include: A. Any food or food product intended for human consumption, except for alcoholic beverages, tobacco, and hot food, including hot food products prepared by the retailer and sold at above room temperature for immediate consumption. B. Seeds and plants to grow foods for personal consumption by eligible household members.	Renumbering section due to moving section 4.100; and updating Food Assistance to SNAP	
4.050	Renumbering and program name update	**4.050 CONFIDENTIALITY** A. If there is a written request by a responsible member of the household, or it's ITS currently authorized representative, or a person acting on behalf of the household to review materials contained in the case record, the material and information contained in the case record shall be made available for inspection during normal business hours. B. The local office shall withhold confidential information, such as the names of persons who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal investigations or prosecutions.	**4.140 CONFIDENTIALITY** A. If there is a written request by a responsible member of the household, the current authorized representative, or a person acting on behalf of the household to review materials contained in the case record, the material and information contained in the case record shall be made available for inspection. B. The local office shall withhold confidential information, such as the names of persons who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal investigations or prosecutions. C. Use or disclosure of information obtained from a SNAP	Renumbering section due to moving section 4.100; and updating Food Assistance to SNAP	

		C. Use or disclosure of information obtained from a Food Assistance applicant or household or from any State or Federal agency included in the Income and Eligibility Verification System (IEVS), including the Internal Revenue Service (IRS), Social Security Administration (SSA) and Colorado Department of Labor and Employment (DOLE) exclusively for the Food Assistance Program, shall be restricted to the following persons: 1. Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally- assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in 4.202.1. 2. Employees of the Comptroller General's office of the United States for audit examination authorized by any other provision of law; 3. Local, State or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested; Local, State, or Federal law enforcement officers acting in their official capacity, upon written request by such law enforcement officers that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, if the	applicant or household or from any State or Federal agency included in the Income and Eligibility Verification System (IEVS), including the Internal Revenue Service (IRS), Social Security Administration (SSA) and Colorado Department of Labor and Employment (DOLE) exclusively for SNAP, shall be restricted to the following persons: 1. Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally- assisted State programs providing assistance on a means-tested basis to low-income individuals, or general assistance programs which are subject to the joint processing requirements in 4.202.1. 2. Employees of the Comptroller General's office of the United States for audit examination authorized by any other provision of law; 3. Local, State or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested; Local, State, or Federal law enforcement officers acting in their official capacity, upon written request by such law enforcement officers that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under a		

		member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under a Federal or State law. The agency shall provide information regarding a household member, upon written request of a law enforcement officer acting in his or her official capacity that includes the name of the person being sought, if the other household member has information necessary for the apprehension or investigation of the other household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole imposed under Federal or State law. The agency must accept any document that reasonably establishes the identity of the household member being sought by law enforcement authorities. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the agency shall follow the procedures in 4.304.4 to determine whether the member's eligibility in the Food Assistance program should be terminated. A determination and request for information that does not comply with the terms and procedures in 4.304.4 is not sufficient to terminate the member's participation. The agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph. 4. Persons Connected with the Parent Locator Service Information made available to the Parent Locator Service must be restricted to the recipient or applicant's most recent address and place of	Federal or State law. The agency shall provide information regarding a household member, upon written request of a law enforcement officer acting in his or her official capacity that includes the name of the person being sought, if the other household member has information necessary for the apprehension or investigation of the other household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole imposed under Federal or State law. The agency must accept any document that reasonably establishes the identity of the household member being sought by law enforcement authorities. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the agency shall follow the procedures in 4.304.4 to determine whether the member's eligibility in the SNAP program should be terminated. A determination and request for information that does not comply with the terms and procedures in 4.304.4 is not sufficient to terminate the member's participation. The agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph. 4. Persons connected with the Parent Locator Service. Information made available to the Parent Locator Service must be restricted to the recipient or applicant's most recent address and place of employment; 5. Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act, in order to assist in the administration of their program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying		

		employment; 5. Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act, in order to assist in the administration of their program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under titles II and XVI of the Social Security Act; 6. Persons directly connected with the verification of immigration status of non-citizen Food Assistance applicants through the Systematic Alien Verification for Entitlements (SAVE) system, to the extent the information is necessary to identify the individual for verification purposes; 7. School authorities for the purpose of determining which children are from families who participate in the Program. This information is used to determine eligibility for meals under the National School Lunch or Breakfast Program; and, 8. Persons directly connected with the administration or enforcement of programs included in the Income and Eligibility Verification System (IEVS). Information obtained through the IEVS will be stored and processed so that no unauthorized personnel may acquire or retrieve the information for unauthorized purposes. All persons with access to information obtained pursuant to the IEVS requirements will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.	eligibility or benefits under titles II and XVI of the Social Security Act; 6. Persons directly connected with the verification of immigration status of non-citizen SNAP applicants through the Systematic Alien Verification for Entitlements (SAVE) system, to the extent the information is necessary to identify the individual for verification purposes; 7. School authorities for the purpose of determining which children are from families who participate in the Program. This information is used to determine eligibility for meals under the National School Lunch or Breakfast Program; and, 8. Persons directly connected with the administration or enforcement of programs included in the Income and Eligibility Verification System (IEVS). Information obtained through the IEVS will be stored and processed so that no unauthorized personnel may acquire or retrieve the information for unauthorized purposes. All persons with access to information obtained pursuant to the IEVS requirements will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.		
4.060	Renumbering; and program	**4.060 RIGHT AND OPPORTUNITY TO REGISTER TO VOTE**	**4.150 RIGHT AND OPPORTUNITY TO REGISTER TO VOTE**	Renumbering section due to	

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

	name update	An applicant for Food Assistance benefits shall be provided the opportunity to register to vote. The county department shall provide to all applicants the prescribed voter registration application. The county department shall not: A. Seek to influence the applicant's political preference or party registration. B. Display any political preference or party allegiance. C. Make any statement to an applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote. D. Make any statement to an applicant or take any action, the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.	An applicant for SNAP benefits shall be provided the opportunity to register to vote. The local office shall provide to all applicants the prescribed voter registration application. The local office shall not: A. Seek to influence the applicant's political preference or party registration. B. Display any political preference or party allegiance. C. Make any statement to an applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote. D. Make any statement to an applicant or take any action, the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.	moving section 4.100; and updating Food Assistance to SNAP	
4.060.1	Renumbering; and non-standardized language	**4.060.1 Transmittal of Voter Registration Records** A completed voter registration application shall be transmitted to the county clerk and recorder for the county in which the county department is located not later than ten (10) calendar days after the date of acceptance; except that, if a registration application is accepted within five (5) calendar days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk and recorder for the county not later than five (5) calendar days after the date of acceptance.	**4.150.1 Transmittal of Voter Registration Records** A completed voter registration application shall be transmitted to the county clerk and recorder for the county in which the local office is located not later than ten (10) calendar days after the date of acceptance; except that, if a registration application is accepted within five (5) calendar days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk and recorder for the county not later than five (5) calendar days after the date of acceptance.	Due to moving section 4.100, renumbering section; updating Food Assistance to SNAP; standardizing language	
4.060.2	Renumbering; and non-standardized language	**4.060.2 Confidentiality of Voter Registration Records** Records concerning voter registration and declination to register to vote shall be maintained for two years by the county department, and these records shall not be a part of the Food Assistance case record and are not subject to subpoena. The county department shall ensure the confidentiality of individuals registering or declining to	**4.150.2 Confidentiality of Voter Registration Records** Records concerning voter registration and declination to register to vote shall be maintained for two years by the local office, and these records shall not be a part of the SNAP case record and are not subject to subpoena. The local office shall ensure the confidentiality of individuals registering or declining to register to vote. A voter registration application completed at	Due to moving section 4.100, renumbering section; and updating Food Assistance to SNAP	

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		register to vote. A voter registration application completed at the agency is not to be used for any purpose other than voter registration.	the agency is not to be used for any purpose other than voter registration.		
4.070	Renumbering	**4.070 COMPLAINT REQUIREMENTS** The local office shall publicize the state's complaint system. In addition, the local office shall advise any household wishing to file a complaint of the complaint procedure and offer assistance in filing a complaint, if appropriate. The State Department shall ensure that information is made available to potential participants, applicants, participants, or other interested persons concerning the complaint system, and the procedure for filing a complaint at the state or county level. Such information shall be made available to potential participants, applicants, and other interested parties through written materials and posters which shall be prominently displayed in all certification and issuance offices. The local office shall make every effort to resolve all complaints, excluding complaints of discrimination, brought to their attention at the local level. However, all complainants shall be informed they have the right to contact the State Department if they are not satisfied with the action taken at the local level.	**4.160 COMPLAINT REQUIREMENTS** The local office shall publicize the state's complaint system. In addition, the local office shall advise any household wishing to file a complaint of the complaint procedure and assist the household with filing a complaint, if appropriate. The State Department shall ensure that information is made available to potential participants, applicants, participants, or other interested persons concerning the complaint system, and the procedure for filing a complaint at the state or county level. Such information shall be made available to potential participants, applicants, and other interested parties through written materials and posters which shall be prominently displayed in all certification and issuance offices. The local office shall make every effort to resolve all complaints, excluding complaints of discrimination, brought to their attention at the local level. However, all complainants shall be informed they have the right to contact the State Department if they are not satisfied with the action taken at the local level.	Renumbering section due to moving section 4.100	
4.070.1	Renumbering; and non-standardized language	**4.070.1 State and County Department Responsibility** A. The State Department shall maintain records of complaints received. These records will be reviewed on an office-by-office basis at least annually. Any potential or actual patterns of deficiencies identified shall be reported to the State Food Assistance Division coordinator for action or for inclusion, if appropriate, in the state and/or county department's Performance Improvement Plan. The State Food Assistance Division shall be the primary contact through which complaints are filed.	**4.160.1 State Department and Local Office Responsibility** A. The State Department shall maintain records of complaints received. These records will be reviewed on an office-by-office basis at least annually. Any potential or actual patterns of deficiencies identified shall be reported to the State department for action or for inclusion, if appropriate, in the state and/or county's Performance Improvement Plan. The State department shall be the primary contact through which complaints are filed. State staff shall either handle the complaint when filed or refer the complaint to	Renumbering section due to moving section 4.100; and standardizing language	

		State staff shall either handle the complaint when filed, or refer the complaint to appropriate state or county staff for disposition. B. When requested to do so by the State Department, the local office shall provide information sufficient to enable the State Food Assistance Division to provide notification to the complainant in accordance with timeframes specified in item C below. C. The State level complaint system shall include notification to the complainant, either verbally or in writing, of the action taken by the State Department in resolving the complaint. Notification to the complainant by the State Department shall be accomplished within the following time frames: 1. Complaints involving expedited services shall be investigated and a response provided to the complainant no later than three (3) business days following the date the complaint was received by the State Department. 2. All other complaints shall be investigated and a response provided to the complainant no later than thirty (30) calendar days following the date the complaint was received by the State Department. D. If a complaint can be resolved through the fair hearing process, the State Department shall advise the complainant of the process for requesting a fair hearing and offer the complainant assistance to request a fair hearing.	appropriate state or county staff for disposition. B. When requested to do so by the State Department, the local office shall provide information sufficient to enable the State department to provide notification to the complainant in accordance with timeframes specified in item C below. C. The State level complaint system shall include notification to the complainant, either verbally or in writing, of the action taken by the State Department in resolving the complaint. Notification to the complainant by the State Department shall be accomplished within the following time frames: 1. Complaints involving expedited services shall be investigated and a response provided to the complainant no later than three (3) business days following the date the complaint was received by the State Department. 2. All other complaints shall be investigated and a response provided to the complainant no later than thirty (30) calendar days following the date the complaint was received by the State Department. D. If a complaint can be resolved through the fair hearing process, the State Department shall advise the complainant of the process for requesting a fair hearing and offer the complainant assistance to request a fair hearing.		
4.070.2	Renumbering	**4.070.2 Non-Discrimination Complaint Requirements** State and local agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for	**4.160.2 Non-Discrimination Complaint Requirements** State and local agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race,	Renumbering section due to moving section 4.100	

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		reasons of age, race, color, sex, disability, religious creed, national origin, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity funded by the USDA. Discrimination in any aspect of program administration is prohibited. Local offices shall ensure that the nondiscrimination poster provided by FNS is prominently displayed. Posters may be obtained through the State Department. The local office shall explain the complaint procedures, as outlined in 4.070.21 "Discrimination Complaint Procedure," to each person expressing an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint under this procedure. Such information shall be made available within ten (10) calendar days from the date of request.	color, sex, disability, religious creed, national origin, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity funded by the USDA. Discrimination in any aspect of program administration is prohibited. Local offices shall ensure that the nondiscrimination poster provided by FNS is prominently displayed. Posters may be obtained through the State Department. The local office shall explain complaint procedures to each person expressing an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint under this procedure. Such information shall be made available within ten (10) calendar days from the date of request.		
4.070.21	Renumbering; unclear language; and program name update	**4.070.21 Discrimination Complaint Procedure** A. Individuals who believe they have been subject to discrimination may file a written complaint with the USDA, FNS national office, the local office, and/or the State Department. All complaints of alleged discrimination shall be made in writing and shall be submitted to the FNS national office. If allegations of discrimination are made verbally, and if the complainant is unable or unwilling to put the allegations in writing, the State or county employee to whom the allegation is made shall document the complaint in writing. The person accepting the complaint shall make every effort to secure the information specified in Subsection C, below. B. The complainant shall be advised that a complaint may be submitted to the State Department, FNS or both, and that a complaint shall not be investigated unless information specified in items C, 2, through C, 4, below, is provided. In addition, the complainant shall be advised that a complaint must be filed no later than one hundred eighty (180) calendar days from the	**4.160.21 Discrimination Complaint Procedure** A. Individuals who believe they have been subject to discrimination may file a written complaint with the USDA, FNS national office, the local office, and/or the State Department. All complaints of alleged discrimination shall be made in writing and shall be submitted to the FNS national office. If allegations of discrimination are made verbally, and if the complainant is unable or unwilling to put the allegations in writing, the State or county employee to whom the allegation is made shall document the complaint in writing. The person accepting the complaint shall make every effort to secure the information specified in Subsection C, below. B. The complainant shall be advised that a complaint may be submitted to the State Department, FNS or both, and that a complaint shall not be investigated unless information specified in items C, 2, through C, 4, below, is provided. In addition, the complainant shall be advised that a complaint must be filed no later than one hundred eighty (180) calendar days from the date of the alleged discrimination. The local office shall date stamp or	Due to moving section 4.100, renumbering section; and addition of clarifying phrase; and updating Food Assistance to SNAP	

		date of the alleged discrimination. The local office shall date stamp or otherwise note the date the complaint is received by the office. 1. Complaints directed to the FNS national office shall be addressed to: U.S. Department of Agriculture, Director, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410; Fax: (202) 690-7442; Email: program.intake@usda.gov. 2. Complaints directed to the State Department shall be addressed to: Colorado Department of Human Services, Food Assistance Program, 1575 Sherman St., Denver, CO 80203. C. The complaint shall include the following information to facilitate investigations: 1. The name, address and telephone number or other means of contacting the person alleging discrimination; 2. The location and name of the office which is accused of discriminatory practices; 3. The nature of the incident or action, or the aspect of Program administration that led the person to allege discrimination; 4. The reason for the alleged; 5. The name(s) and title(s), if appropriate, of person(s) who may have knowledge of the alleged discriminatory act; and 6. The date(s) on which the alleged discriminatory action(s) occurred.	otherwise note the date the complaint is received by the office. 1. Complaints directed to the FNS national office shall be addressed to: U.S. Department of Agriculture, Director, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410; Fax: (202) 690-7442; Email: program.intake@usda.gov. 2. Complaints directed to the State Department shall be addressed to: Colorado Department of Human Services, SNAP, 1575 Sherman St., Denver, CO 80203. C. The complaint shall include the following information to facilitate investigations to be considered complete: 1. The name, address and telephone number or other means of contacting the person alleging discrimination; 2. The location and name of the office which is accused of discriminatory practices; 3. The nature of the incident or action, or the aspect of Program administration that led the person to allege discrimination; 4. The reason for the alleged; 5. The name(s) and title(s), if appropriate, of person(s) who may have knowledge of the alleged discriminatory act; and 6. The date(s) on which the alleged discriminatory action(s) occurred.		
4.070.22	Renumbering; and	**4.070.22 Disposition of Discrimination Complaints**	**4.160.22 Disposition of Discrimination Complaints**	Renumbering section due to	

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	extraneous language	When the local office receives a complaint of alleged discrimination and obtains the information specified in 4.070.21 "Discrimination Complaint Procedure," it shall transmit a copy of the complaint to the FNS national office and/or the State Department within five (5) working days. The State Department shall file the complaint with the FNS national office on behalf of the complainant if the local office does not file the complaint with the FNS national office.	When the local office receives a complaint of alleged discrimination and obtains a complete discrimination complaint, it shall transmit a copy of the complaint to the FNS national office and/or the State Department within five (5) working days. The State Department shall file the complaint with the FNS national office on behalf of the complainant if the local office does not file the complaint with the FNS national office.	moving section 4.100; and removing extraneous language	
4.201	Program name update; and incorrect grammar	**4.201 APPLICATION PROCESSING** A. County offices shall not apply additional conditions or processing requirements that are beyond those prescribed by State Food Assistance rules. The application process includes the filing and completion of an application form, being interviewed, and verifying certain information. Signs shall be posted in certification offices that explain the application processing standards and the right to file an application on the day of initial contact. Similar information about same-day filing shall be included in outreach materials and on the application form. B. The local office shall act promptly on all applications and provide Food Assistance benefits retroactive to the month of application to those households that have completed the application process and have been determined to be eligible. C. Applications will be screened as they are filed, or as individuals come in to apply, to determine eligibility for expedited service or for normal processing. Applicants entitled to expedited service shall be informed immediately and given a same-day interview, whenever possible. Those eligible for expedited processing shall be served in accordance with Sections 4.205.1 and 4.205.11 while those eligible for normal processing shall be served in accordance with Section 4.205.2. Local offices shall not conduct any pre-eligibility screening process prior to securing the	**4.201 APPLICATION PROCESSING** A. Local offices shall not apply additional conditions or processing requirements that are beyond those prescribed by State SNAP rules. The application process includes the filing and completion of an application form, being interviewed, and verifying certain information. Signs shall be posted in certification offices that explain the application processing standards and the right to file an application on the day of initial contact. Similar information about same-day filing shall be included in outreach materials and on the application form. B. The local office shall act promptly on all applications and provide SNAP benefits retroactive to the month of application to those households that have completed the application process and have been determined to be eligible. C. Applications will be screened as they are filed, or as individuals come in to apply, to determine eligibility for expedited service or for normal processing. Applicants entitled to expedited service shall be informed immediately and given a same-day interview, whenever possible. Those eligible for expedited processing shall be served in accordance with Sections 4.205.1 and 4.205.11 while those eligible for normal processing shall be served in accordance with Section 4.205.2. Local offices shall not conduct any pre-eligibility screening process prior to securing the date of application.	Updating Food Assistance to SNAP; and correcting grammar	

		date of application. D. The household may voluntarily withdraw its application at any time prior to a determination of eligibility. Once a determination of eligibility is made, the household may voluntarily terminate its participation. Any reason given by the household for withdrawal or termination shall be documented in the case file. A Notice of Action form, indicating voluntary withdrawal of application or voluntary termination of participation, shall be sent to the household within ten (10) calendar days of the decision, to confirm the action taken. The household shall be advised of its right to reapply at any time subsequent to a withdrawal. E. No household shall have its Food Assistance benefits denied solely on the basis of its application to participate in another program being denied or its benefits under another program being terminated, without a separate determination by the local office that a household failed to satisfy a Food Assistance Program eligibility requirement. F. Households denied Food Assistance that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. Residents of public institutions who apply jointly for SSI and Food Assistance benefits prior to their release from the institution shall not be eligible for Food Assistance until the individual has been released from the public institution. G. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that Program benefits are distributed without regard to race, color, or national origin. In	D. The household may voluntarily withdraw its application at any time prior to a determination of eligibility. Once a determination of eligibility is made, the household may voluntarily terminate its participation. Any reason given by the household for withdrawal or termination shall be documented in the case file. A Notice of Action form, indicating voluntary withdrawal of application or voluntary termination of participation, shall be sent to the household within ten (10) calendar days of the decision, to confirm the action taken. The household shall be advised of its right to reapply at any time after a withdrawal. E. No household shall have its SNAP benefits denied solely based on its application to participate in another program being denied or its benefits under another program being terminated, without a separate determination by the local office that a household failed to satisfy a SNAP eligibility requirement. F. Households denied SNAP that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. Residents of public institutions who apply jointly for SSI and SNAP benefits prior to their release from the institution shall not be eligible for SNAP until the individual has been released from the public institution. G. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that SNAP benefits are distributed without regard to race, color, or national origin. In those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility worker challenge or change a self-declaration made by a household member.		

		those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility worker challenge or change a self-declaration made by a household member.			
4.202	Program name update; and non-standardized language	**4.202 FILING AN APPLICATION** A. Regardless of what type of application system is used, the local office must provide a means for applicants to immediately begin the application process. The household shall be advised it may file an incomplete application form as long as the form contains a name, address, and is signed by a responsible household member or the household's authorized representative. Signatures include handwritten signatures, electronic signature techniques, recorded telephonic signatures, or documented gestured signatures. A valid handwritten signature includes a designation of an X. Local offices shall accept applications for Food Assistance during normal business hours and shall not be restricted to a certain day or time of day. The household shall be advised that it need not be interviewed before filing an application. The county department shall inform applicants that receiving Food Assistance will have no bearing on any other program's time limits that may apply to the household. B. Persons who request information for Food Assistance must be advised of expedited service provisions and encouraged to submit an application so that eligibility processing can begin. County local offices shall encourage the filing of an application form on the same day the household or its representative contacts the local office in person or by telephone and expresses interest in obtaining Food Assistance, or indicates the household is without food or the means to obtain food.	**4.202 FILING AN APPLICATION** A. Regardless of what type of application system is used, the local office must provide a means for applicants to immediately begin the application process. The household shall be advised it may file an incomplete application form if the form contains a name, address, and is signed by a responsible household member or the household's authorized representative. Signatures include handwritten signatures, electronic signature techniques, recorded telephonic signatures, or documented gestured signatures. A valid handwritten signature includes a designation of an X. Local offices shall accept applications for SNAP during normal business hours and shall not be restricted to a certain day or time of day. The household shall be advised that it need not be interviewed before filing an application. The local office shall inform applicants that receiving SNAP will have no bearing on any other program's time limits that may apply to the household. B. Persons who request information for SNAP must be advised of expedited service provisions and encouraged to apply so that eligibility processing can begin. County local offices shall encourage the filing of an application form on the same day the household or its representative contacts the local office in person or by telephone and expresses interest in obtaining SNAP, or indicates the household is without food or the means to obtain food. C. Local offices shall make application forms readily accessible to applicant households, as well as to groups and organizations, and shall also provide an application form to	Updating Food Assistance to SNAP; and standardizing language	

		C. Local offices shall make application forms readily accessible to applicant households, as well as to groups and organizations, and shall also provide an application form to anyone who requests the form. If a household contacting the local office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the local office shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for Food Assistance is received. Application forms shall be made available in Spanish, or other appropriate languages for use in those counties where it has been determined in conjunction with the State local office that there are a significant number of households without an adult member fluent in English. D. The state or local office shall annotate the application form by recording the date the form was received. All valid applications which are paper, transmitted by fax or other electronic transmissions, are acceptable. When an application is submitted through such means outside of business hours, the application filing date shall be recorded as the next business day. E. Households must file applications by submitting the forms in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an online electronic application. The local office must inform the applicant that they have the opportunity to obtain a copy of their application and provide the household with a copy of their completed application upon the request of the client. A copy of a completed application can be a copy of the information provided by the client that was used or will be used to determine a household's eligibility and benefit allotment. At the option of the household, this may be provided in an electronic format.	anyone who requests the form. If a household contacting the local office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the local office shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for SNAP is received. Application forms shall be made available in Spanish, or other appropriate languages for use in those counties where it has been determined in conjunction with the State local office that there are a significant number of households without an adult member fluent in English. D. The state or local office shall annotate the application form by recording the date the form was received. All valid applications which are paper, transmitted by fax or other electronic transmissions, are acceptable. When an application is submitted through such means outside of business hours, the application filing date shall be recorded as the next business day. E. Households must file applications by submitting the forms in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an online electronic application. The local office must inform the applicant that they can obtain a copy of their application and provide the household with a copy of their completed application upon the request of the client. A copy of a completed application can be a copy of the information provided by the client that was used or will be used to determine a household's eligibility and benefit allotment. At the option of the household, this may be provided in an electronic format. F. Applications are valid for a period of sixty (60) calendar days or until eligibility has been determined, whichever is sooner. Once eligibility has been determined, households must submit a new application if the household:		

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		F. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application date must submit a new application. G. When households contact the wrong certification office within a county either in person or by telephone, the certification office shall give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day. If the household has mailed its application to the wrong office within a county, the receiving office shall mail the application to the appropriate office on the same day or forward it the next day by any means that ensures the application will arrive at the appropriate office the same day it is forwarded. An application shall be considered filed and processing standards shall begin the day it is received by any local office in the correct county. A county that receives an application that belongs to another county may secure the application date, process the application to completion, issue the household an EBT card, and then transfer the case to the correct county once the final eligibility decision is made.	1. Failed to attend an interview in the first thirty (30) days of the application, or 2. Was determined ineligible due to household circumstances. G. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that SNAP benefits are distributed without regard to race, color, or national origin. In those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility technician challenge or change a self-declaration made by a household member.		
4.202.1	Program name update; and non-standardized acronyms	**4.202.1 Public Assistance Applications and Processing** A. Households applying for public assistance (PA) shall be notified of their right to apply for Food Assistance at the same time, and shall be allowed to apply for Food Assistance at the same time they apply for public assistance benefits. B. The local office shall provide benefits using the original application and any other pertinent information occurring subsequent to that application for any household filing a joint application for Food Assistance and public assistance benefits. The original application and relevant subsequent information shall also be	**4.202.1 Public Assistance Applications and Processing** A. Households applying for PA shall be notified of their right to apply for SNAP at the same time and shall be allowed to apply for SNAP at the same time they apply for PA benefits. B. The local office shall provide benefits using the original application and any other pertinent information occurring after that application for any household filing a joint application for SNAP and PA benefits. The original application and relevant subsequent information shall also be used for households that are categorically eligible when they are determined eligible to receive PA after being	Updating Food Assistance to SNAP; standardizing acronyms	

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		used for households that are categorically eligible when they are determined eligible to receive public assistance after being denied for Food Assistance. The local office shall not re-interview the household, but shall use mail or telephone contact to obtain information about any changes. C. Households whose public assistance (PA) applications are denied shall not be required to file a new Food Assistance application. The household shall have its Food Assistance eligibility determined or continued based on the applications filed jointly for PA and Food Assistance purposes and any other documented information obtained subsequent to the application that may have been used in the PA determination.	denied for SNAP. The local office shall not re-interview the household but shall use mail or telephone contact to obtain information about any changes. C. Households whose PA applications are denied shall not be required to file a new SNAP application. The household shall have its SNAP eligibility determined or continued based on the applications filed jointly for PA and SNAP purposes and any other documented information obtained after the application that may have been used in the PA determination.		
4.202.2	Program name update; and incorrect grammar	**4.202.2 Application Filing by Ineligible Individuals** The ineligibility of certain individuals for Program benefits will not prohibit the remaining household members from applying for and receiving Food Assistance. Ineligible individuals living in an applicant household shall not be considered eligible household members for Food Assistance purposes; however the ineligible individual's income and resources are considered in the household's eligibility determination and benefit allotment. When the eligible members of a household are all unemancipated minors and the only adult is an ineligible individual, the ineligible individual may make application on behalf of the eligible minors without being considered as having applied for him/herself. However, if there is any other eligible adult of an unemancipated minor in the household, even though they would not normally be considered the household head, that eligible person should make application as the head of household.	**4.202.2 Application Filing by Ineligible Individuals** The ineligibility of certain individuals for SNAP benefits will not prohibit the remaining household members from applying for and receiving SNAP. Ineligible individuals living in an applicant household shall not be considered eligible household members for SNAP purposes; however, the ineligible individual's income and resources are considered in the household's eligibility determination and benefit allotment. When the eligible members of a household are all unemancipated minors and the only adult is an ineligible individual, the ineligible individual may apply on behalf of the eligible minors without being considered as having applied for him/herself. However, if there is any other eligible adult of an unemancipated minor in the household, even though they would not normally be considered the household head, that eligible person should make application as the head of household.	Updating Food Assistance to SNAP; and grammar correction	
4.202.3	Removing section	**4.202.3 SSI Households Submitting Food Assistance**		Removing section as Colorado does	

		Applications to the SSA A. Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the member has a right to make a household application for Food Assistance at the SSA office or the local office. The SSA office is not required to accept applications for SSI applicants or recipients who are not members in a household consisting entirely of SSI recipients unless a county has outstationed a worker at the SSA office. The SSA office will refer non-SSI households to the correct local office. An applicant or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Assistance Program and the availability of the Food Assistance application at the SSA office. The SSA office shall also complete joint SSI and Food Assistance applications for residents of public institutions who apply for SSI prior to their release from the institutions. The applicants shall be permitted to apply for Food Assistance at the same time that they apply for SSI. B. The SSA office will accept and complete Food Assistance applications from SSI households and forward them, within one working day after receipt of a signed application, to the appropriate county local office. The SSA will use the Food Assistance application. The application will be transmitted to the local office with documentation of verification obtained. When an SSA office sends a Food Assistance application and supporting documentation to an incorrect local office, the application and documentation shall be sent to the correct office within one working day. C. The SSA office is required to prescreen all Food Assistance applications for entitlement to expedited service and shall mark “expedited processing” on the first page of all applications of households that appear		not have a contract with SSA	

		to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benefits may be issued a few days sooner if the household applies directly at the local office. The household may take the application from the SSA office to local office for screening, interviewing, and processing of the application. Each local office shall furnish the SSA office(s) serving its geographical area with a street map and/or map defining its boundaries together with the addresses of the certification offices in the project area. D. The local office shall prescreen all applications received from the SSA office for entitlement to expedited service on the day the application is received at the correct local office. All households entitled to expedited service shall be certified in accordance with Sections 4.205.1 and 4.205.11, except that the expedited processing time standard shall begin on the date the application is received at a local office in the correct county. To prevent duplication, the local office shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA office are currently participating in the Food Assistance Program. E. The SSA office shall refer non-SSI households and those in which not all members have applied for or received SSI to the correct local office. The local offices shall process those applications in accordance with the normal and expedited application processing standards and procedures. Applications from such households shall be considered as filed on the date the signed application is taken at a local office in the correct county.			
4.202.31	Removing section	**4.202.31 SSI Telephone Applications and Recertifications Completed by the SSA**		Removing section as Colorado does not have a contract	

		A. If an SSA office takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a Food Assistance application shall also be completed during the telephone interview and shall be mailed by the SSA office to the applicant for signature for return to the SSA office or to the local office. The SSA office shall then forward any Food Assistance applications it receives to the local office. The local office shall not require the household to be interviewed again. The local office may contact the household further to obtain additional information for the eligibility determination. B. The SSA office shall mail information of the client's right to file a Food Assistance application at the SSA office if they are members of a pure SSI household, or at their local office, and their right to an interview to be performed by the county department. C. For households consisting entirely of applicants for, or recipients of, SSI who apply for Food Assistance certification at an SSA office, the application shall be considered filed for normal processing purposes when the application is received by the SSA.		with SSA	
4.202.32	Removing section	**4.202.32 SSI and Food Assistance Joint Processing** A. In those instances where the application has been completed at the SSA office, the local office shall ensure that information required by Section 4.502 is verified prior to certification for households initially applying, and households entitled to expedited certification services shall be processed in accordance with Sections 4.205.1 and 4.205.11. In those cases where the SSI household submits its Food Assistance application to the local office rather than through the SSA office, all verification, including that pertaining to SSA program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the		Removing section as Colorado does not have a contract with SSA	

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		local office rather than being provided by the SSA. For those cases in which SSI and Food Assistance are being processed simultaneously, the local office shall question the household and/or use SDX listings to obtain information on SSI determinations. If the information cannot be obtained through SDX listings and/or questioning the households, a written inquiry may be made to the SSA office to obtain information of the status of SSI determinations. Within ten (10) calendar days of learning of the determination of the SSI application, the local office shall take action in accordance with Section 4.604. B. The expedited processing time standard for applicants who filed prior to the release from a public institution will begin on the date that the individual is released from the public institution. The SSA shall notify the local office of the date of release of the applicant from the institution. Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and Food Assistance, but the local office was not notified on a timely basis of the applicant's release.			
4.202.33	Removing section	**4.202.33 Outstationing Eligibility Workers in SSA Offices** If the county, with the approval of the State Department, chooses to outstation eligibility workers at SSA offices, with SSA's concurrence, the following actions shall be completed: A. SSA will provide adequate space for Food Assistance eligibility workers in SSA offices; B. The county shall have at least one outstationed		Removing section as Colorado does not have a contract with SSA	

		worker on duty at all time periods during which households will be referred for Food Assistance application processing. In most cases, this would require the availability of an outstationed worker throughout normal SSA business hours; C. The following households shall be entitled to file Food Assistance applications with, and be interviewed by, an outstationed eligibility worker: 1. Households containing an applicant for or recipient of SSI. 2. Households which do not have an applicant for or recipient of SSI but which contain an applicant for or recipient of benefits under Title II of the Social Security Act, if the county and the SSA have an agreement to allow the processing of such households at SSA offices. D. Households shall be interviewed for Food Assistance on the day of application unless there is insufficient time to conduct an interview. The county shall arrange for the outstationed worker to interview applicants as soon as possible; E. The outstationed eligibility worker(s) shall not refuse to provide service to an applicant because they do not reside in the county or project area in which the SSA office is located, provided that they reside within the jurisdiction served by the SSA office and the State. The county is not required to process the applications of persons who are not residing within the SSA office's jurisdiction but who do reside within the county's jurisdiction, other than to forward the forms to the correct local offices; F. The county may permit the eligibility worker outstationed at the SSA office to determine the			

		eligibility of households, or may require that completed applications be forwarded elsewhere for the eligibility determination; G. Applications from households entitled to joint processing through an outstationed eligibility worker shall be considered filed on the date they are submitted to that worker. Both the normal and expedited service time standards shall begin on that date; and, H. Households not entitled to joint processing shall be entitled to obtain and submit applications at the SSA office. The outstationed eligibility worker need not process these applications except to forward them to correct local office where they shall be considered filed upon receipt. Both the normal and expedited service time standards shall begin on that date.			
4.203.1	Program name update; and incorrect grammar	**4.203.1 Designating a Head of Household** A. The local office shall allow a household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult members agree to the selection. The household may make this designation each time the household is certified for participation, but may not change the designation during a certification period unless there is a change in the composition of the household. B. The local office shall not use the head of household designation to impose special requirements on the household, such as require that the head of household, rather than another responsible member of the household, appear at the local office to make application for benefits. If the household is not able to select its head of household, or an eligible household does not choose to select its head of household, the	**4.203.1 Designating a Head of Household** A. The local office shall allow a household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult members agree to the selection. The household may make this designation each time the household is certified for participation but may not change the designation during a certification period unless there is a change in the composition of the household. B. The local office shall not use the head of household designation to impose special requirements on the household, such as require that the head of household, rather than another responsible member of the household, appear at the local office to apply for benefits. If the household is not able to select its head of household, or an eligible household does not choose to select its head of household, the local office may make a reasonable	Updating Food Assistance to SNAP; and grammar correction	

		local office may make a reasonable determination of the head of household with an understanding that the head of household is usually the household member who has the most knowledge of the household's financial circumstances. Such individual must be a household member, except that, if the only adult in the Food Assistance household is a non-household member, such individual may make application on behalf of the household of minors as the authorized representative.	determination of the head of household with an understanding that the head of household is usually the household member who has the most knowledge of the household's financial circumstances. Such individuals must be a household member, except that, if the only adult in the SNAP household is a non-household member, such individual may apply on behalf of the household of minors as the authorized representative.		
4.203.2(A)	Program name update; and incorrect grammar	**4.203.2 Designating Authorized Representatives** A. The head of the household, spouse or any other responsible household member may designate in writing someone to act on behalf of the household to make an application, obtain an EBT card, and/or use the EBT card to purchase food for the household. In instances where a household is in need of an authorized representative but is unable to obtain one, the local office will assist such a household in finding an authorized representative. The certification office will assure that authorized representatives are properly designated; that is, the name of the authorized representative and the justification for appointing a person outside the household shall be maintained as part of the household's permanent case record. 1. Making an Application The authorized representative must be a person who is sufficiently aware of relevant household circumstances. Whenever possible, the head of the household or spouse should prepare or review the application even though another household member or an authorized representative is the person interviewed. The local office shall inform the household that the household will be held liable for any over-	**4.203.2 Designating Authorized Representatives** A. The head of the household, spouse or any other responsible household member may designate in writing someone to act on behalf of the household to apply, obtain an EBT card, and/or use the EBT card to purchase food for the household. In instances where a household needs an authorized representative but is unable to obtain one, the local office will assist such a household in finding one. The local office will assure that authorized representatives are properly designated; that is, the name of the authorized representative and the justification for appointing a person outside the household shall be maintained as part of the household's permanent case record. 1. Submitting an Application The authorized representative must be a person who is sufficiently aware of relevant household circumstances. Whenever possible, the head of the household or spouse should prepare or review the application even though another household member or an authorized representative is the person interviewed. The local office shall inform the household that the household will be held liable for any over-issuance which results from erroneous information given by the authorized representative.	Updating Food Assistance to SNAP; and correcting grammar	

		issuance which results from erroneous information given by the authorized representative. 2. Obtaining an EBT Card An authorized representative may be designated to obtain an EBT card for the household at the time the household applies for participation. The authorized representative responsible for obtaining an EBT card may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make an application and obtain an EBT card, the household should be encouraged to name an authorized representative responsible for obtaining an EBT Card in case of illness or other circumstances which might result in an inability to obtain Food Assistance benefits.	2. Obtaining an EBT Card An authorized representative may be designated to obtain an EBT card for the household at the time the household applies for participation. The authorized representative responsible for obtaining an EBT card may be the same individual designated to apply for the household or may be another individual. Even if a household member can apply and obtain an EBT card, the household should be encouraged to name an authorized representative responsible for obtaining an EBT Card in case of illness or other circumstances which might result in an inability to obtain SNAP benefits.		
4.203.21	Program name update; non-standardized acronyms; and non-standardized language	**4.203.21 Individuals Who Cannot Be an Authorized Representative** The following individuals cannot be an authorized representative unless otherwise stated: A. County department employees who are involved in Program eligibility determination and/or issuance processes, or the supervisors of such workers, unless the local office determines that no other representative is available. B. Employees of FNS-authorized retailers and meal services that are authorized to accept Food Assistance benefits, unless the local office determines that no other representative is available. C. An individual disqualified for Intentional Program Violation (IPV)/fraud shall not be an authorized representative during the period of disqualification unless the individual is the only adult in the household and the office is unable to arrange for another authorized representative. Local offices shall determine whether these	**4.203.21 Individuals Who Cannot Be an Authorized Representative** The following individuals cannot be an authorized representative unless otherwise stated: A. Local office employees who are involved in Program eligibility determination and/or issuance processes, or the supervisors of such workers, unless the local office determines that no other representative is available. B. Employees of FNS-authorized retailers and meal services that are authorized to accept SNAP benefits, unless the local office determines that no other representative is available. C. An individual disqualified for IPV/fraud shall not be an authorized representative during the period of disqualification unless the individual is the only adult in the household and the office is unable to arrange for another authorized representative. Local offices shall determine whether these disqualified individuals are needed to apply on behalf of the household, to obtain SNAP benefits for the household, and to	Updating Food Assistance to SNAP; standardizing acronyms; and standardizing language	

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		disqualified individuals are needed to apply on behalf of the household, to obtain Food Assistance benefits for the household, and to use the household's Food Assistance benefits to purchase food. D. In no event may an authorized meal provider for homeless persons act as an authorized representative.	use the household's SNAP benefits to purchase food. D. In no event may an authorized meal provider for homeless persons act as an authorized representative.		
4.203.22	Program name update	**4.203.22 Disqualification of an Authorized Representative** An authorized or emergency representative may be disqualified from representing a household in the Food Assistance Program for up to one (1) year if the local office has obtained evidence that the representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household, or has made improper use of Food Assistance benefits. The local office shall send written notification to the affected household(s) and to the representative thirty (30) calendar days prior to the date of disqualification. The notification shall include the proposed action, the reason for the proposed action, the household's right to request a fair hearing, the telephone number of the office, and, if possible, the name of the person to contact for additional information. This provision is not applicable in the case of drug and alcohol treatment centers or to the heads of group living arrangements that act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and that intentionally misrepresent households' circumstances, may be prosecuted under applicable state fraud statutes for their acts.	**4.203.22 Disqualification of an Authorized Representative** An authorized or emergency representative may be disqualified from representing a household in SNAP for up to one (1) year if the local office has obtained evidence that the representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household or has made improper use of SNAP benefits. The local office shall send written notification to the affected household(s) and to the representative thirty (30) calendar days prior to the date of disqualification. The notification shall include the proposed action, the reason for the proposed action, the household's right to request a fair hearing, the telephone number of the office, and, if possible, the name of the person to contact for additional information. This provision is not applicable in the case of drug and alcohol treatment centers or to the heads of group living arrangements that act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and that intentionally misrepresent households' circumstances, may be prosecuted under applicable state fraud statutes for their acts.	Updating Food Assistance to SNAP	
4.204	Program name updates, non-standardized acronyms and	**4.204 Interviews** A. Interview Requirements	**4.204 Interviews** A. Interview Requirements	Updating Food Assistance to SNAP; standardizing	

	language, and removal of non-applicable regulations	All applicant households shall undergo a phone or face-to-face interview with a qualified eligibility worker prior to initial certification and at least once every twelve (12) months. A household certified for twenty-four (24) months is not required to complete an interview at the 12 month PRF or at twenty-four (24) month recertification, unless the household either requests an interview, is potentially going to be denied for food assistance, or has any outstanding issues or questions about the recertification process. The applicant may include any person(s) he or she chooses for the interview. The individual interviewed may be the head of the household, spouse, or any other responsible member of the household, or an authorized representative. A face-to-face interview may be conducted at the county local office or a mutually acceptable location, including the household's residence upon household request. If the interview is to be conducted at the residence, it must be scheduled in advance. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview. The eligibility worker shall not simply review the information entered on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes. The interviewer must advise households which are applying for other public assistance programs that any time limits and other requirements for the receipt of other public assistance do not apply to the receipt of Food Assistance. Households may still qualify for Food Assistance if they have reached a time limit, begun working, or lost benefits from another	All applicant households shall undergo a phone or face-to-face interview with a qualified eligibility technician prior to initial certification and at least once every twelve (12) months. The State Department recommends phone interviews as the default option with face-to-face interviews only scheduled upon client request. If an individual does not list a working phone number on the application, then a number for the client to call the county office should be provided. A household certified for twenty-four (24) months is not required to complete an interview at the 12-month PRF or at twenty-four (24) month recertification, unless the household either requests an interview, is potentially going to be denied for SNAP (24-month households only) or has any outstanding issues or questions about the recertification process. The applicant may include any person(s) he or she chooses for the interview. The individual interviewed may be the head of the household, spouse, or any other responsible member of the household, or an authorized representative. A face-to-face interview may be conducted at the local office or a mutually acceptable location, including the household's residence upon household request. If the interview is to be conducted at the residence, it must be scheduled in advance. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview. The eligibility technician shall not simply review the information entered on the application but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the	acronyms and language; and removal of section that does not pertain to Colorado regulation	

		program for another reason. Upon determination that a person should be referred to an Employment First Unit, the county department shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The local office shall provide a written statement of these requirements to each work registrant in the household and to each previously exempt or new household member when that person becomes subject to the work registration and at recertification. B. Scheduling Interviews The local office must schedule an interview for all applicant households who are not interviewed on the same day they submit an application to the county department. Interviews shall be scheduled for a specific date and time and an appointment letter shall be given to the client. All interviews, including the date and time of the interview, shall be documented in the case record. When scheduling interviews, the interview shall be scheduled as promptly as possible to ensure that eligible applicant households receive an opportunity to participate within the Program's processing guidelines, as outlined in Section 4.205. When the interview is scheduled, the applicant shall be notified that if it a responsible member of the household or its authorized representative fails to attend the interview, the household will be responsible for rescheduling and attending an interview within thirty (30) days from the date of application and that failure to do so shall result in the denial of the application. C. Missed Interviews If the household fails to attend its scheduled interview, the local office shall mail the household a notice of	household's responsibility to report changes. The interviewer must advise households which are applying for other PA programs that any time limits and other requirements for the receipt of other PA do not apply to the receipt of SNAP. Households may still qualify for SNAP if they have reached a time limit, begun working, or lost benefits from another program for another reason. Upon determination that a person should be referred to an Employment First Unit, the local office shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The local office shall provide a written statement of these requirements to each work registrant in the household and to each previously exempt or new household member when that person becomes subject to the work registration and at recertification. B. Scheduling Interviews The local office must schedule an interview for all applicant households who are not interviewed on the same day they apply to the local office. Interviews shall be scheduled for a specific date and time and an appointment letter must be provided to the client at the address on file. All interviews, including the date and time of the interview, shall be documented in the case record. If the local office fails to schedule an interview with the household before the 30th day and no later than the 60th day, the original application can be used, and benefits are issued from the original date of application. If the household requests an interview date after the 30th day, the local office will deny the application on the 30th day and the household must file a new application. C. Missed Interviews If the household fails to attend its scheduled interview, the		

		missed interview, informing the household that it missed the scheduled interview and that the household is responsible for rescheduling the interview. If the household does not schedule a subsequent interview for a date within thirty (30) calendar days after the application is filed, the application shall be denied by the local office on the thirtieth (30th) day following the date of application. The application shall not be denied before the thirtieth (30th) day. If the household fails to appear for a rescheduled interview, no further action need be taken by the local office, unless requested by the household. If a household misses its first interview, the household forfeits its right to expedited service, unless the second interview is rescheduled for a date within seven (7) days following the date of application. If a household completes an interview any time after the thirtieth (30th) day but no later than the sixtieth (60th) day from the date of application, then the original application shall be used to determine eligibility, and the household shall not be required to complete a new application. However, the household's benefits will be prorated from the date the required action was taken within the second thirty (30) day period. If the household makes contact with the agency after the sixtieth (60th) day following the date of application, the household shall be required to complete a new application. D. Interviews for Public Assistance Households If a household is applying for both public assistance and Food Assistance, the county department shall conduct a single interview at initial application for both public assistance and Food Assistance purposes. The applicant household shall complete the combined application for public assistance and Food Assistance.	local office shall mail the household a notice of missed interview, informing the household that it missed the scheduled interview and that the household is responsible for rescheduling the interview. If the household does not schedule a subsequent interview for a date within 30 calendar days after the application is filed, the application shall be denied by the local office on the 30th day following the date of application. The application shall not be denied before the 30th day. If a household misses its first interview, the household forfeits its right to expedited service, unless the second interview is rescheduled for a date within seven (7) days following the date of application. D. Interviews for PA Households If a household is applying for both PA and SNAP, the local office shall conduct a single interview at initial application for both PA and SNAP purposes. The applicant household shall complete the combined application for PA and SNAP. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for SNAP and PA. A household's eligibility for an out-of-office interview for SNAP purposes does not relieve the household of any responsibility for a face-to-face interview for PA purposes. Except for households which may be eligible under basic categorical eligibility, the household's SNAP eligibility and benefit level shall be based solely on SNAP eligibility criteria, and all households shall be certified in accordance with the noticing, procedural, and timeliness requirements of the SNAP regulations. The PA applicant household shall indicate on the single purpose application if it does not wish to apply for SNAP.		

		Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for Food Assistance and public assistance. A household's eligibility for an out-of-office interview for Food Assistance purposes does not relieve the household of any responsibility for a face-to-face interview for public assistance purposes. Except for households which may be eligible under basic categorical eligibility, the household's Food Assistance eligibility and benefit level shall be based solely on Food Assistance eligibility criteria, and all households shall be certified in accordance with the noticing, procedural, and timeliness requirements of the Food Assistance regulations. The PA applicant household shall indicate on the single purpose application if it does not wish to apply for Food Assistance. E. Interviews for SSI Households Households in which all members are applying for SSI or receiving SSI and are applying and being interviewed for Food Assistance by SSA, will not be required to see a Food Assistance eligibility worker or otherwise be subjected to an additional certification interview. The local office shall accept SSA documentation and shall not contact the household to obtain additional information for the eligibility determination unless the application is improperly completed, mandatory verification required by Section 4.502 is missing, or the local office determines that certain information on the application is questionable. In no event shall the applicant be required to appear at the local office to finalize the eligibility determination. Further contact made in accordance with this paragraph shall not constitute a second Food Assistance certification interview.			
4.205.2(A)	Program name updates; non-standardized	**4.205.2 Normal Processing Standards** A. The county local office shall process applications as	**4.205.2 Normal Processing Standards** A. The local office shall process applications as expeditiously	Updating Food Assistance to SNAP;	

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

	language; incorrect regulatory language	expeditiously as possible and provide eligible households a written notification of their eligibility. The applicant household must receive a Notice of Action form, which will indicate the household's period of eligibility and Food Assistance allotment. Eligible households shall be provided an opportunity to obtain benefits as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Except for applications filed at an SSA office, an application shall be considered filed the day a local office in the correct county receives a valid application containing the applicant's name, address, and signature. Households found to be ineligible shall be sent a Notice of Action form denying the household as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Applicant households that refuse to cooperate in completing the application process shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly refuse to take actions that are required to complete the application process. B. In cases where verification is incomplete, the local office shall provide the household with a statement of required verification on the state-prescribed notice form and offer to assist the household in obtaining the required verification. The office shall allow the household ten (10) calendar days to provide the missing verifications, unless the household missed the first appointment. If the household misses the first appointment and the interview cannot otherwise be rescheduled until after the twentieth (20th) day but before the thirtieth (30th) day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the thirtieth (30th) day. A household can be found ineligible or eligible for the month of application and for the following month based on one (1) application, if sufficient information for such determination is available. The state-prescribed notice form shall reflect specific months of eligibility and	as possible and provide eligible households a written notification of their eligibility. The applicant household must receive a Notice of Action form, which will indicate the household's period of eligibility and SNAP allotment. Eligible households shall be provided an opportunity to obtain benefits as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. An application shall be considered filed the day a local office in the correct county receives a valid application containing the applicant's name, address, and signature. Households found to be ineligible shall be sent a Notice of Action form denying the household as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Applicant households that refuse to cooperate in completing the application process shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly refuse to take actions that are required to complete the application process. B. In cases where verification is incomplete, the local office shall provide the household with a statement of required verification on the state-prescribed notice form and offer to assist the household in obtaining the required verification. The office shall allow the household ten (10) calendar days to provide the missing verifications unless the household missed the first appointment. If the household misses the first appointment and the interview cannot otherwise be rescheduled until after the twentieth (20th) day but before the thirtieth (30th) day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the thirtieth (30th) day. A household can be found ineligible or eligible for the month of application and for the following month based on one application if sufficient information for such determination is available. The state-prescribed notice form shall reflect specific months of eligibility and ineligibility.	standardization of language; and removal of incorrect regulatory language	

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
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		ineligibility. C. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application must submit a new application.			
4.205.3	Program name update; inconsistent language	**4.205.3 Delays in Processing Beyond Thirty (30) Days** If the local office does not determine a household's eligibility and provide an opportunity to participate within thirty (30) calendar days following the date the application was filed, the office shall determine whether the delay was caused by failure to act on the part of the household or on the part of the local office. The following shall be used to determine causes of delay beyond thirty (30) calendar days in the application process: A. If a household has failed to complete a Food Assistance application form even though the local office offered to assist the client in its completion, the household shall be at fault. If the local office failed to offer assistance to the household, the local office is at fault. If the local office offered the household assistance in completing the application but the household failed to cooperate or failed to complete the application process, the local office shall document in the case record its attempt to assist the household. B. If a nonexempt household member failed to register for work even though the local office informed the household of the work requirements, the household shall be at fault unless paragraph D of this section applies. If the local office did not give the client at least ten (10) calendar days to supply information, the local office is at fault. C. If requested verification is missing even though the local office offered to provide assistance and a written notice of needed verification was provided and the household was allowed ten (10) calendar days to supply necessary	**4.205.3 Delays in Processing Beyond Thirty (30) Days** If the local office does not determine a household's eligibility and provide an opportunity to participate within thirty (30) calendar days following the date the application was filed, the office shall determine whether the delay was caused by failure to act on the part of the household or on the part of the local office. The following shall be used to determine causes of delay beyond thirty (30) calendar days in the application process: A. If a household has failed to complete a SNAP application form even though the local office offered to assist the client in its completion, the household shall be at fault. If the local office failed to assist the household, the local office is at fault. If the local office offered the household assistance in completing the application but the household failed to cooperate or failed to complete the application process, the local office shall document in the case record its attempt to assist the household. B. If a nonexempt household member failed to register for work even though the local office informed the household of the work requirements, the household shall be at fault unless paragraph D of this section applies. If the local office did not give the client at least ten (10) calendar days to supply information, the local office is at fault. C. If requested verification is missing even though the local office offered assistance and a written notice of needed verification was provided and the household was allowed ten (10) calendar days to supply necessary verification, the household shall be considered at fault unless paragraph D of this section applies. If the local office did not request necessary	Updating Food Assistance to SNAP; and removal of inconsistent language	

		verification, the household shall be considered at fault unless paragraph D of this section applies. If the local office did not request necessary verification through a written notice, or assist the client as required by these regulations, or give the client time to provide information, then the local office is at fault. D. If the household failed to appear for the first (1st) interview, failed to schedule a second (2nd) interview and/or requested to postpone the interview until after the 30th day following the date of application, the delay shall be the household's fault.	verification through a written notice, or assist the client as required by these regulations, or give the client time to provide information, then the local office is at fault. D. If the household failed to appear for the first (1st) interview, failed to schedule a second (2nd) interview and/or requested to postpone the interview until after the 30th day following the date of application, the delay shall be the household's fault.		
4.205.32	Program name update	**4.205.32 Delays Caused by the Food Assistance Office**	**4.205.32 Delays Caused by the Local Office**	Updating Food Assistance to SNAP in section title	
4.206	Program name update; non-standardized language; and non-standardized acronyms	**4.206 CATEGORIES OF ELIGIBILITY** A. Households applying for Food Assistance must be determined eligible using one of the following categories of eligibility: Basic Categorical Eligibility (BCE), Expanded Categorical Eligibility (ECE) or Standard Eligibility. B. Food Assistance households that are applying for or receiving benefits from other assistance programs in addition to Food Assistance are still required to meet the resource limits and follow the reporting and verification requirements of the other program. Requests for information and verification to determine eligibility for other programs shall not affect or delay the determination of Food Assistance eligibility. C. Eligibility 1. Basic Categorical Eligibility (BCE) a. Basic categorically eligible households are: 1) Households in which all members	**4.206 CATEGORIES OF ELIGIBILITY** A. Households applying for SNAP must be determined eligible using one of the following categories of eligibility: Basic Categorical Eligibility (BCE), Expanded Categorical Eligibility (ECE) or Standard Eligibility. B. SNAP households that are applying for or receiving benefits from other assistance programs in addition to SNAP are still required to meet the resource limits and follow the reporting and verification requirements of the other program. Requests for information and verification to determine eligibility for other programs shall not affect or delay the determination of SNAP eligibility. C. Eligibility 1. Basic Categorical Eligibility (BCE) a. Basic categorically eligible households are: 1) Households in which all members receive, or are authorized to receive, SSI, CW, Old Age Pension (OAP), Aid to the Needy Disabled (AND), Aid to the Blind (AB) or a	Updating Food Assistance to SNAP; standardizing language; and standardizing acronyms	

		receive, or are authorized to receive, Supplemental Security Income (SSI) or benefits from the Colorado Works Program, Old Age Pension (OAP), Aid to the Needy Disabled (AND), Aid to the Blind (AB) or a combination of these benefits. The Colorado Works, SSI, OAP, and/or AB program(s) need only to authorize benefits for participants in order for the household to be considered for basic categorical eligibility. Individuals who are authorized to receive a benefit from one or more of these programs, but who are not paid such benefits because the grant is less than a minimum benefit or the benefits are suspended or are being recouped, are still considered eligible under basic categorical eligibility rules. Households not receiving, or authorized to receive, Temporary Assistance for Needy Families (TANF) Title IV-A or SSI benefits, who are entitled to Medicaid only, shall not be considered SSI or Title IV-A participants. 2) A household in which at least one (1) member receives services from the Family Preservation Program. This determination must be documented in the case record. b. Households eligible under basic categorical eligibility have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the	combination of these benefits. The CW, SSI, OAP, and/or AB program(s) need only to authorize benefits for participants in the household to be considered for BCE. Individuals who are authorized to receive a benefit from one or more of these programs, but who are not paid such benefits because the grant is less than a minimum benefit or the benefits are suspended or are being recouped, are still considered eligible under BCE rules. Households not receiving, or authorized to receive, TANF, Title IV-A or SSI benefits, who are entitled to Medicaid only, shall not be considered SSI or Title IV-A participants. 2) A household in which at least one (1) member receives services from the Family Preservation Program. This determination must be documented in the case record. b. Households eligible under BCE have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors, if these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to SNAP. This includes: 1) Net income; 2) Gross income; 3) Resources; 4) Residency;		

		agency must collect and verify eligibility factors. If these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes: 1) Net income; 2) Gross income; 3) Resources; 4) Residency; 5) Social Security Number; 6) Sponsored non-citizen information. c. A household cannot be considered under basic categorical eligibility rules if, at the time of application: 1) Any member is disqualified for an Intentional Program Violation of the Food Assistance Program. 2) Any member has been convicted of a drug-related felony where Food Assistance benefits were used to purchase drugs. d. Households that are ineligible for Food Assistance benefits under basic categorical eligibility rules shall have their eligibility determined under expanded or standard eligibility rules. 2. Expanded Categorical Eligibility (ECE)	5) Social Security Number; 6) Sponsored non-citizen information. c. A household cannot be considered under BCE rules if, at the time of application: 1) Any member is disqualified for a SNAP IPV. 2) Any member has been convicted of a drug-related felony where SNAP benefits were used to purchase drugs. d. Households that are ineligible for SNAP benefits under BCE rules shall have their eligibility determined under ECE or SE rules. 2. Expanded Categorical Eligibility (ECE) a. ECE households are: 1) Households with a combined gross income at or below two hundred percent (200%) of the federal poverty level; and 2) Households who have been authorized to receive a non-cash Temporary Assistance to Needy Families/Maintenance of Effort (TANF/MOE) funded service designed to further TANF Purpose Four (4) by "encouraging the formation and maintenance of two- parent families." Language regarding the non-cash TANF/MOE funded program shall be provided on the application, recertification application, periodic report form, and/or the statement of facts. b. Households eligible under ECE have been deemed to have met the income and resource		

		a. Expanded categorical eligibility households are: 1) Households with a combined gross income at or below two hundred percent (200%) of the federal poverty level; and 2) Households who have been authorized to receive a non-cash Temporary Assistance to Needy Families/Maintenance of Effort (TANF/MOE) funded service designed to further TANF Purpose Four (4) by "encouraging the formation and maintenance of two- parent families." Language regarding the non-cash TANF/MOE funded program shall be provided on the application, recertification application, periodic report form, and/or the statement of facts. b. Households eligible under expanded categorical eligibility have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors. If these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes: 1) Net income; 2) Gross income; 3) Resources;	requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors, if these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to SNAP. This includes: 1) Net income; 2) Gross income; 3) Resources; 4) Residency; 5) Social Security Number; 6) Sponsored non-citizen information c. A household's eligibility cannot be determined using ECE rules if, at the time of application: 1) Any member is disqualified for a SNAP IPV. 2) Any member has been convicted of a drug-related felony where SNAP benefits were used to purchase drugs. d. Households that are ineligible for SNAP benefits under ECE rules shall have their eligibility determined under SE rules. 3. Standard Eligibility (SE) a. SE rules shall only be applied to the following households:		

		4) Residency; 5) Social Security Number; 6) Sponsored non-citizen information c. A household's eligibility cannot be determined using expanded categorical eligibility rules if, at the time of application: 1) Any member is disqualified for an Intentional Program Violation of the food assistance program. 2) Any member has been convicted of a drug-related felony where Food Assistance benefits were used to purchase drugs. d. Households that are ineligible for Food Assistance benefits under expanded categorical eligibility rules shall have their eligibility determined under standard eligibility rules. 3. Standard Eligibility (SE) a. Standard eligibility rules shall only be applied to the following households: 1) Households that include a member who is serving a disqualification for an IPV or a fraud conviction. 2) Households that include a member who has been convicted of a drug-related felony where Food Assistance benefits were used to purchase drugs.	1) Households that include a member who is serving a disqualification for an IPV or a fraud conviction. 2) Households that include a member who has been convicted of a drug related felony where SNAP benefits were used to purchase drugs. 3) Households that do not meet the criteria to be considered under BCE or ECE rules. b. Households having their eligibility reviewed under SE rules must meet the following criteria: 1) Households that include a member who is aged 60 and older or a person with a disability must have a combined net income, after all applicable deductions, at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408. 2) Households that do not include a member who is aged 60 and older or a person with a disability must have a combined gross income at or below one hundred thirty percent (130%) of the federal poverty level. After all applicable deductions, the household's net income must be at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408. 3) Households must also meet nonfinancial eligibility criteria set out in Section 4.300. c. Households, as defined in Section 4.304, that		

		3) Households that do not meet the criteria to be considered under basic or expanded categorical eligibility rules. b. Households having their eligibility reviewed under standard eligibility rules must meet the following criteria: 1) Households that include a member who is elderly or a person with a disability must have a combined net income, after all applicable deductions, at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408. 2) Households that do not include a member who is elderly or a person with a disability must have a combined gross income at or below one hundred thirty percent (130%) of the federal poverty level. After all applicable deductions, the household's net income must be at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408. 3) Households must also meet nonfinancial eligibility criteria set out in Section 4.300. c. Households, as defined in Section 4.304, that are found ineligible under standard eligibility rules shall be considered ineligible for participation in the Food Assistance Program. D. If the circumstances which allowed the household	are found ineligible under SE rules shall be considered ineligible for participation in SNAP. D. If the circumstances which allowed the household to meet the criteria to be considered under BCE or ECE rules change during the certification period or at the time of recertification or periodic report, the household's eligibility must be re-evaluated according to the appropriate category. If there is insufficient documentation to make an eligibility determination based on the new category of eligibility, the agency shall send the household a request for verification in accordance with Sections 4.604, Action on Reported Changes, and 4.604.1, Verification of Reported Changes. E. Substantial lottery or gambling winnings from an individual will disqualify the entire SNAP household from eligibility in the month the winnings are received. The next time such a household reapplies and is certified for SNAP after losing eligibility, the household would not be considered categorically eligible for the next eligible certification period. After receiving SNAP as a SE household, the SNAP household will be re-evaluated for categorical eligibility at the next eligible certification period.		

		to meet the criteria to be considered under basic or expanded categorical rules change during the certification period or at the time of recertification or periodic report, the household's eligibility must be re-evaluated according to the appropriate category. If there is insufficient documentation to make an eligibility determination based on the new category of eligibility, the agency shall send the household a request for verification in accordance with Sections 4.604, Action on Reported Changes, and 4.604.1, Verification of Reported Changes. E. Substantial lottery or gambling winnings from an individual will disqualify the entire Food Assistance household from eligibility in the month the winnings are received. The next time such a household reapplies and is certified for snap after losing eligibility, the household would not be considered categorically eligible for the next eligible certification period. After receiving snap as a standard eligibility household, the snap household will be reevaluated for categorical eligibility at the next eligible certification period.			
4.207.2(A)	Program name update	**4.207.2 Initial Month Allotment Prorating** A. A household's benefit level for the initial month of application shall be based on the day of the month it applies for benefits. Benefits for the initial month shall be prorated from the date of application to the end of the month. Applicant households consisting of residents of a public institution who apply jointly for SSI and Food Assistance prior to release from an institution will have their eligibility determined for the month in which the applicant household was released from the institution. The benefit level for the initial month of certification shall be based on the date of the	**4.207.2 Initial Month Allotment Prorating** A. The household benefit level for the initial month of application shall be based on the day of the month it applies for benefits. Benefits for the initial month shall be prorated from the date of application to the end of the month. Applicant households consisting of residents of a public institution who apply jointly for SSI and SNAP prior to release from an institution will have their eligibility determined for the month in which the applicant household was released from the institution. The benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution	Updating Food Assistance to SNAP	

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		month the household is released from the institution and the household shall receive benefits from the date of the household's release through the end of the month. Eligible households are entitled to a full month allotment for all months except an initial month of application.	and the household shall receive benefits from the date of the household's release through the end of the month. Eligible households are entitled to a full month allotment for all months except an initial month of application.		
4.207.3	Program name update; non-standardize acronyms; and non-standardized language	**4.207.3 Benefit Allotment** A. After eligibility has been established, the monthly Food Assistance benefit allotment will be determined. The state automated system will compute the household's allotment. The following formula shall be used to determine a household's benefit allotment. 1. Multiply the net monthly income by thirty percent (30%). 2. Round the product down to the next whole dollar if it ends in one (1) through ninety-nine (99) cents. 3. Subtract the result from the maximum benefit allowed for the appropriate household size, as shown in D below. B. If the calculation of benefits for an initial month yields an allotment of less than the federal minimum allotment referenced in 4.207.3, D, no benefits shall be issued to the household for the initial month. For eligible households that are entitled to no benefits in their initial month of application, but are entitled to benefits in subsequent months, the county department shall certify the household for a certification period beginning with the month of application. Except for households that are eligible under basic or expanded categorical eligibility, households with three or more members who are entitled to zero benefits shall have their Food Assistance application denied.	**4.207.3 Benefit Allotment** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section C here and including A and B.] A. After eligibility has been established, the monthly SNAP benefit allotment will be determined. The state automated system will compute the household's allotment. The following formula shall be used to determine a household's benefit allotment. 1. Multiply the net monthly income by thirty percent (30%). 2. Round the product down to the next whole dollar if it ends in one (1) through ninety-nine (99) cents. 3. Subtract the result from the maximum benefit allowed for the appropriate household size, as shown in D below. B. If the calculation of benefits for an initial month yields an allotment of less than the federal minimum allotment referenced in 4.207.3(D), no benefits shall be issued to the household for the initial month. For eligible households that are entitled to no benefits in their initial month of application, but are entitled to benefits in subsequent months, the local office shall certify the household for a certification period beginning with the month of application. Except for households that are eligible under BCE or ECE, households with three or more members who are entitled	Updating Food Assistance to SNAP; and standardization of acronyms and language	

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		This provision does not apply if zero benefits are due to the pro-ration requirements or due to the initial month's allotment being less than the federal minimum allotment referenced in 4.207.3,D. *** D. The Food Assistance maximum and minimum monthly benefit allotment tables will be adjusted as announced by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS)).	to zero benefits shall have their SNAP application denied. This provision does not apply if zero benefits are due to the pro-ration requirements or due to the initial month's allotment being less than the federal minimum allotment referenced in 4.207.3(D). *** D. The SNAP maximum and minimum monthly benefit allotment tables will be adjusted as announced by the USDA, FNS.		
4.208	Program name update; and non-standardized language	**4.208 CERTIFICATION PERIODS** A. Certification periods shall conform to calendar months. Households shall be assigned the longest certification period possible based on the predictability of the household's anticipated income and other circumstances. At the expiration of each certification period, entitlement to Food Assistance benefits ends. Further eligibility shall only be established on a newly completed application for redetermination. Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility. The State-prescribed Notice of Action form provided to the applicant household shall indicate the period of certification if the household is determined to be eligible for benefits. *** C. A delinquent PA redetermination shall not delay the Food Assistance recertification beyond the date of the household's Food Assistance certification period ending date.	**4.208 CERTIFICATION PERIODS** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section B here and including A and C.] A. Certification periods shall conform to calendar months. Households shall be assigned the longest certification period possible based on the predictability of the household's anticipated income and other circumstances. At the expiration of each certification period, entitlement to SNAP benefits ends. Further eligibility shall only be established on a newly completed application for recertification. Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility. The State-prescribed Notice of Action form provided to the applicant household shall indicate the period of certification if the household is determined to be eligible for benefits. *** C. A delinquent PA recertification shall not delay the SNAP recertification beyond the date of the household's SNAP certification period ending date.	Updating Food Assistance to SNAP; and standardizing of language	
4.208.1(A)(1)	Non-standardized	**4.208.1 Certification Period Guidelines [Rev. eff. 4/1/16]**	**4.208.1 Certification Period Guidelines [Rev. eff. 4/1/16]**	Standardizing language	

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	language	Households will be assigned a six (6) month or twenty-four (24) month certification period as follows: A. Twenty-Four (24) Month Certification Period 1. A twenty-four month certification period shall be assigned to households that contain only members who are elderly and/or have a disability and have no earned income, as defined in Section 4.403 at the time of certification. ***	[PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section B here and including A.] Households will be assigned a six (6) month, or twenty-four (24) month certification period as follows: A. Twenty-Four (24) Month Certification Period 1. A twenty-four (24) month certification period shall be assigned to households that contain only members who are aged 60 and older and/or have a disability and have no earned income, as defined in Section 4.403 at the time of certification. ***		
4.208.2	Program name update; repetitive language; and non-standardized acronyms	**4.208.2 Classification of Households as Public Assistance (PA) or Non-Public Assistance (Non-PA)** A. Public Assistance (PA) Households Public Assistance households are those Food Assistance households that contain only persons who receive the following: 1. Colorado Works Basic Cash Assistance grant or any type of TANF payment or services under the Colorado Works Program. The household will be considered a PA household if one (1) member received cash assistance or services, but the entire household benefits from the receipt of this cash or services, such as when one (1) individual in a household is authorized for family preservation; or, 2. A State Grant (OAP-A, OAP-B, AND/AB); or, 3. Colorado Supplement to the SSI Grant B. Non-public assistance (Non-PA) Households All other households are classified as non-public	**4.208.2 Classification of Households as PA or Non-PA Households** A. PA Households PA households are those SNAP households that contain only persons who receive the following: 1. CW Basic Cash Assistance grant or any type of TANF payment or services under the CW Program. The household will be considered a PA household if one (1) member received cash assistance or services, but the entire household benefits from the receipt of this cash or services, such as when one (1) individual in a household is authorized for family preservation; or, 2. A State Grant (OAP-A, OAP-B, AND/AB); or, 3. Colorado Supplement to the SSI Grant B. Non-PA Households All other households are classified as Non-PA households. County General Assistance (GA), SSI with no Colorado	Updating Food Assistance to SNAP; removing repetitive language; and standardization of acronyms	

		assistance households. Any household that contains at least one member who does not receive a Public Assistance benefit, as listed in Subsection A, above, will be classified as Non-PA. County General Assistance (GA), SSI with no Colorado Supplemental payment, and medical-only programs are not considered Public Assistance benefits.	Supplemental payment, and medical-only programs are not considered PA benefits.		
4.209(B)	Program name update	**4.209 RECERTIFICATION PROCESS REQUIREMENTS** *** B. A household shall receive the notice of expiration not less than thirty (30) calendar days and not more than sixty (60) calendar days prior to expiration of its current certification period. If mailed, the notice shall be sent for the same timely receipt, allowing two (2) extra days for delivery delay. All households that file on or before the fifteenth (15th) of the last month of their certification period will have timely reapplied. Notices which are mailed must specify a date that allows at least two (2) days mail time and still gives the household fifteen (15) calendar days to respond. Households that submit an application for recertification by the date specified on their notice of expiration shall be considered to have timely reapplied to prevent an interruption in Food Assistance benefits. ***	**4.209 RECERTIFICATION PROCESS REQUIREMENTS** [PUBLISHER NOTE NOT FOR PUBLICATION: We omitted sections A, C, and D here, including section B.] *** B. A household shall receive the notice of expiration not less than thirty (30) calendar days and not more than sixty (60) calendar days prior to expiration of its current certification period. If mailed, the notice shall be sent for the same timely receipt, allowing two (2) extra days for delivery delay. All households that file on or before the fifteenth (15th) of the last month of their certification period will have timely reapplied. Notices which are mailed must specify a date that allows at least two (2) days mail time and still gives the household fifteen (15) calendar days to respond. Households that submit an application for recertification by the date specified on their notice of expiration shall be considered to have timely reapplied to prevent an interruption in SNAP benefits. ***	Updating Food Assistance to SNAP	
4.209.1	Renumbering due to reorganization	**4.209.1 Recertification Processing Standards and Timeframes** A. Timely Applications for Recertifications 1. Households that file an application for recertification on or before the fifteenth (15th) of the last month of their certification period will have	**4.209.1 Recertification Processing Standards and Timeframes** A. Timely Applications for Recertification 1.Households that file an application for recertification on or before the fifteenth (15th) of the last month of their certification period will have timely reapplied. A	Renumbering section due to separation of sections for clarity	

		timely reapplied. A timely application for recertification shall be approved or denied prior to the end of the household's current certification period and shall provide eligible households with an opportunity to obtain their benefits by their normal issuance day of the month following the expiration of their certification period. 2. Households which have timely reapplied, but because of local office error are not determined eligible in sufficient time to permit normal issuance to the household in the following month, shall receive an immediate opportunity to participate upon being determined eligible. Such households shall be entitled to participate and receive a full month's allotment for the month following the expiration of the certification period. B. Applications for Recertification That are not Timely 1. Households which file an application for recertification anytime between the sixteenth (16th) and the last day of the last month of the certification period shall not be considered as having timely reapplied. For households that have not timely reapplied, but have been found eligible, benefits may be delayed past the household's normal issuance day. The household shall be notified of approval or denial on a notice of action form within thirty (30) calendar days of when the application for recertification was submitted to the local office. 2. If a household files an application form within thirty (30) calendar days after the end of the certification period, the application shall be considered as an application for recertification; however, the application shall be processed as an initial application in accordance with Section 4.201, C, and shall have the allotment for the	timely application for recertification shall be approved or denied prior to the end of the household's current certification period and shall provide eligible households with an opportunity to obtain their benefits by their normal issuance day of the month following the expiration of their certification period. 2. Households which have reapplied timely, but because of local office error are not determined eligible in sufficient time to permit normal issuance to the household in the following month, shall receive an immediate opportunity to participate upon being determined eligible. Such households shall be entitled to participate and receive a full month's allotment for the month following the expiration of the certification period. B. Untimely Applications for Recertification 1. Households which file an application for recertification anytime between the sixteenth (16th) and the last day of the last month of the certification period shall not be considered as having timely reapplied. For households that have not timely reapplied, but have been found eligible, benefits may be delayed past the household's normal issuance day. The household shall be notified of approval or denial on a notice of action form within thirty (30) calendar days of when the application for recertification was submitted to the local office. 2. If a household files an application form within thirty (30) calendar days after the end of the certification period, the application shall be considered as an application for recertification; however, the application shall be processed as an initial application in accordance with Section 4.201, C, and shall have the allotment for the initial month of application prorated from the day of application to the end of the month, unless the local office was at fault for the delay. For		

		initial month of application prorated from the day of application to the end of the month, unless the local office was at fault for the delay. For applications received within thirty (30) calendar days after the expiration of the certification period, verification requirements shall remain consistent with the verification requirements for applications which were filed prior to the expiration of the certification period as outlined at Section 4.502, B. C. If an application for recertification is denied for a failure of the household to take a required action, the local office shall reopen the case if the required action is taken by the end of the certification period and provide benefits for the first month of the new certification period. If the household takes the required action after the end of the certification period, but within the next thirty (30) calendar days, the local office shall reopen the case and provide benefits retroactive to the date that the action was taken by the household. D. A household shall lose its right to uninterrupted benefits if one of the following occurs after the fifteenth (15th) day of the last month of the household's certification period: 1. A household fails to timely submit an application for recertification in accordance with Section 4.209.1, A; or, 2. A household timely files an application for recertification but fails to appear for a scheduled interview; or, 3. A household fails to submit all necessary verification by the date specified on the request for such verification. The request for verification	applications received within thirty (30) calendar days after the expiration of the certification period, verification requirements shall remain consistent with the verification requirements for applications which were filed prior to the expiration of the certification period as outlined at Section 4.502, B. C. Late Applications for Recertification 1. If a household files an application form within thirty (30) calendar days after the end of the certification period, the application shall be considered as an application for recertification; however, the application shall be processed as an initial application in accordance with Section 4.201, C, and shall have the allotment for the initial month of application prorated from the day of application to the end of the month, unless the local office was at fault for the delay. For applications received within thirty (30) calendar days after the expiration of the certification period, verification requirements shall remain consistent with the verification requirements for applications which were filed prior to the expiration of the certification period as outlined at Section 4.502, B. D. If an application for recertification is denied for a failure of the household to take a required action, the local office shall reopen the case if the required action is taken by the end of the certification period and provide benefits for the first month of the new certification period. If the household takes the required action after the end of the certification period, but within the next thirty (30) calendar days, the local office shall reopen the case and provide benefits retroactive to the date that the action was taken by the household. E. A household shall lose its right to uninterrupted benefits if one of the following occurs after the fifteenth (15th) day of the last month of the household's certification period:		

		shall allow the household no less than ten (10) days to provide the verification to prevent an interruption in benefits. If the household is eligible after providing such verification(s), the county/district shall provide benefits within thirty (30) calendar days after the application was filed. If the local office is unable to provide benefits within thirty (30) calendar days due to the time allowed for providing verification, the office shall provide benefits within five (5) calendar days after the household supplies the missing verification. Households that refuse to cooperate in providing required information or taking the required actions to determine eligibility shall be denied.	1. A household fails to timely apply for recertification in accordance with Section 4.209.1, A; or, 2. A household timely files an application for recertification but fails to appear for a scheduled interview; or, 3. A household fails to submit all necessary verification by the date specified on the request for such verification. The request for verification shall allow the household no less than ten (10) days to provide the verification to prevent an interruption in benefits. If the household is eligible after providing such verification(s), the county/district shall provide benefits within thirty (30) calendar days after the application was filed. If the local office is unable to provide benefits within thirty (30) calendar days due to the time allowed for providing verification, the office shall provide benefits within five (5) calendar days after the household supplies the missing verification. Households that refuse to cooperate in providing required information or taking the required actions to determine eligibility shall be denied.		
4.210	Non-standardized language and acronyms; and language not in alignment with federal regulation	**4.210 PERIODIC REPORTING REQUIREMENTS** A. A household consisting solely of members who are persons with a disability and/or members who are elderly with no earned income can be certified for twenty-four (24) months. For households certified for twenty-four months, no interview during the certification period shall be required. Households with a twenty-four month certification period are considered simplified reporting households and are required to report changes at the twelve (12) month interim reporting period and at redetermination.	**4.210 PERIODIC REPORTING REQUIREMENTS** A. A household consisting solely of members who are persons with a disability and/or members who are aged 60 years and older with no earned income can be certified for twenty-four (24) months. For households certified for twenty-four months, no interview during the certification period shall be required. Households with a twenty-four (24) month certification period are required to report changes at the twelve (12) month interim reporting period. B. A PRF shall be mailed to the household during the eleventh (11th) month of the certification period for the	Standardization of language and acronyms; removal of incorrect information; and addition of language to align with Federal regulation	

		B. A periodic report form shall be mailed to the household during the eleventh (11th) month of the certification period for the household to report all changes. If the change report form is not submitted to the local office by the fifth (5TH) day of the twelfth (12th) month of the certification period, a reminder notice shall be sent advising the household that it has ten (10) calendar days plus one (1) calendar day for mailing to return the completed report. Households participating in the Address Confidentiality Program shall be afforded five (5) days mailing time. If the household has not submitted the completed report by extended due date on the reminder notice, the Food Assistance case shall be terminated effective the first day of the thirteenth (13th) month and a termination letter shall be mailed to the household. If the household submits a periodic report form or a change report from for any other public assistance program within thirty (30) calendar days following the effective date of the termination notice and provides all required verification, benefits shall be reinstated without proration. C. The local office must act on all changes reported by those households filing a periodic report. If the household files a complete report that results in reduction or termination of benefits, the agency shall send an adequate notice. The adequate notice must be mailed at least two (2) business days prior to the date that benefits are normally received by the household. If the household fails to provide sufficient information or verification regarding a deductible expense, the county local office shall not terminate the household but shall instead determine the household's benefits without allowing the deduction.	household to report all changes. If the PRF is not submitted to the local office by the fifth (5th) day of the twelfth (12th) month of the certification period, a reminder notice shall be sent advising the household that it has ten (10) calendar days plus one calendar day for mailing to return the completed report. Households participating in ACP shall be afforded five (5) days mailing time. If the household has not submitted the completed form by the extended due date on the reminder notice, the SNAP case shall be terminated effective the first day of the thirteenth (13th) month and a termination letter shall be mailed to the household. If the household submits a PRF or reports changes for any other PA program within thirty (30) calendar days following the effective date of the termination notice and provides all required verification, benefits shall be issued without proration from the beginning of the thirteenth (13th) month. C. The local office must act on all changes reported by those households filing a PRF. If the household files a complete PRF that results in a reduction or termination of benefits, the agency shall send an adequate notice. The adequate notice must be mailed at least two business days prior to the date that benefits are normally received by the household. If the household fails to provide sufficient information or verification regarding a deductible expense, the county local office shall not terminate the household but shall instead determine the household's benefits without allowing the deduction. D. The household shall report changes in circumstances to the following items on the periodic report: 1. A change of more than $100 in the amount of unearned income. 2. A change in the source of income, including starting a job. 3. All changes in household composition, such as the		

			addition or loss of a household member. 4. Changes in home address and any resulting changes in shelter costs. 5. Acquisition of a licensed vehicle that is not fully excludable. 6. A change in liquid resources, such as cash, stocks, bonds, and bank accounts that reach or exceed the resource limits for elderly or disabled households and for all other households, unless these assets are excluded. 7.Changes in the legal obligation to pay child support. 8. Whenever a member of the household wins substantial lottery or gambling winnings. E. If allowable medical expenses are reported and verified, the change should be acted upon for the remainder of the certification period but only if the change results in an increase in benefits.		
4.300	Non-standard language and acronyms	**4.300 NON-FINANCIAL ELIGIBILITY CRITERIA** Non-financial criteria for eligibility shall apply to all households (including those receiving public assistance) and shall be considered prospectively for the issuance month based on the eligibility worker's anticipation of circumstances at the time of application and when changes are made known to the local office. Non-financial criteria shall consist of: ***	**4.300 NON-FINANCIAL ELIGIBILITY CRITERIA** Non-financial criteria for eligibility shall apply to all households (including those receiving PA) and shall be considered prospectively for the issuance month based on the eligibility technician's anticipation of circumstances at the time of application and when changes are made known to the local office. Non-financial criteria shall consist of: ***	Standardization of language and acronyms	
4.302	Program name update and non-standard terminology	**4.302 SOCIAL SECURITY NUMBER REQUIREMENT** A. General Requirements 1. As a condition of Food Assistance eligibility, each member of a household participating in or	**4.302 SOCIAL SECURITY NUMBER REQUIREMENT** A. General Requirements 1. As a condition of SNAP eligibility, each member of a household participating in or applying for participation	Updating Food Assistance to SNAP; standardizing language and acronyms	

		applying for participation in the Food Assistance Program shall provide a Social Security Number (SSN), or proof that an application for a Social Security Number has been submitted to the Social Security Administration. The local office shall not require any household member to submit a Social Security card or other official documents as a means of verifying a Social Security Number. Household members who provide a SSN shall not be denied benefits for failure or inability to present a Social Security card or other official documentation. If individuals have more than one Social Security Number, all numbers shall be required. 2. The local office shall explain that a member is not required to provide a Social Security Number (SSN), but the failure to provide one shall result in disqualification of the individual(s) for whom the number is not provided. The member who does not provide a SSN shall still be required to provide other eligibility information such as income and resources that will affect eligibility of other members. The local office shall advise individuals that any SSN that is provided voluntarily will be used in the same manner as SSNs of eligible household members. The SSNs will be matched against federal and state databases to verify information. SSNs will be used for the initial application matching for duplicate participation. 3. If the household member required to provide a SSN either refuses to supply his/her SSN at the time of application or fails to provide the local office with a form or letter as proof of application for a SSN without good cause, he or she shall be ineligible to participate in the Food Assistance Program. The disqualification applies to the	in SNAP shall provide a Social Security Number (SSN), or proof that an application for an SSN has been submitted to the SSA. The local office shall not require any household member to submit a Social Security card or other official documents as a means of verifying an SSN. Household members who provide an SSN shall not be denied benefits for failure or inability to present a Social Security card or other official documentation. If individuals have more than one SSN, all numbers shall be required. 2. The local office shall explain that a member is not required to provide an SSN, but the failure to provide one shall result in disqualification of the individual(s) for whom the number is not provided. The member who does not provide an SSN shall still be required to provide other eligibility information such as income and resources that will affect eligibility of other members. The local office shall advise individuals that any SSN that is provided voluntarily will be used in the same manner as SSNs of eligible household members. The SSNs will be matched against federal and state databases to verify information. SSNs will be used for the initial application matching for duplicate participation. 3. If the household member required to provide an SSN either refuses to supply his/her SSN at the time of application or fails to provide the local office with a form or letter as proof of application for an SSN without good cause, he or she shall be ineligible to participate in SNAP. The disqualification applies to the individual(s) who refused to cooperate with the application process to obtain the SSN and not the entire household. The household member(s) disqualified may become eligible by providing the local office with an SSN, or by providing verification that an application for an SSN has been submitted to the		

		individual(s) who refused to cooperate with the application process to obtain the SSN and not the entire household. The household member(s) disqualified may become eligible by providing the local office with a Social Security Number, or by providing verification that an application for a SSN has been submitted to the SSA. B. Individuals and Newborns Without a Social Security Number 1. Those household members who do not have the required Social Security Number(s) shall obtain proof of application for a SSN prior to being certified as a member of the household, unless the member is a newborn child. The applicant/recipient shall be instructed to obtain from the SSA proof that he or she has completed an application for a Social Security Number and that the SSA has received that application. A specifically addressed letter from the SSA verifying that application for a SSN has been made is also acceptable proof of application for a Social Security Number. The applicant/recipient shall be instructed to return the completed form as soon as possible to the eligibility worker. A copy of the form shall be maintained in the case record. a. If the household is unable to provide proof of application for an SSN for a newborn, the household shall provide the SSN or proof of application at its next recertification within six (6) months following the baby's birth. The local office shall determine if the good cause provisions are applicable at the recertification. b. If a participating household's benefits are reduced or terminated within the certification	SSA. B. Individuals and Newborns Without an SSN 1. Those household members who do not have the required SSN shall obtain proof of application for a SSN prior to being certified as a member of the household, unless the member is a newborn child. The applicant/recipient shall be instructed to obtain from the SSA proof that he or she has completed an application for an SSN and that the SSA has received that application. A specifically addressed letter from the SSA verifying that application for an SSN has been made is also acceptable proof of application for an SSN. The applicant/recipient shall be instructed to return the completed form as soon as possible to the eligibility technician. A copy of the form shall be maintained in the case record. a. If the household is unable to provide proof of application for an SSN for a newborn, the household shall provide the SSN or proof of application at its next recertification within six (6) months following the baby's birth. The local office shall determine if the good cause provisions are applicable at the recertification. b. If a participating household's benefits are reduced or terminated within the certification period because one or more of its members are required to provide an SSN is disqualified for failure to meet the SSN requirement, the local office shall issue a Notice of Adverse Action form. The notice shall inform the household that the non-cooperating individual(s) without an SSN is being disqualified and show the current eligibility and benefit level of the remaining members, as well as a statement that the disqualified member(s) may end disqualification by providing an SSN.		

		period because one or more of its members are required to provide a SSN is disqualified for failure to meet the SSN requirement, the local office shall issue a Notice of Adverse Action form. The notice shall inform the household that the non-cooperating individual(s) without a SSN is being disqualified, and show the current eligibility and benefit level of the remaining members, as well as a statement that the disqualified member(s) may end disqualification by providing a Social Security number. 2. Household members who provide the eligibility worker with a copy of a form or a letter from SSA, or who demonstrate good cause for not providing the proof from SSA (e.g., difficulty in obtaining birth certificates) shall be allowed to continue to participate in the Food Assistance Program as follows: a. When an SSA form or letter is received by the local office or good cause for not providing proof is demonstrated, the household member in need of a SSN shall be allowed to participate so long as the household is not at fault for not providing proof of application with the SSA. b. If the required SSNs are provided by the household, or it is demonstrated that good cause exists for not having applied for a SSN, the household member(s) without a SSN(s) shall remain eligible to participate. If the local office determines that the household is at fault for not having proof of application for the SSN(s), the member(s) without proof of application shall be disqualified and income shall be handled in accordance with Section 4.411.1.	2. Household members who provide the eligibility technician with a copy of a form or a letter from SSA, or who demonstrate good cause for not providing the proof from SSA (e.g., difficulty in obtaining birth certificates) shall be allowed to continue to participate in SNAP as follows: a. When an SSA form or letter is received by the local office or good cause for not providing proof is demonstrated, the household member in need of an SSN shall be allowed to participate so long as the household is not at fault for not providing proof of application with the SSA. b. If the required SSNs are provided by the household, or it is demonstrated that good cause exists for not having applied for an SSN, the household member(s) without an SSN(s) shall remain eligible to participate. If the local office determines that the household is at fault for not having proof of application for the SSN(s), the member(s) without proof of application shall be disqualified and income shall be handled in accordance with Section 4.411.1. C. Determining Good Cause for Not Providing an SSN 1. In determining good cause, the local office shall consider information received from the household member and/or the SSA. Documentary evidence or collateral information that the household has applied for the number or made every effort to supply the SSA with the necessary information shall be considered good cause. If the household member can show good cause why an application has not been completed in a timely manner, that person shall be allowed to participate until good cause is no longer applicable or until the household's next recertification. If the household member(s) applying for a SSN has been		

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		C. Determining Good Cause for Not Providing a Social Security Number 1. In determining good cause, the local office shall consider information received from the household member and/or the Social Security Administration. Documentary evidence or collateral information that the household has applied for the number or made every effort to supply the Social Security Administration with the necessary information shall be considered good cause. If the household member can show good cause why an application has not been completed in a timely manner, that person shall be allowed to participate until good cause is no longer applicable or until the household's next recertification. If the household member(s) applying for a Social Security Number has been unable to obtain the documents required by Social Security Administration, the eligibility worker should assist the individual(s) in obtaining these documents. 2. If an individual refuses to provide a Social Security Number based on a sincere religious objection, all members of the household may participate in the Program, if otherwise eligible. In these situations, the local office may check with the Social Security Administration to see if the household members already have SSNs, and may use any existing SSNs for verification and matching purposes without further notice to the household.	unable to obtain the documents required by the SSA, the eligibility worker should assist the individual(s) in obtaining these documents. 2. If an individual refuses to provide an SSN based on a sincere religious objection, all members of the household may participate in SNAP, if otherwise eligible. In these situations, the local office may check with the SSA to see if the household members already have SSNs and may use any existing SSNs for verification and matching purposes without further notice to the household.		
4.303(B)	Program name update; and incorrect grammar	**4.303 RESIDENCY REQUIREMENT** *** B. Individuals may not participate in more than one household in any one (1) month unless they are a resident of a shelter for battered women and children,	**4.303 RESIDENCY REQUIREMENTS** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, C, D, E, and F here; including section B.] ***	Updating Food Assistance to SNAP; and correcting grammar	

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		nor may a household participate in more than one (1) county or district in any month unless all household members are residents of a shelter for battered women and children. Households on Indian reservations participating in the Commodity Food Distribution Program for a particular period shall not be allowed to participate in the Food Assistance Program during the same period. Participation shall be limited to participation in the Commodity Program or the Food Assistance Program. ***	B. Individuals may not participate in more than one household in the same month unless they are a resident of a shelter for battered women and children, nor may a household participate in more than one (1) county or district in any month unless all household members are residents of a shelter for battered women and children. Households on Indian reservations participating in the Commodity Food Distribution Program for a particular period shall not be allowed to participate in SNAP during the same period. Participation shall be limited to participation in the Commodity Food Distribution Program or SNAP. ***		
4.304(A)	Program name update	**4.304 DETERMINING HOUSEHOLD COMPOSITION** A. All applications shall be submitted on behalf of a household. Some groups of individuals living together are required to be included in the same Food Assistance household in accordance with Section 4.304.1. ***	**4.304 DETERMINING HOUSEHOLD COMPOSITION** A. All applications shall be submitted on behalf of a household. Some groups of individuals living together are required to be included in the same SNAP household in accordance with Section 4.304.1. ***	Updating Food Assistance to SNAP	
4.304.1(C)	Program name update; and incorrect grammar	**4.304.1 Persons Ineligible for Separate Household Status** *** C. A spouse of a member of a household shall not be a separate household. 1. Spouses refer to: a. Persons who are defined as married to each other under state law. Same-sex spouses must be considered married if the marriage is recognized by the state in which the marriage was celebrated; or, b. Persons who are living together, are free to marry, and are representing themselves as	**4.304.1 Persons Ineligible for Separate Household Status** *** C. A spouse of a member of a household shall not be a separate household. 1. Spouses refer to: a. Persons who are defined as married to each other under state law. Same-sex spouses must be considered married if the marriage is recognized by the state in which the marriage was celebrated; or, b. Persons who are living together, are free to marry, and are representing themselves as husband and wife to relatives, friends, neighbors,	Updating Food Assistance to SNAP; and correcting grammar	

		husband and wife to relatives, friends, neighbors and trades people. 2. Spouses who are legally separated are eligible for separate household status, unless paragraph A of this section applies. 3. For purposes of the Food Assistance Program, partners in a same-sex marriage are not considered spouses, unless married in a state that recognizes the marriage. If, in a same-sex relationship the spouses are not considered married as specified in C, 1, of this section, and there is a child living in the home but only one (1) of the parents is the biological parent to the child, the non-biological parent does not have to be considered part of the household if the non-biological parent is not the natural parent or adoptive parent to the child and purchases and prepares meals separately from the rest of the household.	and trades people. 2. Spouses who are legally separated are eligible for separate household status unless paragraph A of this section applies. 3. For purposes of SNAP, partners in a same-sex marriage are not considered spouses, unless married in a state that recognizes the marriage. If, in a same-sex relationship the spouses are not considered married as specified in C, 1, of this section, and there is a child living in the home but only one (1) of the parents is the biological parent to the child, the non-biological parent does not have to be considered part of the household if the non-biological parent is not the natural parent or adoptive parent to the child and purchases and prepares meals separately from the rest of the household.		
4.304.2	Program name update	**4.304.2 Shared Living Arrangements** A. In instances when two (2) households request Food Assistance for the same child, the child shall be considered a member of the household that provides the majority of the child's monthly meals. If only one (1) household is applying for or requesting Food Assistance benefits for a child, then determining a majority of meals shall not be a factor when determining household composition. B. If two (2) households request assistance for the same child and both households provide an equal number of meals to the child, and the households cannot agree on who should receive Food Assistance benefits for the child for the duration of the certification period, then the household that applies for Food	**4.304.2 Shared Living Arrangements** A. In instances when two (2) households request SNAP for the same child, the child shall be considered a member of the household that provides the majority of the child's monthly meals. If only one (1) household is applying for or requesting SNAP benefits for a child, then determining a majority of meals shall not be a factor when determining household composition. B. If two (2) households request assistance for the same child and both households provide an equal number of meals to the child, and the households cannot agree on who should receive SNAP benefits for the child for the duration of the certification period, then the household that applies for SNAP benefits for the child first shall be able to	Updating Food Assistance to SNAP	

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		Assistance benefits for the child first shall be able to receive benefits for the child. C. In instances when an applicant or ongoing household requests benefits for a child who is already receiving Food Assistance in another household, the household who provides the child with the majority of meals shall be eligible to receive benefits for the child.	receive benefits for the child. C. In instances when an applicant or ongoing household requests benefits for a child who is already receiving SNAP in another household, the household who provides the child with the majority of meals shall be eligible to receive benefits for the child.		
4.304.3(D)	Program name update	**4.304.3 Non-Household Members** *** D. Boarders Individuals residing with others and paying reasonable compensation to others for lodging and meals. Boarders are not eligible to participate in the Food Assistance Program as a separate household. 1. Boarders shall not be considered members of a participant or applicant household, unless the household requests that they be considered as members. If the boarder is not considered a household member, the income and resources of the boarder shall not be considered available to the household. However, the amount of payment that a boarder gives to a household for lodging and meals shall be treated as self-employment income to the household. If the household requests that the boarder be considered a household member, the boarder's income and resources shall be considered available to the household. 2. Individuals for whom foster care payments are intended are to be treated as boarders. If the household requests to include those individuals as household members, the foster care payments received by the household will be included as unearned income.	**4.304.3 Non-Household Members** *** D. Boarders Individuals residing with others and paying reasonable compensation to others for lodging and meals. Boarders are not eligible to participate in SNAP as a separate household. 1. Boarders shall not be considered members of a participant or applicant household, unless the household requests that they be considered as members. If the boarder is not considered a household member, the income and resources of the boarder shall not be considered available to the household. However, the amount of payment that a boarder gives to a household for lodging and meals shall be treated as self-employment income to the household. If the household requests that the boarder be considered a household member, the boarder's income and resources shall be considered available to the household. 2. Individuals for whom foster care payments are intended are to be treated as boarders. If the household requests to include those individuals as household members, the foster care payments received by the household will be included as unearned income. 3.Boarder status shall not be granted to the following	Updating Food Assistance to SNAP	

		3. Boarder status shall not be granted to the following persons: a. Children under eighteen (18) years of age under the parental control of a member of the household. The parental control provision does not apply to foster care children under eighteen (18) years of age. b. Children twenty-one (21) years of age and younger living with their natural, adoptive, or stepparent. c. The spouse of a member of the household. d. A person paying less than a reasonable monthly payment for meals. Such a person will be considered a member of the household which provides the meals and lodging. When the boarder's payments for room are distinguishable from his/her payments for meals, only the amount paid for meals will be considered in determining if reasonable compensation is being paid for meals. Persons who only work in exchange for meals or make payments to a third party on the household's behalf in exchange for meals would not be classified as boarders. A reasonable monthly payment shall be either of the following: 1. Boarders, whose board arrangement is for more than two (2) meals per day, shall pay an amount which equals or exceeds the maximum Food Assistance allotment for the number of persons in the boarder household. 2. Boarders, whose board arrangement is	persons: a. Children under eighteen (18) years of age under the parental control of a member of the household. The parental control provision does not apply to foster care children under eighteen (18) years of age. b. Children twenty-one (21) years of age and younger living with their natural, adoptive, or stepparent. c. The spouse of a member of the household. d. A person paying less than a reasonable monthly payment for meals. Such a person will be considered a member of the household which provides the meals and lodging. When the boarder's payments for room are distinguishable from his/her payments for meals, only the amount paid for meals will be considered in determining if reasonable compensation is being paid for meals. Persons who only work in exchange for meals or make payments to a third party on the household's behalf in exchange for meals would not be classified as boarders. A reasonable monthly payment shall be either of the following: 1. Boarders, whose board arrangement is for more than two (2) meals per day, shall pay an amount which equals or exceeds the maximum SNAP allotment for the number of persons in the boarder household. 2. Boarders, whose board arrangement is for two (2) meals or fewer per day, shall pay an amount which equals or exceeds two-thirds of the maximum allotment for the number of		

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		for two (2) meals or fewer per day, shall pay an amount which equals or exceeds two-thirds of the maximum allotment for the number of persons in the boarder household.	persons in the boarder household.		
4.304.4	Program name update, incorrect numbering; and non-standardized acronyms and language	**4.304.4 Persons Disqualified or Ineligible to Participate in the Food Assistance Program** A. Disqualified individuals shall not be allowed to participate in the Program as separate households. "Disqualified individuals" are individuals disqualified for: 1. Intentional Program violation/fraud; 2. Failure to either provide or obtain a Social Security Number; 3. Being an ineligible non-citizen as defined in Section 4.305.12; 4. Failure to comply with work requirements; 5. Being an able-bodied adult without dependents (ABAWD) who has been disqualified after receiving three (3) months of Food Assistance benefits within a period of thirty-six (36) months; or, 6. Being a person with a felony conviction who is not in compliance with the terms of their sentence and was convicted as an adult for conduct that occurred after February 7, 2014 for any of the following crimes: a. Aggravated sexual abuse under Section 2241 of Title 18, United States Code; b. Murder under Section 1111 of Title 18, United States Code;	**4.304.4 Persons Disqualified or Ineligible to Participate in SNAP** A. Disqualified individuals shall not be allowed to participate in SNAP as separate households. "Disqualified individuals" are individuals disqualified for: 1. IPV/fraud; 2. Failure to either provide or obtain an SSN; 3. Being an ineligible non-citizen; 4. Failure to comply with work requirements; 5. Being an ABAWD who has been disqualified after receiving three (3) months of SNAP benefits within a period of thirty-six (36) months; or, 6. Being a person with a felony conviction who is not in compliance with the terms of their sentence and was convicted as an adult for conduct that occurred after February 7, 2014 for any of the following crimes: a. Aggravated sexual abuse under Section 2241 of Title 18, United States Code; b. Murder under Section 1111 of Title 18, United States Code; c. An offense under Chapter 110 of Title 18, United States Code; d. A federal or state offense involving sexual assault, as defined in Section 40002(a) of the	Updating Food Assistance to SNAP; correcting numbering; and standardizing acronyms and language	

		c. An offense under Chapter 110 of Title 18, United States Code; d. A federal or state offense involving sexual assault, as defined in Section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or e. An offense under state law determined by the attorney general to be substantially similar to an offense described in clause (a), (b), or (c). B. Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony shall not be considered eligible household members. If an individual is suspected of being a fleeing felon, either by their own admission or based on a report from law enforcement, the fleeing status must be verified in order to determine if the client is eligible for Food Assistance benefits. The following four part test must be used to determine if the individual would be considered a fleeing felon for Food Assistance purposes: 1. There is an outstanding felony warrant for the individual by a Federal, State, or local law enforcement agency and the underlying cause for the warrant is for committing, or attempting to commit, a crime that is a felony under the law of the place from which the individual is fleeing or is a high misdemeanor under the law of New Jersey; and 2. The individual is aware of, or should reasonably have been able to expect that, the	Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or e. An offense under state law determined by the attorney general to be substantially similar to an offense described in clause (a), (b), or (c). B. Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony shall not be considered eligible household members. If an individual is suspected of being a fleeing felon, either by their own admission or based on a report from law enforcement, the fleeing status must be verified to determine if the client is eligible for SNAP. The following four-part test must be used to determine if the individual would be considered a fleeing felon for SNAP: 1. There is an outstanding felony warrant for the individual by a Federal, State, or local law enforcement agency and the underlying cause for the warrant is for committing, or attempting to commit, a crime that is a felony under the law of the place from which the individual is fleeing or is a high misdemeanor under the law of New Jersey; and 2. The individual is aware of, or should reasonably have been able to expect that, the felony warrant has already or would have been issued; and 3. The individual has taken some action to avoid being arrested or jailed; and 4. The Federal, State, or local law enforcement agency is actively seeking the individual as provided in 4.304.4(C)(1). C. Individuals who are determined to be a parole or		

		felony warrant has already or would have been issued; and 3. The individual has taken some action to avoid being arrested or jailed; and 4. The Federal, State, or local law enforcement agency is actively seeking the individual as provided in 4.304.4(C)(1). C. Individuals who are determined to be a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, an impartial party, as designated by the agency, must determine that the individual violated a condition of his or her probation or parole imposed under Federal or State law, and that Federal, State, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole as outlined below. 1. For the purposes of this provision, actively seeking is defined as follows: a. A Federal, State, or local law enforcement agency informs the local Food Assistance office that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within twenty (20) days of submitting a request for information about the individual to the local office; b. A Federal, State, or local law enforcement agency presents a felony arrest warrant as provided in 4.304.4(B)(1); or c. A Federal, State, or local law enforcement agency states that it intends to enforce an	probation violator shall not be an eligible household member. To be considered a probation or parole violator, an impartial party, as designated by the agency, must determine that the individual violated a condition of his or her probation or parole imposed under Federal or State law, and that Federal, State, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole as outlined below. 1. For the purposes of this provision, actively seeking is defined as follows: a. A Federal, State, or local law enforcement agency informs the local office that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within twenty (20) days of submitting a request for information about the individual to the local office; b. A Federal, State, or local law enforcement agency presents a felony arrest warrant as provided in 4.304.4(B)(1); or C. A Federal, State, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within thirty (30) days of the date of a request from a local office about a specific outstanding felony warrant or probation or parole violation. D. Residents of commercial and noncommercial boarding houses and institutions are not eligible to participate in the Program unless exempt in Section 4.304.41. 1. The household of the proprietor of a boarding house may participate in the Program separate and apart from the residents of the boarding house if that household meets all eligibility requirements for Program participation.		

		outstanding felony warrant or to arrest an individual for a probation or parole violation within thirty (30) days of the date of a request from a local Food Assistance office about a specific outstanding felony warrant or probation or parole violation. E. Residents of commercial and noncommercial boarding houses and institutions are not eligible to participate in the Program unless exempt in Section 4.304.41. 1. The household of the proprietor of a boarding house may participate in the Program separate and apart from the residents of the boarding house if that household meets all of the eligibility requirements for Program participation. 2. An institution is a place which has not been authorized by FNS to accept Food Assistance benefits but which provides its residents with the majority of their daily meals as a part of its normal services. Residents of a halfway house for persons with a disability are considered to be residents of an institution if they are provided meals as part of their regular service. 3. Students who purchase meal plans through an institution of higher education shall be considered residents of an institution if the meal plan provides the student more than fifty percent (50%) of his/her meals, unless the individual is otherwise exempt from the institution provisions as provided in Section 4.304.41.	2. An institution is a place which has not been authorized by FNS to accept SNAP benefits, but which provides its residents with more than fifty percent (50%) of their daily meals as a part of its normal services. Residents of a halfway house for persons with a disability are residents of an institution if they are provided meals as part of their regular service. 3. Students who purchase meal plans through an institution of higher education shall be considered residents of an institution if the meal plan provides the student more than fifty percent (50%) of his/her meals, unless the individual is otherwise exempt from the institution provisions as provided in Section 4.304.41.		
4.304.41(A)	Non-standardized language	**4.304.41 EXEMPTIONS FROM THE BOARDING HOUSE AND INSTITUTION PROHIBITIONS** A. An individual who is a resident of federally subsidized housing for elderly persons under Section 202 of the Housing Act of 1959 or Section 236 of the	**4.304.41 EXEMPTIONS FROM THE BOARDING HOUSE AND INSTITUTION PROHIBITIONS** A. An individual who is a resident of federally subsidized housing for persons aged 60 and older under Section 202 of the Housing Act of 1959 or Section 236 of the National	Standardizing language	

		National Housing Act. A person who is elderly is defined as a member of a household who is sixty (60) years of age or older.	Housing Act.		
4.305	Program name update; non-standardized language and acronyms;	**4.305 CITIZENSHIP AND NON-CITIZENSHIP STATUS** Citizens of the United States are potentially eligible for participation in the Food Assistance Program, provided they meet other eligibility requirements. Most non-citizens must be in a qualified alien status and meet one (1) additional condition to be eligible for participation in the Program. Some classes of non-citizens are eligible for participation without having to meet an additional condition. A. Citizens and Non-Citizen Nationals 1. The following individuals are considered United States citizens: a. A person born in the United States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands or the Mariana Islands, b. A person who has become a citizen through the naturalization process, c. A person born outside of the United States to at least one (1) U.S. citizen parent, d. A child under eighteen (18) years of age adopted or born outside the U.S. with a parent who is a U. S. citizen, who has been admitted as a lawful permanent resident, and is in the legal and physical custody of a parent who is a U.S. citizen. 2. Although not considered U.S. citizens, non-citizen nationals enjoy the same potential eligibility for Food Assistance benefits as U.S.	**4.305 CITIZENSHIP AND NON-CITIZENSHIP STATUS** Citizens of the United States are potentially eligible for participation in SNAP, provided they meet other eligibility requirements. Most non-citizens must be in a qualified non-citizen status and meet one (1) additional condition to be eligible for participation in the Program. Some classes of non-citizens are eligible for participation without having to meet an additional condition. A. Citizens and Non-Citizen Nationals 1. The following individuals are considered United States citizens: a. A person born in the United States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands or the Mariana Islands, b. A person who has become a citizen through the naturalization process, c. A person born outside of the United States to at least one (1) U.S. citizen parent, d. A child under eighteen (18) years of age adopted or born outside the U.S. with a parent who is a U. S. citizen, who has been admitted as a lawful permanent resident, and is in the legal and physical custody of a parent who is a U.S. citizen. 2. Although not considered U.S. citizens, non-citizen nationals have the same potential eligibility for SNAP as U.S. citizens. Non-citizen nationals are those individuals born in an outlying possession of the	Updating Food Assistance to SNAP; standardization of terminology and acronyms	

		citizens. Non-citizen nationals are those individuals born in an outlying possession of the United States (either American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. B. Non- Citizens Non-citizens in a qualified alien status and certain groups of non-citizens who are not in a qualified alien status are eligible for participation under certain conditions. Some non-citizens in a qualified alien status must also meet an additional condition, as outlined in Section 4.305, B, 3, to be eligible for participation. Each of the following categories of eligible non-citizen status stands alone for the purposes of determining eligibility. If eligibility expires under one (1) eligible status, the local office shall determine if eligibility exists under another status. 1. Non-Citizens in a Qualified Alien Status The following classes of non-citizens, based on the immigration status of an individual, are defined as a qualified status. The non-citizen shall be qualified as listed below at the time the non-citizen applies for, receives, or attempts to receive Food Assistance benefits. A non-citizen under the age of eighteen (18) that is in a qualified alien status, as outlined in paragraphs A and B of this subsection, shall be eligible for participation in the program without having to meet an additional requirement. Once the non-citizen turns eighteen (18), the eligibility of the non-citizen shall be reviewed. a. A non-citizen in one (1) of the following	United States (either American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. B. Non-Citizens Non-citizens in a qualified status and certain groups of non-citizens who are not in a qualified alien status are eligible for participation under certain conditions. Some non-citizens in a qualified alien status must also meet an additional condition, as outlined in Section 4.305, B, 3, to be eligible for participation. Each of the following categories of eligible non-citizen status stands alone for the purposes of determining eligibility. If eligibility expires under one (1) eligible status, the local office shall determine if eligibility exists under another status. 1. Non-Citizens in a Qualified Status The following classes of non-citizens, based on the immigration status of an individual, are defined as a qualified status. The non-citizen shall be qualified as listed below at the time the non-citizen applies for, receives, or attempts to receive SNAP benefits. A non-citizen under the age of eighteen (18) that is in a qualified alien status, as outlined in paragraphs A and B of this subsection, shall be eligible for participation in the program without having to meet an additional requirement. Once the non-citizen turns eighteen (18), the eligibility of the non-citizen shall be reviewed. A non-citizen in one (1) of the following qualified alien statuses is not required to meet an additional condition to be eligible for participation in the Program and is eligible for participation indefinitely from the date the non-citizen obtains status as a qualified alien or enters the U.S. in a qualifying status.		

		qualified alien statuses is not required to meet an additional condition to be eligible for participation in the Program and is eligible for participation indefinitely from the date the non-citizen obtains status as a qualified alien or enters the U.S. in a qualifying status. 1) A refugee who is admitted to the United States under Section 207 of the Immigration and Nationality Act (INA), which is codified throughout Title 8 of the United States Code. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203. 2) Victims of trafficking, under the Trafficking Victims Protection Act of 2000, as amended, certified by the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR). This person shall have a certification letter. a) ORR issues a letter of eligibility for adults and children under the age of eighteen (18). A trafficked minor shall have either an interim assistance letter or an eligibility letter from ORR to be eligible for Food Assistance. The local office shall accept these letters in place of Department of Homeland Security documentation. b) Certification letters and eligibility	1) A refugee who is admitted to the United States under Section 207 of the Immigration and Nationality Act (INA), which is codified throughout Title 8 of the United States Code. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection. 2) Victims of trafficking, under the Trafficking Victims Protection Act of 2000, as amended, certified by the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR). This person shall have a certification letter. a) ORR issues a letter of eligibility for adults and children under the age of eighteen (18). A trafficked minor shall have either an interim assistance letter or an eligibility letter from ORR to be eligible for SNAP. The local office shall accept these letters in place of Department of Homeland Security documentation. b) Certification letters and eligibility letters do not expire; however, interim assistance letters that are provided to children are valid for ninety (90) calendar days from the effective date of the letter. ORR may extend the interim eligibility an additional thirty (30) calendar days. Children with an interim assistance letter can only receive SNAP benefits until the expiration of the period established in the interim letter. c) The local office can verify the status of these individuals through SAVE.		

		letters do not expire; however, interim assistance letters that are provided to children are valid for ninety (90) calendar days from the effective date of the letter. ORR may extend the interim eligibility an additional thirty (30) calendar days. Children with an interim assistance letter can only receive Food Assistance benefits until the expiration of the time period established in the interim letter. c) The local office can verify the status of these individuals through SAVE. 3) Asylees granted asylum under Section 208 of the INA, which is codified throughout Title 8 of the United States Code. The U.S. Code does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository. 4) A non-citizen whose deportation is being withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under Section 241(b)(3) of the INA. 5) Cuban or Haitian entrants under Section 501(e) of the Refugee Education Assistance Act of 1980 (retroactive to August 22, 1996). 6) Retroactive to August 22, 1996, Amerasians under Section 584 of the Foreign Operations, Export Financing and Related	3) Asylees granted asylum under Section 208 of the INA, which is codified throughout Title 8 of the United States Code. The U.S. Code does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection. 4) A non-citizen whose deportation is being withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under Section 241(b)(3) of the INA. 5) Cuban or Haitian entrants under Section 501(e) of the Refugee Education Assistance Act of 1980 (retroactive to August 22, 1996). 6) Retroactive to August 22, 1996, Amerasians under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988. 7) Iraqi and Afghan Special Immigrants (SIV) Special immigrant status under Section 101(A)(27) of the INA may be granted to Iraqi and Afghan nationals who have worked on behalf of the U.S. Government in Iraq or Afghanistan. The Department of Defense Appropriations Act of 2010 (DODAA), P.L. 111-118, Section 8120 enacted on December 19, 2009, provides that SIVs are eligible for all benefits to the same extent and the same period as refugees. b. Non-citizens in one (1) of the following qualified alien statuses are required to meet an additional condition (see Section 4.305, B, 3) to be eligible for participation in the Program. 1) Lawfully Admitted for Permanent Residence (LPRs) under the Immigration and Nationality Act		

		Programs Appropriations Act of 1988. 7) Iraqi and Afghan Special Immigrants (SIV) Special immigrant status under Section 101(A)(27) of the INA may be granted to Iraqi and Afghan nationals who have worked on behalf of the U.S. Government in Iraq or Afghanistan. The Department Of Defense Appropriations Act of 2010 (DODAA), P.L. 111-118, Section 8120 enacted on December 19, 2009, provides that SIVs are eligible for all benefits to the same extent and the same period of time as refugees. b. Non-citizens in one (1) of the following qualified alien statuses are required to meet an additional condition (see Section 4.305, B, 3) to be eligible for participation in the Program. 1) Lawfully Admitted for Permanent Residence (LPRs) under the Immigration and Nationality Act (INA). LPRs are holders of Green Cards. If a non-citizen is in a qualified alien status as outlined in paragraph a. of this section and later adjusts to LPR status, the non-citizen does not have to meet an additional condition to be eligible for participation and shall remain eligible based on the previous qualified alien status. 2) Paroled into the United States under Section 212(d)(5) of the INA for at least one (1) year. 3) Granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980.	(INA). LPRs are holders of Green Cards. If a non-citizen is in a qualified alien status as outlined in paragraph a. of this section and later adjusts to LPR status, the non-citizen does not have to meet an additional condition to be eligible for participation and shall remain eligible based on the previous qualified alien status. 2) Paroled into the United States under Section 212(d)(5) of the INA for at least one (1) year. 3) Granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980. 4) A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a family member with whom the non-citizen resides, such as by a spouse, a parent, or a member of the spouse or parent's family. This qualified alien status also extends to a non-citizen whose child has been battered or subjected to battery or cruelty or to a non-citizen child whose parent has been battered. To establish eligibility, the local office shall determine that the non-citizen has satisfied three (3) requirements. Spouses and children who have applied for or have been granted protection under the Violence Against Women Act will meet these requirements. a) The battered non-citizen(s) shall show that he/he has an approved or pending petition which makes a prima facie case for immigration status in one (1) of the following categories: i) Form I-130, petition for alien relative, filed by their spouse or the child's parent;		

		4) A non-citizen who has been battered or subjected to extreme cruelty in the U.S. by a family member with whom the non-citizen resides, such as by a spouse, a parent, or a member of the spouse or parent's family. This qualified alien status also extends to a non-citizen whose child has been battered or subjected to battery or cruelty or to a non-citizen child whose parent has been battered. To establish eligibility, the local office shall determine that the non-citizen has satisfied three (3) requirements. Spouses and children who have applied for or have been granted protection under the Violence Against Women Act will meet these requirements. a) The battered non-citizen(s) shall show that he/he has an approved or pending petition which makes a prima facie case for immigration status in one (1) of the following categories: i) Form I-130, petition for alien relative, filed by their spouse or the child's parent; ii) Form I-130 petition as a widow(er) of a U.S. citizen; iii) Self-petition under the Violence Against Women Act (including those filed by a parent on behalf of an abused child); or, iv) An application for cancellation of removal or suspension of deportation filed as a victim of domestic violence.	ii) Form I-130 petition as a widow(er) of a U.S. citizen; iii) Self-petition under the Violence Against Women Act (including those filed by a parent on behalf of an abused child); or, iv) An application for cancellation of removal or suspension of deportation filed as a victim of domestic violence. b) There is substantial connection between the battery or extreme cruelty and the need for SNAP benefits; and c) The battered non-citizen, child, or parent no longer resides in the same home as the abuser. 2. Eligible Non-Citizens Not in a Qualified Status: The following classes of non-citizens are not defined as having a qualified status but are potentially eligible for participation in SNAP without having to meet an additional condition (see Section 4.305, B, 3). All other classes of non-citizens that are not in a qualified status are not eligible for participation SNAP. a. Certain American Indians Born Abroad American Indians born abroad in Canada living in the U.S. under Section 289 of the INA or non-citizen members of a federally recognized Indian tribe under Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(B)(E) who are recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as		

		b) There is substantial connection between the battery or extreme cruelty and the need for Food Assistance benefits; and c) The battered non-citizen, child, or parent no longer resides in the same home as the abuser. 2. Eligible Non-Citizens Not in a Qualified Alien Status: The following classes of non-citizens are not defined as having a qualified alien status, but are potentially eligible for participation in the Food Assistance Program without having to meet an additional condition (see Section 4.305, B, 3). All other classes of non-citizens that are not in a qualified alien status are not eligible for participation in the Program. a. Certain American Indians Born Abroad American Indians born abroad in Canada living in the U.S. under Section 289 of the INA or non-citizen members of a federally-recognized Indian tribe under Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(B)(E) who are recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians. This provision was intended to cover Native Americans who are entitled to cross the U.S. border between Canada and/or Mexico. It was intended to include, among others, the St. Regis Band of the Mohawk in New York State, the MicMac in Maine, the Abanaki in	Indians. This provision was intended to cover Native Americans who are entitled to cross the U.S. border between Canada and/or Mexico. It was intended to include but is not limited to the St. Regis Band of the Mohawk in New York State, the Micmac (also known as Mi'kmaq) in Maine, the Abenaki in Vermont, and the Kickapoo in Texas. b. Hmong or Highland Laotian Tribal Members An individual lawfully residing in the U.S. who was a member of a Hmong or Highland Laotian tribe that rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era (August 5, 1964 – May 7, 1975). This category includes A: 1) Spouse or surviving spouse of a deceased Hmong or Highland Laotian Tribal Member who is not remarried; and/or, 2) Unmarried dependent child of Hmong or Highland Laotian Tribal Member who is: under the age of eighteen (18) or a full-time student under the age of twenty-two (22); 3) Unmarried child under the age of eighteen (18) or a full-time student under the age of twenty-two (22) of a deceased Hmong or Highland Laotian Tribal Member, provided the child was dependent upon him or her at the time of his or her death; or, 4) Unmarried child with disabilities age eighteen (18) or older if the child with disabilities had a disability and was dependent on the person prior to the child's eighteenth (18th) birthday.		

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		Vermont, and the Kickapoo in Texas. b. Hmong or Highland Laotian Tribal Members An individual lawfully residing in the U.S. who was a member of a Hmong or Highland Laotian tribe that rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era (August 5, 1964 – May 7, 1975). This category includes A: 1) Spouse or surviving spouse of a deceased Hmong or Highland Laotian Tribal Member who is not remarried; and/or, 2) Unmarried dependent child of Hmong or Highland Laotian Tribal Member who is: under the age of eighteen (18) or a full-time student under the age of twenty-two (22); 3) Unmarried child under the age of eighteen (18) or a full-time student under the age of twenty-two (22) of a deceased Hmong or Highland Laotian Tribal Member, provided the child was dependent upon him or her at the time of his or her death; or, 4) Unmarried child with disabilities age eighteen (18) or older if the child with disabilities had a disability and was dependent on the person prior to the child's eighteenth (18th) birthday.A) For purposes of this paragraph, “child” means the legally adopted or biological child of the person described in this	A) For purposes of this paragraph, “child” means the legally adopted or biological child of the person described in this section as a Hmong or Highland Laotian Tribal Member. 3. Additional Conditions Non-citizens in a qualified status as outlined in subsection 4.305, B, 1, are required to meet one additional condition to be eligible for participation in the Program. At the time the non-citizen applies for SNAP, he or she need only satisfy one of the following conditions to be eligible: a. Five (5) Years of Residence The non-citizen has lived in the U.S. in a qualified alien status for five (5) years. The five (5) year waiting period begins on the date the non-citizen obtains status as a qualified alien or enters the U.S. in a qualifying status. b. Forty (40) Qualifying Work Quarters A person shall have satisfied this additional condition if he or she is lawfully admitted for permanent residence while already possessing credit for forty (40) qualifying work quarters as defined under Title II of the Social Security Act. In some cases, an applicant may have work from employment that is not covered by Title II of the Social Security Act, but which is countable toward the forty (40) quarters test, and there are also cases in which SSA records do not show current year’s earnings. Such quarters are still countable for the forty (40) quarter test, but the individual non-citizen shall be responsible for providing evidence needed to verify the quarters.		

		section as a Hmong or Highland Laotian Tribal Member. 3. Additional Conditions Non-citizens in a qualified alien status as outlined in subsection 4.305, B, 1, are required to meet one additional condition in order to be eligible for participation in the Program. At the time the non-citizen applies for Food Assistance, he or she need only satisfy one of the following conditions to be eligible for Food Assistance: a. Five (5) Years of Residence The non-citizen has lived in the U.S. in a qualified alien status for five (5) years. The five (5) year waiting period begins on the date the non-citizen obtains status as a qualified alien or enters the U.S. in a qualifying status. b. Forty (40) Qualifying Work Quarters A person shall have satisfied this additional condition if he or she is lawfully admitted for permanent residence while already possessing credit for forty (40) qualifying work quarters as defined under Title II of the Social Security Act. In some cases, an applicant may have work from employment that is not covered by Title II of the Social Security Act, but which is countable toward the forty (40) quarters test, and there are also cases in which SSA records do not show current year's earnings. Such quarters are still countable for the forty (40) quarter test, but the individual non-citizen shall be responsible for providing evidence needed to verify the quarters.	1) The sum of work quarters can include: a) Quarters the non-citizen worked; b) Quarters credited from the work of a parent of such a non-citizen while the non-citizen was under eighteen (18), which includes quarters worked before the non-citizen was born or adopted; or c) Quarters credited from the work of the non-citizen's spouse. Quarters are only creditable to the non-citizen for work performed by his or her spouse if the couple is still legally married, or if the spouse becomes deceased while married to the non-citizen, and the work being credited to the non-citizen was performed after the marriage began. If a couple divorces prior to determination of SNAP eligibility, a spouse may not get credit for quarters of their spouse. However, if the local office determines eligibility of a non-citizen based on the quarters of the spouse, and then the couple divorces, the non-citizen's eligibility continues until the next re-certification. At that time, the local office shall determine the non-citizen's eligibility without crediting the non-citizen with the former spouse's quarters of coverage. 2) The sum of work quarters cannot include: a) Quarters in which not enough income was earned to qualify, or, b) Quarters earned after December 31,		

		1) The sum of work quarters can include: a) Quarters the non-citizen worked; b) Quarters credited from the work of a parent of such a non-citizen while the non-citizen was under eighteen (18), which includes quarters worked before the non-citizen was born or adopted; or c) Quarters credited from the work of the non-citizen's spouse. Quarters are only creditable to the non-citizen for work performed by his or her spouse if the couple is still legally married, or if the spouse becomes deceased while married to the non-citizen, and the work being credited to the non-citizen was performed after the marriage began. If a couple divorces prior to determination of Food Assistance eligibility, a spouse may not get credit for quarters of their spouse. However, if the local office determines eligibility of a non-citizen based on the quarters of the spouse, and then the couple divorces, the non-citizen's eligibility continues until the next re-certification. At that time, the local office shall determine the non-citizen's eligibility without crediting the non-citizen with the former spouse's quarters of coverage. 2) The sum of work quarters cannot include:	1996, cannot be counted if the non-citizen, during the quarter, received SNAP or any other federal means-tested public benefits, such as Medicaid, SSI, TANF, or state Children's Health Insurance Program. c. Children Under Eighteen (18) A non-citizen under eighteen (18) years of age in a qualified alien status who lawfully resides in the U.S. When the non-citizen turns eighteen (18), non-citizen eligibility shall be reviewed. d. Blind or Person with Disabilities A non-citizen who is blind or a person with a disability if the non-citizen is receiving benefits or assistance for their condition regardless of entry date. e. Born on or before August 22, 1931 who lawfully resided in the U.S. on August 22, 1996. f. Military Connection 1) Qualified aliens with a military connection, including an individual who is lawfully residing in a state and is on active duty, other than training, in the military, excluding national guard; or, 2) An honorably discharged veteran, as defined in Section 101 of Title 38, U.S.C, whose discharge is not because of immigration status, who fulfills the minimum active-duty service requirements. This includes an individual who died in active military duty, naval or air service. This provision extends to the spouse, un-remarried surviving spouse, and unmarried		

		a) Quarters in which not enough income was earned to qualify, or, b) Quarters earned after December 31, 1996, cannot be counted if the non-citizen , during the quarter, received Food Assistance or any other federal means-tested public benefits, such as Medicaid, SSI, TANF, or state Children's Health Insurance Program. c. Children Under Eighteen (18) A non-citizen under eighteen (18) years of age in a qualified alien status who lawfully resides in the U.S. When the non-citizen turns eighteen (18), non-citizen eligibility shall be reviewed. d. Blind or Person with Disabilities A non-citizen who is blind or a person with a disability if the non-citizen is receiving benefits or assistance for their condition regardless of entry date. e. Elderly born on or before August 22, 1931 who lawfully resided in the U.S. on August 22, 1996. f. Military Connection 1) Qualified aliens with a military connection, including an individual who is lawfully residing in a state and is on active duty, other than training, in the military, excluding national guard; or, 2) An honorably discharged veteran, as	dependent children. A discharge "under honorable conditions," which is not the same as an honorable discharge, does not meet this requirement. 3) The definition of "veteran" shall also include: a. An individual who served before July 1, 1946, in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts; or, b. An individual who is on active duty (other than active duty for training) in the Armed Forces of the United States, or the spouse of such a person; or, c. The spouse of a veteran who served at least twenty-four (24) months in the Armed Forces. This includes the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. Copies of the federal laws are available for inspection; or d. An unmarried dependent child of a veteran who is under the age of eighteen (18) or, if a full-time student, under the age of twenty- two (22); or, e. Unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried child with disabilities age eighteen (18) or older if the child with		

		defined in Section 101 of Title 38, U.S.C, whose discharge is not because of immigration status, who fulfills the minimum active-duty service requirements. This includes an individual who died in active military duty, naval or air service. This provision extends to the spouse, un-remarried surviving spouse, and unmarried dependent children. A discharge “under honorable conditions,” which is not the same as an honorable discharge, does not meet this requirement. 3) The definition of “veteran” shall also include: a. An individual who served before July 1, 1946, in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts; or, b. An individual who is on active duty (other than active duty for training) in the Armed Forces of the United States, or the spouse of such a person; or, c. The spouse of a veteran who served at least twenty-four (24) months in the Armed Forces. This includes the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. Copies of the federal laws are available for inspection during normal working hours by	disabilities was disabled and dependent upon the deceased veteran prior to the child's eighteenth (18th) birthday. 1. For purposes of this provision, “child” means the legally adopted or biological child of the veteran.		

		contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203, or state publications depository; or, d. An unmarried dependent child of a veteran who is under the age of eighteen (18) or, if a full-time student, under the age of twenty-two (22); or, e. Unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried child with disabilities age eighteen (18) or older if the child with disabilities was disabled and dependent upon the deceased veteran prior to the child's eighteenth (18th) birthday. 1. For purposes of this provision, “child” means the legally adopted or biological child of the veteran.			
4.305.1	Program name update; and redundant language	**4.305.1 Non-Citizens Ineligible for Participation in the Program** The following non-citizens are not eligible to participate in the Food Assistance Program as a member of any household. A. Non-citizens who are lawfully present in the U.S. but not in a qualified status, such as students and H-1B Visa workers;	**4.305.1 Non-Citizens Ineligible for Participation in the Program** The following non-citizens are not eligible to participate in SNAP as a member of any household. A. Non-citizens who are lawfully present in the U.S. but not in a qualified status, such as students and H-1B Visa workers; B. Undocumented non-citizens (e.g., individuals who	Updating Food Assistance to SNAP; and removal of redundant language	

		B. Undocumented non-citizens (e.g., individuals who entered the country as temporary residents and overstayed their visas or who entered without a visa) are not eligible for Food Assistance benefits; C. Non-citizen visitors; D. Tourists; E. Diplomats; F. Students who enter the U.S. temporarily with no intention of abandoning their residence in a foreign country; G. Individuals granted temporary protection status (TPS), unless in some other qualifying alien status; H. Citizens of nations under Compact of Free Association agreements (Palau, Micronesia, and the Marshall Islands) who have been admitted under those agreements are not qualified aliens. These individuals may otherwise reside, work, and study in the U.S.; and, I. Individuals with U Visas, including minor children under the age of eighteen (18), are ineligible for Food Assistance as they have temporary status and are not considered qualified aliens. However, if the individual adjusts to qualified alien status, such as LPR or battered immigrant status, then the individual's non-citizen eligibility shall be reviewed under the new status.	entered the country as temporary residents and overstayed their visas or who entered without a visa); C. Non-citizen visitors; D. Tourists; E. Diplomats; F. Students who enter the U.S. temporarily with no intention of abandoning their residence in a foreign country; G. Individuals granted temporary protection status (TPS), unless in some other qualifying alien status; H. Citizens of nations under Compact of Free Association agreements (Palau, Micronesia, and the Marshall Islands) who have been admitted under those agreements are not qualified aliens. These individuals may otherwise reside, work, and study in the U.S.; and, I. Individuals with U Visas, including minor children under the age of eighteen (18), are ineligible as they have temporary status and are not considered qualified non-citizens. However, if the individual adjusts to qualified alien status, such as LPR or battered immigrant status, then the individual's non-citizen eligibility shall be reviewed under the new status.		
4.305.2	Program name update	**4.305.2 Households Containing a Sponsored Non-Citizen Member** *** D. Calculating Sponsor Income 1. The total gross income and resources of a	**4.305.2 Households Containing a Sponsored Non-Citizen Member** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, F, G, and H here; including D and E.] ***	Updating Food Assistance to SNAP	

		sponsor and sponsor's spouse shall be considered as unearned income and resources of a sponsored non-citizen for a period until the person's citizenship is obtained; or until the non-citizen has worked or can receive credit for forty (40) work quarters under Title II of the Social Security Act; or the sponsor dies. The spouse's income and resources shall be counted even if the sponsor and spouse were married after the signing of the agreement. 2. The monthly income of the sponsor and the sponsor's spouse to be considered toward the non-citizen shall be the total monthly earned and unearned income of the sponsor and spouse at the time the household containing the sponsored non-citizen member applies for or is recertified for Program participation and shall be calculated as follows: a. Reduced by an amount equal to twenty percent (20%) of the earned income of the sponsor and the sponsor's spouse; and, b. An amount equal to the Food Assistance Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes; and, c. If a sponsored non-citizen can demonstrate to the local office's satisfaction that his or her sponsor is the sponsor of other non-citizens, the local office shall divide the deemed income and resources of the sponsor and the sponsor's spouse by the	D. Calculating Sponsor Income 1. The total gross income and resources of a sponsor and sponsor's spouse shall be considered as unearned income and resources of a sponsored non-citizen for a period until the person's citizenship is obtained; or until the non-citizen has worked or can receive credit for forty (40) work quarters under Title II of the Social Security Act; or the sponsor dies. The spouse's income and resources shall be counted even if the sponsor and spouse were married after the signing of the agreement. 2. The monthly income of the sponsor and the sponsor's spouse to be considered toward the non-citizen shall be the total monthly earned and unearned income of the sponsor and spouse at the time the household containing the sponsored non-citizen member applies for or is recertified for Program participation and shall be calculated as follows: a. Reduced by an amount equal to twenty percent (20%) of the earned income of the sponsor and the sponsor's spouse; and, b. An amount equal to the SNAP monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes; and, c. If a sponsored non-citizen can demonstrate to the local office's satisfaction that his or her sponsor is the sponsor of other non-citizens, the local office shall divide the deemed income and resources of the sponsor and the sponsor's spouse by the number of such sponsored non-		

		number of such sponsored non-citizens. 3. If the sponsored non-citizen has already reported gross income information on his/her sponsor in compliance with the sponsored non-citizen rules of another state assistance program, and the local office is aware of the amounts that income amount shall be used for Food Assistance deeming purposes. However, the local office shall limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the non-citizen. The only reduction will be twenty percent (20%) earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse and an amount equal to the Food Assistance Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes. 4. Actual money paid to the non-citizen by the sponsor or the sponsor's spouse shall not be considered as income to the non-citizen unless the amount paid exceeds the amount already considered as income as above. Only the portion that actually exceeds the income already considered shall be added to that income. 5. If the non-citizen changes sponsors during the certification period, a change shall be processed to consider the new sponsor's income and resources toward the non-citizen as soon as possible after the information is verified. The previous sponsor's income and resources shall be used until such determination; however, should any present sponsor become deceased, that sponsor's income and resources shall not be	citizens. 3. If the sponsored non-citizen has already reported gross income information on his/her sponsor in compliance with the sponsored non-citizen rules of another state assistance program, and the local office is aware of the amounts that income amount shall be used for SNAP deeming purposes. However, the local office shall limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the non-citizen. The only reduction will be twenty percent (20%) earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse and an amount equal to the SNAP monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes. 4. Actual money paid to the non-citizen by the sponsor or the sponsor's spouse shall not be considered as income to the non-citizen unless the amount paid exceeds the amount already considered as income as above. Only the portion that exceeds the income already considered shall be added to that income. 5. If the non-citizen changes sponsors during the certification period, a change shall be processed to consider the new sponsor's income and resources toward the non-citizen as soon as possible after the information is verified. The previous sponsor's income and resources shall be used until such determination; however, should any present sponsor become deceased, that sponsor's income and resources shall not be attributed to the non-citizen. 6. Total resources of the sponsor and the sponsor's spouse shall be considered as resources to the non-		

		attributed to the non-citizen. 6. Total resources of the sponsor and the sponsor's spouse shall be considered as resources to the non-citizen reduced by one thousand five hundred dollars ($1,500). E. The counting of a sponsor's income and resource provisions do not apply to a non-citizen who is: 1. A member of his or her sponsor's Food Assistance household; 2. Sponsored by an organization or group as opposed to an individual; 3. Not required to have a sponsor under the Immigration and Nationality Act (INA), such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant; 4. A non-citizen who is considered as an "indigent" non-citizen; An indigent non-citizen is a non-citizen who has been determined to be unable to obtain food and shelter which totals to an amount exceeding one hundred thirty percent (130%) of the federal poverty level. A non-citizen who is receiving in-kind benefits that exceed the gross income level for the household size shall not be considered indigent. The non- citizen's own income plus any cash, food, housing, or other assistance provided by other individual's, including the sponsor will be counted in making this determination. For purposes of this provision, the sum of the eligible sponsored non-citizen's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance	citizen reduced by one thousand five hundred dollars ($1,500). E. The counting of a sponsor's income and resource provisions do not apply to a non-citizen who is: 1. A member of his or her sponsor's SNAP household; 2. Sponsored by an organization or group as opposed to an individual; 3. Not required to have a sponsor under the Immigration and Nationality Act (INA), such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant; 4. A non-citizen who is considered as an "indigent" non-citizen; An indigent non-citizen is a non-citizen who has been determined to be unable to obtain food and shelter which totals to an amount exceeding one hundred thirty percent (130%) of the federal poverty level. A non-citizen who is receiving in-kind benefits that exceed the gross income level for the household size shall not be considered indigent. The non- citizen's own income plus any cash, food, housing, or other assistance provided by other individual's, including the sponsor will be counted in making this determination. For purposes of this provision, the sum of the eligible sponsored non-citizen's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance from the sponsor and others, shall not exceed one hundred thirty percent (130%) of the poverty income guideline for the household's size. The local office shall determine the amount of income and other assistance provided in the month of application. If the non-citizen is below one hundred thirty percent (130%) of the federal		

		from the sponsor and others, shall not exceed one hundred thirty percent (130%) of the poverty income guideline for the household's size. The local office shall determine the amount of income and other assistance provided in the month of application. If the non-citizen is below one hundred thirty percent (130%) of the federal poverty level, the only amount that the local office shall consider to such a non-citizen will be the amount actually provided by the sponsor for a period beginning on the date of such determination and ending twelve (12) months after such date. Each determination is renewable for additional twelve (12) month periods. The local office shall notify the U.S. attorney general of each such determination, including the names of the sponsor and the sponsored non-citizen involved. 5. A child of a battered parent is exempt from the provision of sponsorship. A battered non- citizen spouse, non-citizen parent of a battered child, or child of a battered non-citizen will not have sponsor's income and resources counted during a twelve (12) month period after the local office determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After twelve (12) months, the local office shall not deem the batterer's income and resources if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits, and the non-citizen does not live with the batterer; 6. Had been sponsored but has since obtained citizenship; 7. A person whose sponsor has died; or,	poverty level, the only amount that the local office shall consider to such a non-citizen will be the amount provided by the sponsor for a period beginning on the date of such determination and ending twelve (12) months after such date. Each determination is renewable for additional twelve (12) month periods. The local office shall notify the U.S. attorney general of each such determination, including the names of the sponsor and the sponsored non-citizen involved. 5. A child of a battered parent is exempt from the provision of sponsorship. A battered non- citizen spouse, non-citizen parent of a battered child, or child of a battered non-citizen will not have sponsor's income and resources counted during a twelve (12) month period after the local office determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After twelve (12) months, the local office shall not deem the batterer's income and resources if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits, and the non-citizen does not live with the batterer; 6. Had been sponsored but has since obtained citizenship; 7. A person whose sponsor has died; or, 8. Who has worked or can receive credit for a total of forty (40) work quarters under Title II of the Social Security Act. F. Verification Requirements The local office shall verify the following information at the time of initial application and recertification: 1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if the spouse is		

		8. Who has worked or can receive credit for a total of forty (40) work quarters under Title II of the Social Security Act. F. Verification Requirements The local office shall verify the following information at the time of initial application and recertification: 1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if the spouse is living with the sponsor) at the time of the non-citizen's application for Food Assistance. 2. The names (and alien registration numbers) of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement. 3. The number of dependents who are eligible to be claimed for federal income tax purposes by the sponsor and the sponsor's spouse. 4. The name, address, and phone number of the non-citizen's sponsor. G. Awaiting Verification 1. Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen shall be ineligible. When such verification is provided, the local office shall act on the information as a reported change in household circumstances. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible non-citizen (excluding the attributed income and resources of the non-citizen's sponsor and sponsor's spouse) shall be treated in the same manner as a disqualified member as set	living with the sponsor) at the time of the non-citizen's application for SNAP. 2. The names (and alien registration numbers) of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement. 3. The number of dependents who are eligible to be claimed for federal income tax purposes by the sponsor and the sponsor's spouse. 4. The name, address, and phone number of the non-citizen's sponsor. G. Awaiting Verification 1. Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen shall be ineligible. When such verification is provided, the local office shall act on the information as a reported change in household circumstances. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible non-citizen (excluding the attributed income and resources of the non-citizen's sponsor and sponsor's spouse) shall be treated in the same manner as a disqualified member as set forth in Section 4.411.1 and considered available in determining the eligibility and benefit level of the remaining household members. 2. If the sponsored non-citizen refuses to cooperate in providing and/or verifying needed information, other adult members of the non-citizen's household shall be responsible for providing and/or verifying the information. If the information or verification is subsequently received, the local office shall act on the information as a reported change. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the needed		

		forth in Section 4.411.1 and considered available in determining the eligibility and benefit level of the remaining household members. 2. If the sponsored non-citizen refuses to cooperate in providing and/or verifying needed information, other adult members of the non-citizen's household shall be responsible for providing and/or verifying the information. If the information or verification is subsequently received, the local office shall act on the information as a reported change. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the needed information is provided and/or verified. The local office shall assist the non-citizen in obtaining verification provided the household is cooperating with the local office. H. Sponsored Non-Citizen's Responsibility 1. During the period the sponsored non-citizen is subject to deeming, the eligible sponsored non-citizen shall be responsible for obtaining the cooperation of his/her sponsor, for providing the local office, at the time of application and/or recertification, the information and/or documentation necessary to calculate income and resources attributable to the non-citizen's household. The eligible sponsored non-citizen shall be responsible for providing the names (or other identifying factors) of other non-citizens for whom the non- citizen's sponsor has signed an agreement to support. The local office shall attribute the entire amount of income and resources to the applicant eligible sponsored non-citizen until he or she provides the information required. 2. The local office will determine how many of	information is provided and/or verified. The local office shall assist the non-citizen in obtaining verification provided the household is cooperating with the local office. H. Sponsored Non-Citizen's Responsibility 1. During the period the sponsored non-citizen is subject to deeming, the eligible sponsored non-citizen shall be responsible for obtaining the cooperation of his/her sponsor, for providing the local office, at the time of application and/or recertification, the information and/or documentation necessary to calculate income and resources attributable to the non-citizen's household. The eligible sponsored non-citizen shall be responsible for providing the names (or other identifying factors) of other non-citizens for whom the non- citizen's sponsor has signed an agreement to support. The local office shall attribute the entire amount of income and resources to the applicant eligible sponsored non-citizen until he or she provides the information required. 2. The local office will determine how many of such non-citizens are SNAP applicants or participants and initiate appropriate proration. The eligible sponsored non-citizen shall also be responsible for reporting the required information about the sponsor and sponsor's spouse should the non-citizen obtain a different sponsor during the certification period. The eligible sponsored non-citizen shall report changes in income should the sponsor or sponsor's spouse change or lose employment or become deceased during the certification period. The local office shall act on the information as a reported change in household circumstances as set forth in Section 4.604. ***		

		such non-citizens are Food Assistance Program applicants or participants and initiate appropriate proration. The eligible sponsored non-citizen shall also be responsible for reporting the required information about the sponsor and sponsor's spouse should the non-citizen obtain a different sponsor during the certification period. The eligible sponsored non-citizen shall report changes in income should the sponsor or sponsor's spouse change or lose employment or become deceased during the certification period. The local office shall act on the information as a reported change in household circumstances as set forth in Section 4.604. ***			
4.305.3	Program name update; and non-standardized language	**4.305.3 Reporting Undocumented Non-Citizens** A. The local office shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive Food Assistance because the member is present in the United States in violation of the Immigration and Nationality Act. B. In determining whether the member is present in the United States in violation of the Immigration and Nationality Act, caution shall be exercised to insure that the determination is not made merely on the non-citizen's inability or unwillingness to provide documentation of non-citizen status. When a person indicates inability or unwillingness to provide documentation of non-citizen status, the local office shall not continue efforts to obtain documentation other than that necessary to obtain information on the income and resources to be made available to remaining members of the household.	**4.305.3 Reporting Undocumented Non-Citizens** A. The local office shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive SNAP because the member is present in the United States in violation of the Immigration and Nationality Act. B. In determining whether the member is present in the United States in violation of the Immigration and Nationality Act, caution shall be exercised to ensure that the determination is not made merely on the non-citizen's inability or unwillingness to provide documentation of non-citizen status. When a person indicates inability or unwillingness to provide documentation of non-citizen status, the local office shall not continue efforts to obtain documentation other than that necessary to obtain information on the income and resources to be made available to remaining members of the household. C. Because many non-citizens who are legally present in the United States are not eligible for SNAP, eligibility	Updating Food Assistance to SNAP; and standardizing language	

		C. Because many non-citizens who are legally present in the United States are not eligible for Food Assistance, eligibility workers are cautioned that a determination that a person is an ineligible non-citizen is not equivalent to a determination that a person is an illegal non-citizen. D. When and if a Food Assistance eligibility worker is able, on the basis of information that becomes available to him/her in the process of reviewing a household's eligibility for Food Assistance, to determine that a member or members of that household are in fact illegal non-citizens present in the United States in violation of the immigration laws, the eligibility worker will report the determination to his or her supervisor. The report to INS, if made, shall be in writing. This rule does not permit the reporting to INS on mere suspicion or prejudice. Firm evidence that a household is illegally in the U.S. would be required. A person known to be a non-citizen in the United States in violation of the Immigration and Nationality Act is only known to have such status when he or she is found in this country and is known to have a final order of deportation outstanding against him or her. An outstanding order of deportation is final when it is not subject to appeal because the relevant statutory appeal period of ten (10) days has expired or because there are no lawful grounds upon which an appeal may be based or because the available administrative and/or judicial appeals have been exhausted, and the order is not subject to review under the limited standards of reopening for consideration. E. The failure to report an illegal non-citizen to INS will not be considered a quality assurance error or assessed as an administrative deficiency.	technicians are cautioned that a determination that a person is an ineligible non-citizen is not equivalent to a determination that a person is a non-citizen present in the United States in violation of immigration laws. D. When and if a SNAP eligibility technician is able, based on information that becomes available to him/her in the process of reviewing a household's eligibility for SNAP, to determine that a member or members of that household are in fact non-citizens present in the United States in violation of the immigration laws, the eligibility technician will report the determination to his or her supervisor. The report to INS, if made, shall be in writing. This rule does not permit the reporting to INS on mere suspicion or prejudice. Firm evidence that a household is illegally in the U.S. would be required. A person known to be a non-citizen in the United States in violation of the Immigration and Nationality Act is only known to have such status when he or she is found in this country and is known to have a final order of deportation outstanding against him or her. An outstanding order of deportation is final when it is not subject to appeal because the relevant statutory appeal period of ten (10) days has expired or because there are no lawful grounds upon which an appeal may be based or because the available administrative and/or judicial appeals have been exhausted, and the order is not subject to review under the limited standards of reopening for consideration. E. The failure to report a non-citizen illegally present in the United States to INS will not be considered a quality assurance error or assessed as an administrative deficiency.		
4.306(A)	Program name update	**4.306 STUDENT ELIGIBILITY**	**4.306 STUDENT ELIGIBILITY**	Updating Food Assistance to SNAP	

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		A. Any person who is age eighteen (18) through forty-nine (49), physically and mentally fit, and enrolled at least half time in an institution of higher education shall not be eligible to participate in the Food Assistance Program unless the person meets at least one of the criteria listed below.	A. Any person who is age eighteen (18) through forty-nine (49), physically and mentally fit, and enrolled at least half time in an institution of higher education shall not be eligible to participate in the SNAP unless the person meets at least one of the criteria listed below.		
4.306.1	Program name update and grammar corrections	**4.306.1 Student Eligibility Criteria** To be eligible to participate in the Food Assistance Program, a student shall meet at least one (1) of the following criteria: *** B. The student is participating in a state or federally financed work-study program. The student shall be approved for a work-study program at the time of application for Food Assistance. The work- study shall be approved for the school term and student shall anticipate actually working during that time. The student qualifies for this exemption the month the school term in which the work- study will occur begins or the month work-study is approved, whichever is later. The exemption will continue until the end of the school term or until it becomes known that the student has refused an assignment. The exemption shall not continue between terms when there is a break of one (1) full month or longer unless the student is participating in work-study during the break. C. The student is responsible for the more than half of the physical care of a dependent household member under the age of six (6), or a full-time student who is a single parent with responsibility for the care of a dependent child under age twelve (12). The single parent provision applies in those situations where only one natural, adoptive, or stepparent regardless of marital status is in the same Food Assistance household as the child. A full-time student	**4.306.1 Student Eligibility Criteria** [PUBLISHER NOTE NOT TO BE PUBLISHED: We are omitting sections A, D, E, and G here; including B, C, and F.] To be eligible to participate in SNAP, a student shall meet at least one (1) of the following criteria: *** B. The student is participating in a state or federally financed work-study program. The student shall be approved for a work-study program at the time of application for SNAP. The work-study shall be approved for the school term and the student shall anticipate actually working during that time. The student qualifies for this exemption the month the school term in which the work-study will occur begins or the month work-study is approved, whichever is later. The exemption will continue until the end of the school term or until it becomes known that the student has refused an assignment. The exemption shall not continue between terms when there is a break of one (1) full month or longer unless the student is participating in work-study during the break. C. The student is responsible for more than half of the physical care of a dependent household member under the age of six (6), or a full-time student who is a single parent with responsibility for the care of a dependent child under age twelve (12). The single parent provision applies in those situations where only one natural, adoptive, or stepparent regardless of marital status is in the same SNAP household as the child. A full-time student in the same SNAP household with a child who is under his/her parental control may qualify if he/she does not reside with	Updating Food Assistance to SNAP; and grammar corrections for clarity	

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		in the same Food Assistance household with a child who is under his/her parental control may qualify if he/she does not reside with his/her spouse. *** F. The student is assigned to or placed in an institution of higher education through a program under the Workforce Innovation and Opportunity Act (WIOA), Employment First Program, a program under Section 236 of the Trade Act of 1974 (19 USC 2296), another program for the purpose of employment and training operated by the state or local government (program shall have at least one (1) component equivalent to the Food Assistance Employment First Program), or as a result of participating in the JOBS program under Title IV of the Social Security Act. Self-initiated placement during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled. This placement is considered in compliance provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. ***	his/her spouse. *** F. The student is assigned to or placed in an institution of higher education through a program under the Workforce Innovation and Opportunity Act (WIOA), EF, a program under Section 236 of the Trade Act of 1974 (19 USC 2296), another program for the purpose of employment and training operated by the state or local government (program shall have at least one (1) component equivalent to the SNAP EF Program), or as a result of participating in the JOBS program under Title IV of the Social Security Act. ***		
4.307	Program name update	**4.307 STRIKER ELIGIBILITY** A. Households containing a striking member shall not be eligible for Food Assistance unless the household was eligible for the Program the day before the strike	**4.307 STRIKER ELIGIBILITY** A. Households containing a striking member shall not be eligible for SNAP unless the household was eligible for the Program the day before the strike and are otherwise	Updating Food Assistance to SNAP	

		and are otherwise eligible at time of the strike. Households where the striking member was exempt from work registration the day before the strike shall not be subject to these provisions and shall be certified if otherwise eligible, unless the exemption was based on the employment. B. Pre-strike eligibility is determined by considering the day prior to the strike as the day of application and assuming the strike was not occurring. Eligibility at the time of application shall be determined by comparing the striking member's income as of the day before the strike to the striking member's current income and adding the higher of the two (2) to the current income of the non-striking household members during the month of application. The higher income will be used in determining benefits. C. For Food Assistance purposes, a striker is anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Individuals will be deemed participants in a strike whether or not they personally voted for the strike.	eligible at time of the strike. Households where the striking member was exempt from work registration the day before the strike shall not be subject to these provisions and shall be certified if otherwise eligible unless the exemption was based on the employment. B. Pre-strike eligibility is determined by considering the day prior to the strike as the day of application and assuming the strike was not occurring. Eligibility at the time of application shall be determined by comparing the striking member's income as of the day before the strike to the striking member's current income and adding the higher of the two (2) to the current income of the non-striking household members during the month of application. The higher income will be used in determining benefits. C. For SNAP purposes, a striker is anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Individuals will be deemed participants in a strike whether or not they personally voted for the strike.		
4.308	Program name update	**4.308 VOLUNTARY QUIT** A. No individual who quit his or her most recent job without good cause or reduces work effort and, after the reduction, is working less than thirty (30) hours each week, without good cause, or earning less than the federal minimum wage multiplied by thirty (30) hours, shall be eligible for participation in the Food Assistance Program. At the time of application, the eligibility technician shall explain to the applicant the potential penalties if a household member quits his or her job or reduced hours or wages without good cause or if another member joins the household if that individual has voluntarily quit employment.	**4.308 VOLUNTARY QUIT** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections D, E, and G here; including A, B, C, and F.] A. No individual who quit his or her most recent job without good cause or reduces work effort and, after the reduction, is working less than thirty (30) hours each week, without good cause, or earning less than the federal minimum wage multiplied by thirty (30) hours, shall be eligible for participation in SNAP. At the time of application, the eligibility technician shall explain to the applicant the potential penalties if a household member quits his or her job or reduced hours or wages without good cause or if	Updating Food Assistance to SNAP	

		B. When a household files an application, or when a participating household reports the loss of a source of income or reduction in hours, the local office shall determine whether any household member voluntarily quit or reduced his or her hours or income. Benefits shall not be delayed pending the outcome of this determination. A sanction shall be imposed if the quit or reduction in hours or wages occurred within sixty (60) calendar days prior to the date of application or anytime thereafter, and the quit or reduction was without good cause. An employee of the federal government, or of a state or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours, and, through no fault of his or her own loses the new job, the earlier quit shall not be a basis for disqualification. C. In the case of an applicant household, the local office shall determine whether any currently unemployed household member who is required to register for work or was exempt from registration for being employed has voluntarily quit his or her most recent job within the last sixty (60) days. If the local office learns that a household has lost a source of income after the date of application but before the household is certified, the local office shall determine whether a voluntary quit occurred. The nonexempt individual who quit or reduced work hours will be ineligible to participate for the sanction period if the household is determined eligible for the Food Assistance Program. The individual will be required to comply with Employment First following the sanction period unless the individual becomes exempt from work requirements.	another member joins the household if that individual has voluntarily quit employment. B. When a household files an application, or when a participating household reports the loss of a source of income or reduction in hours, the local office shall determine whether any household member voluntarily quit or reduced his or her hours or income. Benefits shall not be delayed pending the outcome of this determination. A sanction shall be imposed if the quit or reduction in hours or wages occurred within sixty (60) calendar days prior to the date of application or anytime thereafter, and the quit or reduction was without good cause. An employee of the federal government, or of a state or local government who participates in a strike against such government and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours, and, through no fault of his or her own loses the new job, the earlier quit shall not be a basis for disqualification. C. In the case of an applicant household, the local office shall determine whether any currently unemployed household member who is required to register for work or was exempt from registration for being employed has voluntarily quit his or her most recent job within the last sixty (60) days. If the local office learns that a household has lost a source of income after the date of application but before the household is certified, the local office shall determine whether a voluntary quit occurred. The nonexempt individual who quit or reduced work hours will be ineligible to participate for the sanction period if the household is determined eligible for SNAP. The individual will be required to comply with EF following the sanction period unless the individual becomes exempt from work requirements. ***		

		*** F. If the local office determines that the individual voluntarily quit his or her job or reduced his or her work hours without good cause while participating in the Food Assistance Program, the local office shall provide the household with a Notice of Adverse Action within ten (10) calendar days after the determination of a voluntary quit is made. The notice shall contain the particular act of noncompliance, the proposed period of disqualification, the action to be taken at the end of the disqualification and shall specify that the individual may be included in the household after the disqualification period if the individual meets other work requirements.	F. If the local office determines that the individual voluntarily quit his or her job or reduced his or her work hours without good cause while participating in SNAP, the local office shall provide the household with a Notice of Adverse Action within ten (10) calendar days after the determination of a voluntary quit is made. The notice shall contain the particular act of noncompliance, the proposed period of disqualification, the action to be taken at the end of the disqualification and shall specify that the individual may be included in the household after the disqualification period if the individual meets other work requirements.		
4.309	Program name update	**4.309 HOUSEHOLDS WITH SPECIAL CIRCUMSTANCES** The following sections explain the application of Food Assistance criteria and certification procedures to the eligibility determinations for households with special circumstances pertaining to: ***	**4.309 HOUSEHOLDS WITH SPECIAL CIRCUMSTANCES** The following sections explain the application of SNAP criteria and certification procedures to the eligibility determinations for households with special circumstances pertaining to: ***	Updating Food Assistance to SNAP	
4.309.1	Program name update; and non-standardized language	**4.309.1 Dining Facilities and Homeless Meal Providers** Households with special circumstances, such as a person with disabilities, elderly, or center residents, may be authorized to use Food Assistance benefits to buy food from authorized communal dining facilities, meals on wheels, drug or alcohol treatment and rehabilitation centers, and shelters for battered women and children. Homeless households may also use Food Assistance benefits to purchase prepared meals from approved restaurants. Homeless Food Assistance households may use food benefits for meals prepared for and served by an authorized provider (for example, soup kitchen or	**4.309.1 Dining Facilities and Homeless Meal Providers** Households with special circumstances, such as a person with disabilities, persons aged 60 and older, or center residents, may be authorized to use SNAP benefits to buy food from authorized communal dining facilities, meals on wheels, drug or alcohol treatment and rehabilitation centers, and shelters for battered women and children. Homeless households may also use SNAP benefits to purchase prepared meals from approved restaurants. SNAP households experiencing homelessness may use food benefits for meals prepared for and served by an authorized provider (for example, soup kitchen or temporary shelter) that feeds	Updating Food Assistance to SNAP; and standardization of language	

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		temporary shelter) that feeds homeless persons.	persons experiencing homelessness.		
4.309.3	Program name update; non-standardized language and acronyms	**4.309.3 Drug and Alcohol Treatment and Rehabilitation Centers** A. Residents of publicly operated community mental health centers or private non-profit organizations or institutions, operating a residential drug or alcohol treatment or rehabilitation program, are eligible to participate in the Food Assistance Program. Applications shall be made through an authorized representative who is employed by the drug or alcohol treatment or rehabilitation facility and designated by the facility for that purpose. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E). B. The drug or alcohol treatment or rehabilitation center shall be approved by the Colorado Department of Human Services (CDHS), Office of Behavioral Health (OBH) before its residents are eligible for Food Assistance participation. The Office of Behavioral Health will ensure that the center is providing treatment that can lead to the rehabilitation of drug or alcohol addiction. Before the certification of residents can be accomplished, the local office shall verify that the center has been approved by FNS as a retailer, is certified by the Office of Behavioral Health, and such proof may be provided in the form of a license or an approval letter issued to the center by that agency, or is funded under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x, et seq.). C. Residents and their children residing in an approved drug or alcohol treatment and rehabilitation center shall voluntarily elect to participate in the Food Assistance Program. Residents shall have their eligibility determined as one-person households unless children are residing with them at the center.	**4.309.3 Drug and Alcohol Treatment and Rehabilitation Centers** A. Residents of publicly operated community mental health centers or private non-profit organizations or institutions, operating a residential drug or alcohol treatment or rehabilitation program, are eligible to participate in SNAP. Applications shall be made through an authorized representative who is employed by the drug or alcohol treatment or rehabilitation facility and designated by the facility for that purpose. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E). B. The drug or alcohol treatment or rehabilitation center shall be approved by CDHS, Office of Behavioral Health (OBH) before its residents are eligible for SNAP participation. The OBH will ensure that the center is providing treatment that can lead to the rehabilitation of drug or alcohol addiction. Before the certification of residents can be accomplished, the local office shall verify that the center has been approved by FNS as a retailer, is certified by the OBH, and such proof may be provided in the form of a license or an approval letter issued to the center by that agency or is funded under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x, et seq.). C. Residents and their children residing in an approved drug or alcohol treatment and rehabilitation center shall voluntarily elect to participate in SNAP. Residents shall have their eligibility determined as one-person households unless children are residing with them at the center. Children of the residents in a drug and alcohol treatment center who live with their parents in the treatment center will qualify for SNAP. Meals served to the children are eligible for purchase with SNAP benefits. The local office shall certify residents of drug/alcohol treatment centers by	Updating Food Assistance to SNAP; standardizing language and acronyms	

		Children of the residents in a drug and alcohol treatment center who live with their parents in the treatment center will qualify for Food Assistance. Meals served to the children are eligible for purchase with Food Assistance. The local office shall certify residents of drug/alcohol treatment centers by using the same provisions that apply to other applicant households. D. Residents may be receiving public assistance or SSI benefits, or may be destitute of income and resources and eligible for expedited service. Residents who qualify for expedited service shall have benefits available for spending no later than seven calendar days following the date the application was filed. E. Any applicant household containing a member who regularly participates in a drug or alcohol treatment program on a non-resident basis shall include this member when having its eligibility determined, complete the application process through the head of household or through an authorized representative, and shall meet all financial and non-financial criteria unless specifically exempt. Such households may use any part of their Food Assistance benefits to purchase food prepared for or served to the individual during the course of such program provided the program has been authorized by FNS for such purposes.	using the same provisions that apply to other applicant households. D. Residents may be receiving public assistance or SSI benefits, or may be destitute of income and resources and eligible for expedited service. Residents who qualify for expedited service shall have benefits available for spending no later than seven calendar days following the date the application was filed. E. Any applicant household containing a member who regularly participates in a drug or alcohol treatment program on a non-resident basis shall include this member when having its eligibility determined, complete the application process through the head of household or through an authorized representative, and shall meet all financial and non-financial criteria unless specifically exempt. Such households may use any part of their SNAP benefits to purchase food prepared for or served to the individual during the program, provided the program has been authorized by FNS for such purposes.		
4.309.1	Program name update and non-standard terminology	**4.309.31 Responsibilities of the Center** *** C. The treatment center shall also report when the resident leaves the treatment center. The treatment center shall return to the issuing office any benefits received after the household has left the center. The treatment center shall provide the residents with	**4.309.31 Responsibilities of the Center** *** C. The treatment center shall also report when the resident leaves the treatment center. The treatment center shall return to the issuing office any benefits received after the household has left the center. The treatment center shall provide the residents with their	Updating Food Assistance to SNAP; and standardizing terminology	

		their EBT card when the household leaves the treatment and rehabilitation program. Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The departing resident shall receive his/her full allotment if already issued and if no benefits have been spent on his/her behalf. If benefits have been issued and any portion has been spent on his/her behalf and the resident leaves prior to the sixteenth (16th) of the month, the center shall provide the resident with one half of his/her monthly allotment; on or after the sixteenth (16th), and benefits have already been used, the resident shall not receive any benefits. Under no circumstances shall the center pull benefits from an EBT card after the resident has left the facility. The drug or alcohol treatment center shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure. The center shall provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to return the form to the local Food Assistance office within ten (10) days of any change the household is required to report. D. The organization or institution shall be responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution shall be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. E. The organization or institution may be penalized or	EBT card when the household leaves the treatment and rehabilitation program. Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The departing resident shall receive his/her full allotment if already issued and if no benefits have been spent on his/her behalf. If benefits have been issued and any portion has been spent on his/her behalf and the resident leaves prior to the sixteenth (16th) of the month, the center shall provide the resident with one half of his/her monthly allotment; on or after the sixteenth (16th), and benefits have already been used, the resident shall not receive any benefits. Under no circumstances shall the center pull benefits from an EBT card after the resident has left the facility. The drug or alcohol treatment center shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure. The center shall provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to return the form to the local office within ten (10) days of any change the household is required to report. D. The organization or institution shall be responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. The organization or institution shall be knowledgeable about household circumstances when serving as an AR. The organization or institution should carefully review those circumstances with residents prior to applying on their behalf. E. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The certification office shall promptly notify the state		

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		disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The certification office shall promptly notify the state office when it has reason to believe that an organization or institution is misusing Food Assistance benefits in its possession. However, no action shall be taken against the organization or institution prior to an FNS investigation. The certification office shall establish a claim for over-issuance of Food Assistance benefits held on behalf of resident clients if any over-issuances are discovered as a result of an FNS investigation or hearing. If FNS disqualifies an organization or institution as an authorized treatment center, the certification office shall suspend its authorized representative status for the same period.	department when it has reason to believe that an organization or institution is misusing SNAP benefits in its possession. However, no action shall be taken against the organization or institution prior to an FNS investigation. The certification office shall establish a claim for over-issuance of SNAP benefits held on behalf of resident clients if any over-issuances are discovered because of an FNS investigation or hearing. If FNS disqualifies an organization or institution as an authorized treatment center, the certification office shall suspend its authorized representative status for the same period.		
4.309.4	Program name update; incorrect numbering due to reformatting	**4.309.4 Residents of Group Living Arrangements** A. Group living arrangements are residential settings that are considered alternatives to institutional living. Institutional settings are not included in this provision. To be eligible as residents of a group living arrangement, the person must be a person with disabilities. In addition, the local office shall verify that the group living arrangement is a public or private nonprofit facility with no more than sixteen (16) residents, and is certified as a group living arrangement by the Colorado Department of Public Health and Environment and the Colorado Department of Human Services under Section 1616(e) of the Social Security Act. FNS may also certify under standards determined by the USDA that are comparable to standards implemented BY the state under 1616(e) of the Social Security Act (codified at 42 USC). Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575	**4.309.4 Residents of Group Living Arrangements** A. Group living arrangements are residential settings that are considered alternatives to institutional living. Institutional settings are not included in this provision. To be eligible as residents of a group living arrangement, the person must be a person with disabilities. In addition, the local office shall verify that the group living arrangement is a public or private nonprofit facility with no more than sixteen (16) residents and is certified as a group living arrangement by the Colorado Department of Public Health and Environment and the state department under Section 1616(e) of the Social Security Act. FNS may also certify under standards determined by the USDA that are comparable to standards implemented by the state under 1616(e) of the Social Security Act (codified at 42 USC). Copies of the federal laws are available for inspection. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E). B. Residents of group living arrangements may elect to participate in SNAP.	Updating Food Assistance to SNAP; and renumbering	

		Sherman Street, Denver, Colorado 80203; or a state publications depository. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E). B. Residents of group living arrangements may elect to participate in the Food Assistance Program. Residents shall either apply and be certified through an authorized representative, who is employed and designated by the group living arrangement, or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement shall determine if any resident may apply for Food Assistance on his/her own behalf; the determination shall be based on the resident's physical and mental capability to handle his/her own affairs. 1. If residents apply through the use of the facility's authorized representative, their eligibility shall be determined as one-person households. The group living arrangement may either receive and spend the allotment on food prepared by and/or served to the eligible resident, or allow the eligible resident to use all or any portion of the allotment on his/her own behalf. The group living facility employee designated to serve as an authorized representative shall be responsible for obtaining their own Electronic Benefit Transfer (EBT) card and Personal Identification Number (PIN) with which to access benefits from the resident's account while the resident remains a resident of the facility. The resident's EBT card shall be stored in a secure area while the resident resides in the group living facility. The group living facility shall not have access to, or knowledge of, the PIN for	Residents shall either apply and be certified through an authorized representative, who is employed and designated by the group living arrangement or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement shall determine if any resident may apply for SNAP on his/her own behalf; the determination shall be based on the resident's physical and mental capability to handle his/her own affairs. 1. If residents apply using the facility's authorized representative, eligibility shall be determined as a one-person household. The group living arrangement may either: a) Receive and spend the allotment on food prepared by and/or served to the eligible resident, or b) Allow the eligible resident to use all or any portion of the allotment on his/her own behalf. 2. The group living facility employee designated to serve as an authorized representative shall be responsible for obtaining their own Electronic Benefit Transfer (EBT) card and Personal Identification Number (PIN) with which to access benefits from the resident's account while the resident remains a resident of the facility. 3. The resident's EBT card shall be stored in a secure area while the resident resides in the group living facility. The group living facility shall not have access to, or knowledge of, the PIN for the resident's personal EBT card. 4. If the residents apply on their own behalf, the applications shall be accepted for any individual		

		the resident's own EBT card. 2. If the residents apply on their own behalf, the applications shall be accepted for any individual applying as one-person household or for any grouping of residents applying as a household. If residents are certified on their own behalf, the allotment may be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents, used by eligible residents to purchase and prepare food for their own consumption, and/or to purchase meals prepared and served by the group living arrangement. C. Applications for residents of group living arrangements shall be processed using the same standards that apply to all other Food Assistance households including that residents entitled to expedited service shall have benefits available for spending no later than seven (7) calendar days following the date the application was filed. Required verification shall be obtained prior to further benefits being issued. D. The local office shall process changes in household circumstances and recertifications by using the same standards that apply to all other Food Assistance households, and resident households shall be afforded the same rights all other Food Assistance households enjoy, including the right to notices of adverse action, fair hearings, and entitlement to lost benefits.	applying as a one-person household or for any grouping of residents applying as a household. If residents are certified on their own behalf, the allotment may be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents, used by eligible residents to purchase and prepare food for their own consumption, and/or to purchase meals prepared and served by the group living arrangement. C. Applications for residents of group living arrangements shall be processed using the same standards that apply to all other SNAP households including that residents entitled to expedited service shall have benefits available for spending no later than seven (7) calendar days following the date the application was filed. Required verification shall be obtained prior to further benefits being issued. D. The local office shall process changes in household circumstances and recertifications by using the same standards that apply to all other SNAP households, and resident households shall be afforded the same rights all other SNAP households enjoy, including the right to notices of adverse action, fair hearings, and entitlement to lost benefits.		
4.309.41	Program name update and grammar issues	**4.309.41 Responsibilities of Group Living Arrangements** *** C. When the household leaves the facility, the group living arrangement, either acting as an authorized	**4.309.41 Responsibilities of Group Living Arrangements** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A and B her, including C, D, and E.] ***	Updating Food Assistance to SNAP; and grammar edit	

		representative or retaining use of the benefits on behalf of the residents (regardless of the method of application), shall provide residents with their EBT card. The household, not the group living arrangement, shall be allowed to receive his/her authorized issuance. Also, the departing household shall receive its full allotment if no benefits have been spent on behalf of that individual household. These procedures are applicable any time during the month. However, if the benefits have already been issued and any portion spent on behalf of the individual and the household leaves the group living arrangement prior to the sixteenth (16th) of the month, the facility shall provide the resident with one half of his/her monthly allotment. If the household leaves on or after the sixteenth (16th) of the month and the benefits have already been issued and used, the household does not receive any benefits. Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. Under no circumstances shall the group living arrangement pull benefits from an EBT card after the resident or group of residents have left the facility. The facility shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure. The group living arrangement shall provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to return the form to the local Food Assistance office within ten (10) days of any change the household is required to report. D. When acting as the authorized representative, a group living arrangement shall be responsible for any misrepresentation or fraud, which it knowingly	C. When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the benefits on behalf of the residents (regardless of the method of application), shall provide residents with their EBT card. The household, not the group living arrangement, shall be allowed to receive his/her authorized issuance. Also, the departing household shall receive its full allotment if no benefits have been spent on behalf of that individual household. These procedures are applicable any time during the month. However, if the benefits have already been issued and any portion spent on behalf of the individual and the household leaves the group living arrangement prior to the sixteenth (16th) of the month, the facility shall provide the resident with one half of his/her monthly allotment. If the household leaves on or after the sixteenth (16th) of the month and the benefits have already been issued and used, the household does not receive any benefits. Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. Under no circumstances shall the group living arrangement pull benefits from an EBT card after the resident or group of residents have left the facility. The facility shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure. The group living arrangement shall provide the household with a change report form as soon as it has knowledge of the household plan to leave the facility and advise the household to return the form to the local office within ten (10) days of any change the household is required to report. D. When acting as the authorized representative, a group living arrangement shall be responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. The facility shall be		

		commits in the certification of center residents. As an authorized representative, the facility shall be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The facility shall be strictly liable for all losses or misuse of benefits held on behalf of resident households and for all over-issuances that occur while the households are residents of the treatment center. However, the resident applying on his/her own behalf shall be responsible for over-issuance as would any other household. E. The group living arrangement may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the group living arrangement services or if meals are prepared at a central location for delivery to the individual residents. If residents purchase and/or prepare food for individual consumption, as opposed to communal dining, the group living arrangement shall ensure that each resident's Food Assistance benefits are used for meals intended for that resident. If the resident retains use of his/her own allotment, he/she may either use the benefits to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.	knowledgeable about household circumstances as an authorized representative and should carefully review those circumstances with residents prior to applying on their behalf. The facility shall be strictly liable for all losses or misuse of benefits held on behalf of resident households and for all over-issuances that occur while the households are residents of the treatment center. However, the resident applying on his/her own behalf shall be responsible for over-issuance as would any other household. E. The group living arrangement may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the group living arrangement services or if meals are prepared at a central location for delivery to the individual residents. If residents purchase and/or prepare food for individual consumption, as opposed to communal dining, the group living arrangement shall ensure that each resident's SNAP benefits are used for meals intended for that resident. If the resident retains use of his/her own allotment, he/she may either use the benefits to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.		
4.309.42	Program name update; and non-standardized language	**4.309.42 Disqualification of the Group Living Arrangements** A group living arrangement facility authorized by FNS may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The local office shall promptly notify the Colorado Department of Human Services, Division of Food and Energy Assistance, when it has reason to believe that a facility is misusing benefits.	**4.309.42 Disqualification of the Group Living Arrangements** A group living arrangement facility authorized by FNS may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The local office shall promptly notify the state department, when it has reason to believe that a facility is misusing benefits. However, the local office shall take no action prior to FNS action against the facility. The local office shall establish a claim for over-issuances of SNAP benefits held on	Updating Food Assistance to SNAP; and standardizing language	

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		However, the local office shall take no action prior to FNS action against the facility. The local office shall establish a claim for over-issuances of Food Assistance benefits held on behalf of resident clients if any over-issuances are discovered during an investigation or hearing procedure for redemption violations. If the facility loses its authorization from FNS to accept Food Assistance benefits, or is no longer certified by the Colorado Department of Public Health and Environment as a group living arrangement, residents using the facility as an authorized representative shall no longer be able to participate. The residents are not entitled to a Notice of Adverse Action, but shall receive a written notice explaining the termination and when it shall become effective. Residents applying on their own behalf shall still be able to participate, if otherwise eligible.	behalf of resident clients if any over-issuances are discovered during an investigation or hearing procedure for redemption violations. If the facility loses its authorization from FNS to accept SNAP benefits or is no longer certified by the Colorado Department of Public Health and Environment as a group living arrangement, residents using the facility as an authorized representative shall no longer be able to participate. The residents are not entitled to a Notice of Adverse Action but shall receive a written notice explaining the termination and when it shall become effective. Residents applying on their own behalf shall still be able to participate, if otherwise eligible.		
4.310(A)	Program name update and non-standardized language	**4.310 GENERAL WORK REQUIREMENTS** As a condition of eligibility for Food Assistance benefits, each household member not determined exempt must comply with the following work requirements: A. Register for work at the time of initial application and ate every recertification by signing the application for assistance or redetermination. The application must be signed by the member required to register, an authorized representative, or by another adult household member; ***	**4.310 GENERAL WORK REQUIREMENTS** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, C, D, and E here, and including A.] As a condition of eligibility for SNAP, each household member not determined exempt must comply with the following work requirements: A. Register for work at the time of initial application and at every recertification by signing the application for assistance or recertification. The application must be signed by the member required to register, an authorized representative, or by another adult household member; ***	Updating Food Assistance to SNAP; and standardizing language	
4.310.2	Program name update and non-standardized terminology	**4.310.2 Informing the Household of General Work Requirements** At the point of initial application and redetermination, when an interview is required, Food Assistance households must	**4.310.2 Informing the Household of General Work Requirements** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, C, and D here, and including A]	Updating Food Assistance to SNAP; and standardizing terminology	

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		receive from the eligibility staff written notice and a verbal explanation of: A. The Food Assistance general work requirements;	At the point of initial application and recertification, when an interview is required, SNAP households must receive from the eligibility staff written notice and a verbal explanation of: A. The SNAP general work requirements;		
4.310.3	Program name update	**4.310.3 General Work Requirement Exemptions** *** D. A student enrolled at least half-time, as defined by the educational facility, in any recognized school, training program, or institution of higher education; 1. A student who is enrolled in an institute of higher education must meet student eligibility requirements to receive Food Assistance. 2. Students who are eligible for Food Assistance remain exempt from work requirements during normal periods of class attendance and school breaks. 3. Persons who are not enrolled at least half-time or who experience a break in their enrollment status due to graduation, expulsion, suspension, or who drop out or otherwise do not intend to register for the next normal school term (other than summer), shall not be eligible for this exemption.	**4.310.3 General Work Requirement Exemptions** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, E, F, G and H here, and including D] *** D. A student enrolled at least half-time, as defined by the educational facility, in any recognized school, training program, or institution of higher education; 1. A student who is enrolled in an institute of higher education must meet student eligibility requirements to receive SNAP. 2. Students who are eligible for SNAP remain exempt from work requirements during normal periods of class attendance and school breaks. 3. Persons who are not enrolled at least half-time or who experience a break in their enrollment status due to graduation, expulsion, suspension, or who drop out or otherwise do not intend to register for the next normal school term (other than summer), shall not be eligible for this exemption.	Updating Food Assistance to SNAP	
4.310.5(B)	Program name update	**4.310.5 Voluntary Quit** *** B. A level sanction will be imposed if voluntary quit occurred within sixty (60) calendar days prior to the date of application or after the date of application but prior to eligibility determination and the voluntary quit was without good cause.	**4.310.5 Voluntary Quit** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A and C here, including B.] *** B. A level sanction will be imposed if voluntary quit occurred within sixty (60) calendar days prior to the date of application or after the date of application but prior to	Updating Food Assistance to SNAP	

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		1. Individuals who voluntary quit are ineligible to participate in the Food Assistance Program and shall be treated as a disqualified member. If the disqualified member joins another household, the ABAWD disqualification period for that individual shall continue until the ABAWD disqualification period is completed.	eligibility determination and the voluntary quit was without good cause. 1. Individuals who voluntary quit are ineligible to participate in SNAP and shall be treated as a disqualified member. If the disqualified member joins another household, the ABAWD disqualification period for that individual shall continue until the ABAWD disqualification period is completed.		
4.310.8	Program name update; non-standardized language; missing lettering	**4.310.8 Level Sanction Periods** A. If the local office determines that an individual has voluntarily quit or failed to accept suitable employment without good cause, that individual shall be ineligible to participate in the Food Assistance Program and shall be treated as a disqualified member. If the disqualified member joins another household, the disqualification period for that individual shall continue until the disqualification period is completed. 1. The first (1st) time, the individual shall be disqualified for a period of one (1) month after the date the individual became ineligible. 2. The second (2nd) time an individual fails without good cause to comply with work requirements, the individual shall be disqualified for a period of three (3) months after the date the individual became ineligible. 3. The third (3rd) or subsequent time an individual fails without good cause to comply with work requirements, the individual shall be disqualified for a period of six (6) months after the date the individual became ineligible. B. The disqualification period shall begin the month following the expiration of the Notice of Adverse Action, unless a fair hearing is requested.	**4.310.8 Level Sanction Periods** A. If the local office determines that an individual has voluntarily quit or failed to accept suitable employment without good cause, that individual shall be ineligible to participate in SNAP and shall be treated as a disqualified member. If the disqualified member joins another household, the disqualification period for that individual shall continue until the disqualification period is completed. 1. The first (1st) time, the individual shall be disqualified for a period of one (1) month after the date the individual became ineligible. 2. The second (2nd) time an individual fails without good cause to comply with work requirements, the individual shall be disqualified for a period of three (3) months after the date the individual became ineligible. 3. The third (3rd) or subsequent time an individual fails without good cause to comply with work requirements, the individual shall be disqualified for a period of six (6) months after the date the individual became ineligible. B. The disqualification period shall begin the month following the expiration of the Notice of Adverse Action unless a fair hearing is requested. C. If the level sanction disqualified individual is the sole	Updating Food Assistance to SNAP; standardizing terminology; and correcting numbering	

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		C. If the level sanction disqualified individual is the sole member of the Food Assistance household and then becomes exempt, the newly exempt individual can reapply for benefits. The newly exempt individual will be eligible based on the date of the application or, if in the case of reinstatement, the date exemption information was provided to the county office. If the level sanction disqualified individual is in a Food Assistance household with other eligible members and then becomes exempt, the newly exempt individual will be eligible based on the date exemption information was provided to the county office.	member of the SNAP household and then becomes exempt, the newly exempt individual can reapply for benefits. The newly exempt individual will be eligible based on the date of the application or, if in the case of reinstatement, the date exemption information was provided to the local office. D. If the level sanction disqualified individual is in a SNAP household with other eligible members and then becomes exempt, the newly exempt individual will be eligible based on the date exemption information was provided to the local office.		
4.311.1	Program name update; and non-standardized language	**4.311.1 ABAWD Exemptions** While ABAWDs can be exempt under general work requirement exemptions, these individuals could also meet one of the following ABAWD exemptions: A. Younger than eighteen (18) years of age or older than forty-nine (49) years of age. The month of the household member's birthday is not a countable month; B. Exempt from the general work requirements; C. Is residing in a Food Assistance household where a household member is under age 18; D. Pregnancy; E. Exempt under a waiver approved by the USDA, FNS; F. Exempt using Colorado defined state exemptions as identified in the current Food Assistance Employment and Training State Plan.	**4.311.1 ABAWD Exemptions** While ABAWDs can be exempt under general work requirement exemptions, these individuals could also meet one of the following ABAWD exemptions: A. Age eighteen (18) through the age of forty-nine (49). The month of the household member's birthday is not a countable month; B. Exempt from the general work requirements; C. Is residing in a SNAP household where a household member is under age 18; D. Pregnancy; E. Exempt under a waiver approved by the USDA, FNS; F. Exempt using Colorado defined state exemptions as identified in the current SNAP Employment and Training State Plan.	Updating Food Assistance to SNAP; and standardizing language	
4.311.2	Non-standard	**4.311.2 Changes in ABAWD Exemption Status**	**4.311.2 Changes in ABAWD Exemption Status**	Standardizing	

	terminology	ABAWDs are not required to report changes in their exemption status during a certification period. However, if the ABAWD loses their exemption status during a certification period, the months the ABAWD was not exempt will count toward their three countable months in a thirty-six (36) calendar month period. Any remaining months of benefits received during that certification period are not considered overpayments and claims will not be established.	ABAWDs are not required to report changes in their exemption status during a certification period. However, if the ABAWD loses their exemption status during a certification period, the months the ABAWD was not exempt will count toward their three countable months in a thirty-six (36) calendar month period. Any remaining months of benefits received during that certification period are not considered over-issuances and claims will not be established.	terminology	
4.311.3	Program name update; and missing numbering	**4.311.3 ABAWD Time Limits** ABAWDs are not eligible to participate in Food Assistance if they have received Food Assistance benefits for more than three countable months during a thirty-six (36) month period. However, ABAWDs may be eligible for up to three additional consecutive months after regaining eligibility In accordance with paragraph (C) of this section. A. Countable months Countable months are accrued when an ABAWD received Food Assistance benefits for the full benefit month but did not: 1. Meet an exemption; or 2. Fulfill their work requirements. B. Good cause for countable months If an ABAWD would have worked an average of 20 hours per week but missed some work for good cause, the ABAWD shall be considered to have me the work requirement if the absence from work is temporary and the individual retains work.	**4.311.3 ABAWD Time Limits** ABAWDs are not eligible to participate in SNAP if they have received SNAP benefits for more than three countable months during a thirty-six (36) month period. However, ABAWDs may be eligible for up to three additional consecutive months after regaining eligibility in accordance with paragraph (C) of this section. A. Countable months Countable months are accrued when an ABAWD received SNAP benefits for the full benefit month but did not: 1. Meet an exemption; or 2. Fulfill their work requirements. B. Good cause for countable months If an ABAWD would have worked an average of 20 hours per week but missed some work for good cause, the ABAWD shall be considered to have me the work requirement if the absence from work is temporary and the individual retains work. Good cause for countable months shall include circumstances beyond the individual's control, such as, but	Updating Food Assistance to SNAP; and correcting numbering	

		Good cause for countable months shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. C. ABAWD time limit clock The ABAWD time limit clock: 1. Counts accrued countable months for all ABAWDs who are not in compliance with work requirements and do not have an exemption; and 2. Resets accrued countable months and ABAWD disqualifications, regardless of start date, for all ABAWDs every 36 calendar months starting October 1st, 2019. D. Regaining eligibility 1. An individual who is denied eligibility under this provision can regain eligibility if in a thirty (30) calendar day period, the individual: a. Worked eighty (80) or more hours; b. Participates in and complies with the requirements of a work program for eighty (80) or more hours; c. Participates and complies with Workfare; or d. Becomes exempt 2. The individual will be reinstated if otherwise eligible and will continue to be eligible as long as the individual continues to meet the work	not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. C. ABAWD time limit clock The ABAWD time limit clock: 1. Counts accrued countable months for all ABAWDs who are not in compliance with work requirements and do not have an exemption; and 2. Resets accrued countable months and ABAWD disqualifications, regardless of start date, for all ABAWDs every 36 calendar months starting October 1st, 2019. D. Regaining eligibility 1. An individual who is denied eligibility under this provision can regain eligibility if in a thirty (30) calendar day period, the individual: a. Worked eighty (80) or more hours; b. Participates in and complies with the requirements of a work program for eighty (80) or more hours; c. Participates and complies with Workfare; or d. Becomes exempt 2. The individual will be reinstated if otherwise eligible and will continue to be eligible if the individual continues to meet the work requirement or is exempt. 3. Three additional consecutive months. 4. If an individual regains eligibility but then fails to		

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		requirement or is exempt. 3. Three additional consecutive months. If an individual regains eligibility but then fails to continue meeting these requirements, the individual shall remain eligible for a consecutive three-month period after the individual notifies the county department. The individual can only have this provision applied for a single three-month period in the thirty-six (36) calendar month period.	continue meeting these requirements, the individual shall remain eligible for a consecutive three-month period after the individual notifies the local office. The individual can only have this provision applied for a single three-month period in the thirty-six (36) calendar month period.		
4.312	Program name updates and non-standardized language/definitions	**4.312 EMPLOYMENT FIRST (EF)** In Colorado, the Employment and Training program is called EF. The purpose of the program is to assist members of households participating in the Food Assistance Program in gaining skills, training, work, or experience that will increase their ability to obtain employment. CDHS must submit an annual Employment and Training State Plan for approval by the USDA, Food and Nutrition Service. A copy of the CDHS Employment and Training plan is available for inspection during normal working hours by contacting the SNAP Director, Food and Energy Assistance Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203. The EF program is a voluntary work program for Food Assistance applicants and recipients. Failure to participate with the EF program will not result in a work requirement disqualification.	**4.312 EMPLOYMENT FIRST (EF)** In Colorado, the Employment and Training program is called EF. The purpose of the program is to assist members of households participating in SNAP in gaining skills, training, work, or experience that will increase their ability to obtain employment. CDHS must submit an annual Employment and Training State Plan for approval by the USDA, Food and Nutrition Service. A copy of the CDHS Employment and Training plan is available for inspection. The EF program is a voluntary work program for SNAP applicants and recipients. Failure to participate with the EF program will not result in a work requirement disqualification.	Updating Food Assistance to SNAP; and standardizing language/definitions	
4.312.1	Non-standardized language	**4.312.1 County Administration Requirements for EF** A county department choosing to administer an EF program shall submit a county plan as prescribed by CDHS and shall operate their EF program in alignment with the CDHS Employment and Training plan. Failure to adhere to the requirements as described in the CDHS	**4.312.1 County Administration Requirements for EF** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section A and B here] Local offices choosing to administer an EF program shall submit a county plan as prescribed by CDHS and shall operate	Standardizing language	

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		Employment and Training plan will result in a Corrective Action Plan (CAP). A county department may enter into a contractual agreement for all or any part of the EF program service delivery. These contractual agreements shall be reviewed by CDHS for adherence to the program requirements before implementation. ***	their EF program in alignment with the CDHS Employment and Training plan. Failure to adhere to the requirements as described in the CDHS Employment and Training plan will result in a Corrective Action Plan (CAP). Local offices may enter into a contractual agreement for all or any part of the EF program service delivery. These contractual agreements shall be reviewed by CDHS for adherence to the program requirements before implementation. ***		
4.313	Non-standardized language	**4.313 COLORADO WORKFARE PROGRAM** In Colorado, the Section 20 Workfare Program of the Food and Nutrition Act of 20018 (codified at 7 USC Sec. 2011 et seq) is called the Colorado Workfare Program. CDHS must submit an annual Section 20 Workfare State Plan for approval by the USDA, Food and Nutrition Service. A copy of the CDHS Section 20 Workfare plan is available for inspection during normal working hours by contacting the SNAP Director, Food and Energy Assistance Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203.	**4.313 COLORADO WORKFARE PROGRAM** In Colorado, the Section 20 Workfare Program of the Food and Nutrition Act of 20018 (codified at 7 USC Sec. 2011 et seq) is called the Colorado Workfare Program. CDHS must submit an annual Section 20 Workfare State Plan for approval by the USDA, Food and Nutrition Service. A copy of the CDHS Section 20 Workfare plan is available for inspection.	Standardized language	
4.313.1	Non-standardized language	**4.313.1 County Administration Requirements for Workfare** A county department choosing to administer a Colorado Workfare program shall submit a county plan as prescribed by CDHS and shall operate their Workfare program in alignment with the CDHS Section 20 Workfare plan. Failure to adhere to the requirements as described in the CDHS Section 20 Workfare plan will result in a Correct Action Plan (CAP).	**4.313.1 County Administration Requirements for Workfare** Local offices choosing to administer a Colorado Workfare program shall submit a county plan as prescribed by CDHS and shall operate their Workfare program in alignment with the CDHS Section 20 Workfare plan. Failure to adhere to the requirements as described in the CDHS Section 20 Workfare plan will result in a Correct Action Plan (CAP).	Standardizing language	
4.400	Non-standardized language	**4.400 FINANCIAL ELIGIBILITY CRITERIA** Income shall be considered prospectively for the issuance month based on the eligibility worker's determination of the household's reasonably anticipated monthly income, and	**4.400 FINANCIAL ELIGIBILITY CRITERIA** Income shall be considered prospectively for the issuance month based on the eligibility technician's determination of the household's reasonably anticipated monthly income, and for	Standardizing language	

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		for households eligible under standard eligibility as outlined in Section 4.206, the value of its resources is considered.	households eligible under Standard Eligibility as outlined in Section 4.206, the value of its resources is considered.		
4.401	Non-standardized language and grammar errors	**4.401 INCOME ELIGIBILITY STANDARDS** A. Income eligibility is determined based on the composition of the household. A household shall meet the gross and net MONTHLY income eligibility standards as outlined IN THIS SECTION. SEE SECTION 4.401.1 AND 4.401.2 FOR THE GROSS AND NET PERCENTAGES OF THE FEDERAL POVERTY LEVELS. 1. Expanded categorically eligible households must have gross income below two hundred percent (200%) of the federal poverty level. 2. Basic categorically eligible households shall be deemed as having met gross and net income limits. 3. Households which are not considered expanded or basic categorically eligible and instead subject to standard eligibility rules shall meet income eligibility standards as follows: a. Households that do not include a member who is elderly or a person with a disability shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal poverty level. b. Households that include a member who is elderly or a person with a disability shall have a net income at or below one hundred percent (100%) of the federal poverty level. 4. For household members who are persons that	**4.401 INCOME ELIGIBILITY STANDARDS** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section B here, and including A.] A. Income eligibility is determined based on the composition of the household. A household shall meet the gross and net monthly income eligibility standards as outlined in this section. See section 4.401.1 and 4.401.2 for the gross and net percentages of the Federal Poverty Levels. 1. ECE households must have gross income below two hundred percent (200%) of the federal poverty level. 2. BCE households shall be deemed as having met gross and net income limits. 3. Households which are not considered ECE or BCE and instead subject to SE rules shall meet income eligibility standards as follows: a. Households that do not include a member who is aged 60 and older or a person with a disability shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal poverty level. b. Households that include a member who is aged 60 and older or a person with a disability shall have a net income at or below one hundred percent (100%) of the federal poverty level. 4. For household members who are persons that are aged 60 and older and/or have a disability, who are	Standardizing language; and correcting incorrect capitalizations	

		are elderly and/or have a disability, who are unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act, or a non-disease related, severe, permanent disability, may be considered, together with his or her spouse if the spouse is living in the same home, a separate household from the others with whom the individual lives. The combined income of the others with whom the individual who is elderly and a person with disabilities resides (excluding the income of the individual who is elderly and a person with disabilities and his or her spouse) must not exceed one hundred sixty five percent (165%) of the poverty level. See Sections 4.401.1 and 4.401.2 for the gross and net income levels for 165% of the federal poverty level. ***	unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act, or a non-disease related, severe, permanent disability, may be considered, together with his or her spouse if the spouse is living in the same home, a separate household from the others with whom the individual lives. The combined income of the others with whom the individual who is aged 60 and older and a person with disabilities resides (excluding the income of the individual who is aged 60 and older and a person with disabilities and his or her spouse) must not exceed one hundred sixty five percent (165%) of the poverty level. See Sections 4.401.1 and 4.401.2 for the gross and net income levels for 165% of the federal poverty level. ***		
4.402	Program name update, spelling error, and non-standardized language	**4.402 HOUSEHOLD INCOME ELIGIBILITY** A. Determining Income 1. Income eligibility shall be determined prospectively based on the eligibility worker's anticipation of income at the time of application and when changes are made known to the local office. *** B. Variations in Date of Pay 1. Regular ongoing earned income that is received early or late by a household due to a holiday, a weekend, or pay dates being changed will have income courted based on the regular pay schedule instead of the actual date of pay.	**4.402 HOUSEHOLD INCOME ELIGIBILITY** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A.2, A.3, C] A. Determining Income 1. Income eligibility shall be determined prospectively based on the eligibility technician's anticipation of income at the time of application and when changes are made known to the local office. *** B. Variations in Date of Pay 1. Regular ongoing earned income that is received early or late by a household due to a holiday, a weekend, or pay dates being changed will have income counted based on the regular pay schedule	Updating Food Assistance to SNAP; correcting spelling error; and standardizing language	

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		2. Households receiving monthly benefits such as public assistance or social security payments shall not have their monthly income varied merely because mailing cycles resulted in two (2) payments in one month and none in the next month. 3. Households containing a member of the Armed Services of the United States shall not have their monthly income varied merely because the first day of the month falls on a holiday or weekend which resulted in two (2) payments in the month and none in the subsequent month. ***	instead of the actual date of pay. 2. Households receiving monthly benefits such as public assistance or social security payments shall not have their monthly income varied merely because mailing cycles resulted in two (2) payments in one month and none in the next month. 3. Households containing a member of the Armed Services of the United States shall not have their monthly income varied merely because the first day of the month falls on a holiday or weekend which resulted in two (2) payments in the month and none in the subsequent month. ***		
4.402.1(A)	Program name update and non-standardized acronym	**4.402.1 Prospective Budgeting** A. Prospective budgeting is the process of computing a household's allotment based on anticipated income and circumstances during the issuance month. All Food Assistance households and all situations require prospective budgeting determinations, including public assistance households under the Title IVA (Temporary Assistance to Needy Families/Colorado Works) Program. ***	**4.402.1 Prospective Budgeting** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B and C here, including A.] A. Prospective budgeting is the process of computing a household's allotment based on anticipated income and circumstances during the issuance month. All SNAP households and all situations require prospective budgeting determinations, including public assistance households under the Title IVA (TANF /Colorado Works) Program. ***	Updating Food Assistance to SNAP; and standardizing acronym use	
4.402.2	Program name update and non-standardized language	**4.202.2 Averaging Income** *** B. The types of households listed above shall have their self-employment income, contract income, or educational monies annualized or prorated, and added to other household income to determine monthly Food Assistance income. C. To average income prospectively, the eligibility	**4.402.2 Averaging Income** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A here, including B and C.] *** B. The types of households listed above shall have their self-employment income, contract income, or educational monies annualized or prorated, and added to other	Updating Food Assistance to SNAP; and standardizing language	

		worker shall use the household's anticipation of income, considering fluctuations, to obtain a monthly average amount for the period of certification. The number of months used to arrive at the average income need not be the same as the number of months in the certification period, such as the known income from two (2) previous months may be averaged and projected for each month of a certification period that is longer than two (2) months. Refer to Section 4.403.11 for more information on computing self-employment income. Fluctuating income that has been averaged may be adjusted if verification of a change in circumstances is received.	household income to determine monthly income for SNAP. C. To average income prospectively, the eligibility technician shall use the household's anticipation of income, considering fluctuations, to obtain a monthly average amount for the period of certification. The number of months used to arrive at the average income need not be the same as the number of months in the certification period, such as the known income from two (2) previous months may be averaged and projected for each month of a certification period that is longer than two (2) months. Refer to Section 4.403.11 for more information on computing self-employment income. Fluctuating income that has been averaged may be adjusted if verification of a change in circumstances is received.		
4.403	Program name update and non-standardized language	**4.403 COUNTABLE EARNED INCOME** The following shall be considered as earned income. A. Wages and Salaries 1. All payments for services as an employee, including garnishments, or money payments legally obligated to the employee and diverted to a third party for the employee's household expenses. Countable income from employment received by students in institutions of higher education while participating in state work-study programs or a fellowship with a work requirement shall not be considered as earned income. 2. Earned income includes government payments from Agricultural Stabilization and Conservation Service and wages of AmeriCorps Volunteers in Service to America (VISTA) workers. VISTA	**4.403 COUNTABLE EARNED INCOME** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, C, D, and G here, and including A, E, and F.] The following shall be considered as earned income: A. Wages and Salaries 1. All payments for services as an employee, including garnishments, or money payments legally obligated to the employee and diverted to a third party for the employee's household expenses. Countable income from employment received by students in institutions of higher education while participating in state work-study programs or a fellowship with a work requirement shall not be considered as earned income. 2. Earned income includes government payments	Updating Food Assistance to SNAP; standardizing language	

		payments are excluded if the client was receiving Food Assistance when he or she joined VISTA. If the client was not receiving Food Assistance when he or she joined VISTA, the VISTA payments shall count as earned income. Temporary interruptions in Food Assistance participation shall not alter the exclusion once an initial determination has been made (see Section 4.405.2, A, 3). Temporary interruptions shall be defined as a period of time where a household or individual missed a full month of benefits, excluding instances where the lapse in benefits is due to the local office not taking timely action in accordance with the processing standards outlined in Sections 4.604, 4.205, or 4.209.1. 3. Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. Advances on wages shall count as income in the month received, if reasonably anticipated. However, wages held by the employer as a general practice shall not be counted as income unless the household anticipates that it will receive income from such wages previously withheld by the employer. When an advance on wages is subsequently repaid from current wages, only the amount of wages received is considered as income. The amount of repayment is disregarded, even if the wage earner was not a Food Assistance participant at the time of the advance. 4. Payment for sick leave, vacation pay, and bonus pay shall be considered as earned income, if the person was still employed while receiving the pay. ***	from Agricultural Stabilization and Conservation Service and wages of AmeriCorps Volunteers in Service to America (VISTA) workers. VISTA payments are excluded if the client was receiving SNAP benefits when he or she joined VISTA. If the client was not receiving SNAP benefits when he or she joined VISTA, the VISTA payments shall count as earned income. Temporary interruptions in SNAP participation shall not alter the exclusion once an initial determination has been made (see Section 4.405.2, A, 3). Temporary interruptions shall be defined as a period of time where a household or individual missed a full month of benefits, excluding instances where the lapse in benefits is due to the local office not taking timely action in accordance with the processing standards outlined in Sections 4.604, 4.205, or 4.209.1. 3. Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. Advances on wages shall count as income in the month received, if reasonably anticipated. However, wages held by the employer as a general practice shall not be counted as income unless the household anticipates that it will receive income from such wages previously withheld by the employer. When an advance on wages is subsequently repaid from current wages, only the wages received is considered as income. The amount of repayment is disregarded, even if the wage-earner was not a SNAP participant at the time of the advance. 4. Payment for sick leave, vacation pay, and bonus pay shall be considered as earned income if the person was still employed while receiving the pay. ***		

		E. Self-Employment The method of ascertaining the self-employment income to be considered for Food Assistance purposes is often difficult and the guidelines set forth in Sections 4.403.1–4.403.12 are meant to clarify and aid the process. In determining gross self-employment income, all income received by the self-employment household must be considered. Self-employment income includes: 1. Monies received from rental or lease of self-employment property. Rental property shall be considered a self-employment enterprise. However, the income will be considered as earned income only if the household member (or disqualified person) actively manages the property at least an average of twenty (20) hours per week. 2. Monies received from the sale of capital goods, services, and property connected to the self-employment enterprise. Proceeds of sales from capital goods or equipment are to be treated as income rather than as capital gains. The term “capital gains”, as used by the Internal Revenue Service (IRS), describes the handling of the profit from the sale of capital assets such as, but not limited to, computers and other electronic devices, office furniture, vehicles, and equipment used in a self- employment enterprise; or securities, real estate, or other real property held as an investment for a set period of time. For Food Assistance purposes, the total amount received from the sale of capital goods shall be counted as income to the household.	E. Self-Employment The method of ascertaining the self-employment income to be considered for SNAP purposes is often difficult and the guidelines set forth in Sections 4.403.1–4.403.12 are meant to clarify and aid the process. In determining gross self-employment income, all income received by the self-employment household must be considered. Self-employment income includes: 1. Monies received from rental or lease of self-employment property. Rental property shall be considered a self-employment enterprise. However, the income will be considered as earned income only if the household member (or disqualified person) actively manages the property at least an average of twenty (20) hours per week. 2. Monies received from the sale of capital goods, services, and property connected to the self-employment enterprise. Proceeds of sales from capital goods or equipment are to be treated as income rather than as capital gains. The term “capital gains”, as used by the Internal Revenue Service (IRS), describes the handling of the profit from the sale of capital assets such as, but not limited to, computers and other electronic devices, office furniture, vehicles, and equipment used in a self-employment enterprise; or securities, real estate, or other real property held as an investment for a set time period. For SNAP purposes, the total amount received from the sale of capital goods shall be counted as income to the household. F. Owners of Limited Liability Corporations (LLC) and S-Corporations For SNAP purposes, owners of LLCs or S-Corporations		

		F. Owners of Limited Liability Corporations (LLC) and S-Corporations For Food Assistance Program purposes, owners of LLCs or S-Corporations are considered employees of the corporation and, therefore, cannot be considered self-employed. Because they are not considered self-employed, they are not entitled to the exclusion of allowable costs of producing self-employment income. The income from these types of corporations should be treated as regular earned income, not self-employment income. Although income received from these corporations is not considered self-employment, the income as reported on the LLC or S-Corporation owner's individual form 1040, shall be counted in determining the household's eligibility and benefit level. Income verified on the 1040 would then be annualized. In the case of a new business, anticipated income shall be used to determine financial eligibility until a tax form is available. ***	are considered employees of the corporation and, therefore, cannot be considered self-employed. Because they are not considered self-employed, they are not entitled to the exclusion of allowable costs of producing self-employment income. The income from these types of corporations should be treated as regular earned income, not self-employment income. Although income received from these corporations is not considered self-employment, the income as reported on the LLC or S-Corporation owner's individual form 1040, shall be counted in determining the household's eligibility and benefit level. Income verified on the 1040 would then be annualized. In the case of a new business, anticipated income shall be used to determine financial eligibility until a tax form is available. ***		
4.403.11(D)	Program name update; non-standardized language	**4.403.11 Determining Monthly Income from Self-Employment** *** D. Anticipating Capital Gains and Other Self-Employment Income When self-employment income is calculated on an anticipated basis, any capital gains that the household anticipates receiving in the next twelve (12) months, beginning with the date the application is filed, are added and divided by twelve (12). This amount is used in successive certification periods over the next twelve months unless a change occurs. A new average monthly amount must be calculated over this twelve month period if the anticipated amount of capital gains changes. The anticipated monthly amount of capital	**4.403.11 Determining Monthly Income from Self-Employment** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, and C her, and including D] *** D. Anticipating Capital Gains and Other Self-Employment Income When self-employment income is calculated on an anticipated basis, any capital gains that the household anticipates receiving in the next twelve (12) months, beginning with the date the application is filed, are added and divided by twelve (12). This amount is used in successive certification periods over the next twelve months unless a change occurs. A new average monthly amount must be calculated over this twelve-month period if	Updating Food Assistance to SNAP; standardizing language	

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		gains and the anticipated monthly self-employment income then are added and the anticipated cost of producing the income deducted. The cost is calculated by anticipating the monthly allowable costs of producing the self-employment income. The monthly net self-employment income will be added to any other earned and unearned income received by the household to determine eligibility of self-employed Food Assistance applicants. For those households with self-employment income which is not annualized, the eligibility worker shall anticipate income. Any anticipated proceeds from the sale of capital gains shall be used as income in the month the proceeds are anticipated to be received.	the anticipated amount of capital gains changes. The anticipated monthly amount of capital gains and the anticipated monthly self-employment income then are added and the anticipated cost of producing the income deducted. The cost is calculated by anticipating the monthly allowable costs of producing the self-employment income. The monthly net self-employment income will be added to any other earned and unearned income received by the household to determine eligibility of self-employed SNAP applicants. For those households with self-employment income, which is not annualized, the eligibility technician shall anticipate income. Any anticipated proceeds from the sale of capital gains shall be used as income in the month the proceeds are anticipated to be received.		
4.404	Grammar error	**4.404 COUNTABLE UNEARNED INCOME** *** I. Substantial Lottery or Gambling Winnings Substantial lottery or gambling winnings will be counted as unearned income in the month received. If multiple individuals shared in the purchase of a ticket, hand, or similar bet, then only the portion of the winnings allocated to the member of the snap household would be counted in the eligibility determination.	**4.404 Countable Unearned Income** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, D, E, F, G, and H her, and including I] *** I. Substantial Lottery or Gambling Winnings Substantial lottery or gambling winnings will be counted as unearned income in the month received. If multiple individuals shared in the purchase of a ticket, hand, or similar bet, then only the portion of the winnings allocated to the member of the SNAP household would be counted in the eligibility determination.	Correcting incorrect case use	
4.405	Program name update and non-standardized definition	**4.405 EXEMPT INCOME** Income from certain sources will be excluded for Food Assistance eligibility purposes under mandate of law. Only the following will not be considered as income:	**4.405 EXEMPT INCOME** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, D, E, F, G, H.1, H.2, H.3, H.4, H.5, H.6, H.8, H.9, H.10, I, and J here, and including H.7]	Updating Food Assistance to SNAP; and standardizing definition	

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		*** H. Vendor Payments *** 7.Energy assistance payments, other than for the Low-Income Energy Assistance Program (LEAP) or a one-time payment under federal or state law for weatherization or to repair/replace an inoperative furnace or other heating or cooling device, that are made under a state or local program shall be counted as income. The exclusion will still apply if a down payment is made and is followed by a final payment upon completion of work. If a state law prohibits the household from receiving a cash payment under state or local general assistance (or comparable program), the assistance would be excluded. This applies to either an energy assistance payment or other type of payment. Energy assistance payments for an expense paid on behalf of the household under a state law shall be considered an out-of-pocket expense incurred and paid by the household. Energy assistance payments made under Part A of Title IV of the Social Security Act (42 U.S.C. 601, et seq.) is included as income. The Act does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository. ***	Income from certain sources will be excluded for SNAP eligibility purposes under mandate of law. Only the following will not be considered as income: *** H. Vendor Payments *** 7. Energy assistance payments, other than for the Low-Income Energy Assistance Program (LEAP) or a one-time payment under federal or state law for weatherization or to repair/replace an inoperative furnace or other heating or cooling device, that are made under a state or local program shall be counted as income. The exclusion will still apply if a down payment is made and is followed by a final payment upon completion of work. If a state law prohibits the household from receiving a cash payment under state or local general assistance (or comparable program), the assistance would be excluded. This applies to either an energy assistance payment or other type of payment. Energy assistance payments for an expense paid on behalf of the household under a state law shall be considered an out-of-pocket expense incurred and paid by the household. Energy assistance payments made under Part A of Title IV of the Social Security Act (42 U.S.C. 601, et seq.) is included as income. The Act does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection. ***		
4.405.2	Program name update, non-standardized	**4.405.2 Income Excluded by Other Federal Statutes** The following government payments are received for a	**4.405.2 Income Excluded by Other Federal Statutes** [PUBLISHER NOTE NOT FOR PUBLICATION: We are	Updating Food Assistance to SNAP; and	

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	language	specific purpose and are excluded as income by federal law. Copies of the federal laws are available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203. A. General 1. P.L. No. 89-642, Section 11(b) of the Child Nutrition Act of 1966, as amended, excludes the value of assistance to children under this Act. 2. Reimbursement from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, (P.L. No. 91-646, Section 216). 3. Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1972, as amended, (P.L. No. 93-113). Payments under Title I (AmeriCorps Volunteers in the Service of America/VISTA - including University Year for Action and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving Food Assistances or public assistance at the time they joined the Title I Program, except that households which are receiving an income exclusion for a VISTA or other Title I Subsistence Allowance at the time of conversion to the Food Assistance Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in Food Assistance participation shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving public assistance or Food Assistance at the time	omitting sections A.7-A.17, A.20-A.26, A.28, B.1-B.12, and B.14-B.21 here, and including A.1-A.6, A.18, A.19, A.27, and B.13.] The following government payments are received for a specific purpose and are excluded as income by federal law. Copies of the federal laws are available for inspection. A. General 1. P.L. No. 89-642, Section 11(b) of the Child Nutrition Act of 1966, as amended, excludes the value of assistance to children under this Act. 2. Reimbursement from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, (P.L. No. 91-646, Section 216). 3. Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1972, as amended, (P.L. No. 93-113). Payments under Title I (AmeriCorps Volunteers in the Service of America/VISTA - including University Year for Action and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving Food Assistances or public assistance at the time they joined the Title I Program, except that households which are receiving an income exclusion for a VISTA or other Title I Subsistence Allowance at the time of conversion to the Food Assistance Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in Food Assistance participation shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving public assistance or Food Assistance at the time they joined VISTA shall have these volunteer payments	standardizing language	

		they joined VISTA shall have these volunteer payments included as earned income. 4. P.L. No. 101-610, Section 17(d), 11/16/90, National and Community Service Act (NCSA) of 1990, as amended, provides that Section 142(b) of the JTPA applies to projects conducted under Title I of the NCSA as if such projects were conducted under the JTPA. Title I includes three Acts: a. Serve-America: the Community Service, Schools and Service-Learning Act of 1990, as amended. b. American Conservation and Youth Service Corps Act of 1990, as amended. c. National and Community Service Act, as amended. There are approximately forty-seven (47) different NCSA programs and they vary by state. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning program and the AmeriCorps umbrella program come under this title. The National Civilian Community Corps (NCCC) is a federally managed AmeriCorps program. The Summer for Safety program is an AmeriCorps program under which participants earn a stipend and a one thousand dollar ($1,000) post-service educational award. The National and Community Service Trust Act of 1993 (P.L. No. 103-82, 9/23/93) amended the National and Community Services Act of 1990, but did not change the exclusion. 5. P.L. No. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P.L. No. 100-	included as earned income. 4. P.L. No. 101-610, Section 17(d), 11/16/90, National and Community Service Act (NCSA) of 1990, as amended, provides that Section 142(b) of the JTPA applies to projects conducted under Title I of the NCSA as if such projects were conducted under the JTPA. Title I includes three Acts: a. Serve-America: the Community Service, Schools and Service-Learning Act of 1990, as amended. b. American Conservation and Youth Service Corps Act of 1990, as amended. c. National and Community Service Act, as amended. There are approximately forty-seven (47) different NCSA programs and they vary by state. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning program and the AmeriCorps umbrella program come under this title. The National Civilian Community Corps (NCCC) is a federally managed AmeriCorps program. The Summer for Safety program is an AmeriCorps program under which participants earn a stipend and a one thousand dollar ($1,000) post-service educational award. The National and Community Service Trust Act of 1993 (P.L. No. 103-82, 9/23/93) amended the National and Community Services Act of 1990 but did not change the exclusion. 5. P.L. No. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P.L. No. 100-707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income for SNAP purposes. This exclusion applies to		

		707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income for Food Assistance purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Payments made to homeless people with funds from Federal Emergency Management Assistance (FEMA) to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency are not excluded under this provision. 6. Payments, allowances and earnings under the Workforce Innovation and Opportunity Act (WIOA) are excluded as income. Earnings paid for on-the-job training are still counted for the Food	Federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood, or explosion, which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Payments made to homeless people with funds from Federal Emergency Management Assistance (FEMA) to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency are not excluded under this provision. 6. Payments, allowances and earnings under the Workforce Innovation and Opportunity Act (WIOA) are excluded as income. Earnings paid for on-the-job training are still counted for SNAP. On-the-job training payments for members under nineteen (19) years of age who are participating in WIOA Programs and are under the parental control of an adult member of the household shall be excluded as income. The exclusion shall apply regardless of school attendance and/or enrollment as outlined in Section 4.405, C. On-the-job training payments under the Summer Youth Employment and Training Program are excluded from		

		Assistance Program. On-the-job training payments for members under nineteen (19) years of age who are participating in WIOA Programs and are under the parental control of an adult member of the household shall be excluded as income. The exclusion shall apply regardless of school attendance and/or enrollment as outlined in Section 4.405, C. On-the-job training payments under the Summer Youth Employment and Training Program are excluded from income. *** 18. Payments made from the Agent Orange Settlement Fund (P.L. No. 101-201). All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income retroactive to January 1, 1989. The veteran with disabilities will receive yearly payments. Survivors of deceased veterans with disabiliities will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company. P.L. No. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excludes payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income in determining eligibility or the amount of benefits under the Food Assistance Program. P.L. No. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to Agent Orange. These VA payments	income. *** 18. Payments made from the Agent Orange Settlement Fund (P.L. No. 101-201). All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income retroactive to January 1, 1989. The veteran with disabilities will receive yearly payments. Survivors of deceased veterans with disabilities will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company. P.L. No. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excludes payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income in determining SNAP eligibility or the amount of SNAP benefits. P.L. No. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to Agent Orange. These VA payments are not excluded by law. 19. P.L. No. 101-508, Section 5801, which amended Section 402(i) of the Social Security Act, 11/5/90. At-risk block grant child care payments made under section 5801 are excluded from being counted as income for SNAP purposes and no deduction may be allowed for any expense covered by such payments. *** 27. P.L. No. 103-322, Section 230202, 9/13/94,		

		are not excluded by law. 19. P.L. No. 101-508, Section 5801, which amended Section 402(i) of the Social Security Act, 11/5/90. At-risk block grant child care payments made under section 5801 are excluded from being counted as income for Food Assistance purposes and no deduction may be allowed for any expense covered by such payments. *** 27. P.L. No. 103-322, Section 230202, 9/13/94, Amendments to Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) provides in part that, notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a federal program or a federally financed state or local program would otherwise pay: a. Such crime victim compensation program shall not pay that compensation. b. The other program shall make its payments without regard to the existence of the crime victim compensation program. Based on this language, payments received under this Program must be excluded from income for Food Assistance purposes. *** B. American Indian or Alaska Native *** 13. P.L. No. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income nor	Amendments to Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) provides in part that, notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a federal program or a federally financed state or local program would otherwise pay: a. Such crime victim compensation program shall not pay that compensation. b. The other program shall make its payments without regard to the existence of the crime victim compensation program. Based on this language, payments received under this Program must be excluded from income for SNAP purposes. *** B. American Indian or Alaska Native *** 13. P.L. No. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income nor otherwise used to reduce or deny SNAP benefits except for per capita shares in excess of two thousand dollars ($2,000). The first two thousand dollars ($2,000) of each payment is excluded. ***		

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		otherwise used to reduce or deny Food Assistance benefits except for per capita shares in excess of two thousand dollars ($2,000). The first two thousand dollars ($2,000) of each payment is excluded. ***			
4.407(A)	Program name update	**4.407 DEDUCTIONS AND EXCLUSIONS FROM INCOME** A. Allowable deductions are subtracted from total monthly gross income to determine the household's monthly net Food Assistance income. The monthly income shall be rounded down to the lower dollar if it ends in one (1) through forty-nine (49) cents and rounded to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents before deductions are considered. ***	**4.407 DEDUCTIONS AND EXCLUSIONS FROM INCOME** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, C, D, and E here, and including A.] A. Allowable deductions are subtracted from total monthly gross income to determine the household's monthly net SNAP income. The monthly income shall be rounded down to the lower dollar if it ends in one (1) through forty-nine (49) cents and rounded to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents before deductions are considered. ***	Updating Food Assistance to SNAP	
4.407.2(A)	Grammar error	**4.407.2 Earned Income Deduction** A. A household with earned income shall receive a deduction of twenty percent (20%) of its gross nonexempt earned income, which is been rounded down to the lower dollar if it ends in the one (1) through forty-nine (49) cents and rounded up to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents. The twenty percent (20%) deduction shall also apply to prorated income earned by the disqualified member and attributed to the household.	**4.407.2 Earned Income Deduction** A. A household with earned income shall receive a deduction of twenty percent (20%) of its gross nonexempt earned income, which is rounded down to the lower dollar if it ends in the one (1) through forty-nine (49) cents and rounded up to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents. The twenty percent (20%) deduction shall also apply to prorated income earned by the disqualified member and attributed to the household.	Correcting grammar error	
4.407.3	Program name update; and non-standardized language	**4.407.3 Excess Shelter Deduction** *** B. A shelter deduction cap, as specified below, applies to households that do not contain person who is elderly and/or a person with a disability as defined in Section 4.304.41. Those households containing a	**4.407.3 Excess Shelter Deduction** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, C, and E here, including B and D.] *** B. A shelter deduction cap, as specified below, applies to households that do not contain A person who is aged 60	Updating Food Assistance to SNAP; and standardizing language	

		person who is elderly and/or a person with a disability shall receive an excess shelter deduction for the monthly cost of shelter that exceeds fifty percent (50%) of the household's monthly income after all other applicable deductions. **Shelter Deduction Cap** **Effective October 1, 2020** | $586 *** D. A household may claim both the costs of its actual residence and those for a home that is not occupied by the household because of employment or training away from home; or Illness; or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for Food Assistance purposes; and the home must not be leased or rented during the absence of the household. ***	and older or a person with a disability as defined in Section 4.304.41. Those households containing a person who is aged 60 and older and/or a person with a disability shall receive an excess shelter deduction for the monthly cost of shelter that exceeds fifty percent (50%) of the household's monthly income after all other applicable deductions. **Shelter Deduction Cap** **Effective October 1, 2020** | $586 *** D. A household may claim both the costs of its actual residence and those for a home that is not occupied by the household because of employment or training away from home; or Illness; or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for SNAP purposes; and the home must not be leased or rented during the absence of the household. ***		
4.407.31	Program name update	**4.407.31 Four-Tiered Mandatory Standard Utility Allowance** Effective October 1, 2008, a four tiered mandatory standard utility allowance deduction was implemented in determining a household's excess shelter deduction. Households cannot claim actual utility expenses and are only entitled to one of the four utility allowances. The four utility allowances shall be reviewed annually and adjusted each year, based on Federal approval, to reflect Colorado's cost of utilities. No utility expenses can be allowed as an income exclusion for self-employed	**4.407.31 Four-Tiered Mandatory Standard Utility Allowance** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, C, and D here, and including B.] Effective October 1, 2008, a four-tiered mandatory standard utility allowance deduction was implemented in determining a household's excess shelter deduction. Households cannot claim actual utility expenses and are only entitled to one of the four utility allowances. The four utility allowances shall be reviewed annually and adjusted each year, based on Federal approval, to reflect Colorado's cost of utilities. No utility	Updating Food Assistance to SNAP	

		households when a mandatory utility allowance is given to the household. When determining expedited eligibility, the appropriate utility allowance shall be applied when establishing the household's shelter costs. The four (4) tiers are as follows: A. Heating and Cooling Utility Allowance (HCUA) 1. "Cooling costs" are defined as utility costs relating to the operation of air conditioning systems, room air conditioners, swamp coolers, or evaporative coolers. Fans are not an allowable cooling cost. A heating and cooling utility allowance (HCUA) is available only to households who: a. Incur or anticipate heating or cooling costs separate and apart from their rent or mortgage; b. Received a Low-Income Energy Assistance Program (LEAP) payment within the previous twelve (12) month period, regardless of whether or not the individual is still residing at the address for which he/she received the LEAP payment; c. Live in private rental housing and are billed by their landlords on the basis of individual usage or are charged a flat rate separately from their rent for heating and cooling; d. Share a residence and who incur at least a portion of the heating or cooling cost; each household will be entitled to the full HCUA; or,	expenses can be allowed as an income exclusion for self-employed households when a mandatory utility allowance is given to the household. When determining expedited eligibility, the appropriate utility allowance shall be applied when establishing the household's shelter costs. The four (4) tiers are as follows: A. Heating and Cooling Utility Allowance (HCUA) 1. "Cooling costs" are defined as utility costs relating to the operation of air conditioning systems, room air conditioners, swamp coolers, or evaporative coolers. Fans are not an allowable cooling cost. A heating and cooling utility allowance (HCUA) is available only to households who: a. Incur or anticipate heating or cooling costs separate and apart from their rent or mortgage; b. Received a Low-Income Energy Assistance Program (LEAP) payment within the previous twelve (12) month period, regardless of whether or not the individual is still residing at the address for which he/she received the LEAP payment; c. Live in private rental housing and are billed by their landlords on the basis of individual usage or are charged a flat rate separately from their rent for heating and cooling; d. Share a residence and who incur at least a portion of the heating or cooling cost; each household will be entitled to the full HCUA; or, e. Live in public housing and are responsible for excess heating and/or cooling costs.		

		e. Live in public housing and are responsible for excess heating and/or cooling costs. 2. A Food Assistance household, which incurs or anticipates a heating or cooling costs on an irregular basis, may continue to receive the HCUA between billing periods. 3. Operation of a space heater, electric blanket, heat lamp, cooking stove and the like when used as a supplemental heating source are allowable costs when determining eligibility for the basic utility allowance (BUA), but do not qualify a household for the HCUA. 4. The HCUA standard is as follows: **HCUA Standard** **Effective October 1, 2020** \$486 ***	2. A SNAP household, which incurs or anticipates heating or cooling costs on an irregular basis, may continue to receive the HCUA between billing periods. 3. Operation of a space heater, electric blanket, heat lamp, cooking stove and the like when used as a supplemental heating source are allowable costs when determining eligibility for the basic utility allowance (BUA), but do not qualify a household for the HCUA. 4. The HCUA standard is as follows: **HCUA Standard** **Effective October 1, 2020** \$486 ***		
4.407.6	Program name update; non-standardized language; and grammar error	**4.407.6 Excess Medical Deduction** A household shall receive a deduction for total medical expenses in excess of thirty-five dollars ($35) per month, incurred by any household member(s) who is elderly or a person with disabilities. Other household members who are not elderly or a person with disabilities, including spouses and dependents, cannot claim costs of their medical treatment and services. A. The following medical costs, less the cost of reimbursements from another source, are allowable: *** 7. Reasonable transportation and lodging to obtain medical treatment or services. Mileage expenses shall be calculated based on the prevailing Internal Revenue Service (IRS)	**4.407.6 Excess Medical Deduction** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A.1-A.6, A.8, and B.1-B.5 here, and including A.7 and B.6] A household shall receive a deduction for total medical expenses more than thirty-five dollars ($35) per month, incurred by any household member(s) who is aged 60 and older or a person with disabilities. Other household members who are not aged 60 and older or a person with disabilities, including spouses and dependents, cannot claim costs of their medical treatment and services. A. The following medical costs, less the cost of reimbursements from another source, are allowable: ***	Updating Food Assistance to SNAP; standardizing language; and correcting incorrect capitalization	

		COMMERCIAL mileage rate. *** B. Non-allowable medical costs include, but are not limited to: *** 6. Medical expenses carried forward from past billing periods unless one of the following conditions is met: a. The amount is being carried forward pending reimbursement information; or, b. The household has made arrangements to make monthly installments on the past due bills. The past due amount must be due to missed payments under a previous repayment agreement with the medical provider, and the payment plan is now being renegotiated with the provider. The negotiation of a payment plan with a collection agency will not be accepted as a renegotiated payment plan; or, c. Households that become categorically eligible for food assistance by reason of becoming a pure SSI household shall be entitled to excess medical expenses for the period for which they are authorized to receive SSI or from the date of the food assistance application, whichever is later. Restored benefits shall be issued if appropriate; or, d. Medical expenses that occur after the date an application is filed and reported at the subsequent application for redetermination or periodic report shall be considered if the medical expense has not previously been reported and allowed as a medical deduction.	7. Reasonable transportation and lodging to obtain medical treatment or services. Mileage expenses shall be calculated based on the prevailing Internal Revenue Service (IRS) commercial mileage rate. *** B. Non-allowable medical costs include, but are not limited to: *** 6. Medical expenses carried forward from past billing periods unless one of the following conditions is met: a. The amount is being carried forward pending reimbursement information; or, b. The household has arranged to make monthly installments on the past due bills. The past due amount must be due to missed payments under a previous repayment agreement with the medical provider, and the payment plan is now being renegotiated with the provider. The negotiation of a payment plan with a collection agency will not be accepted as a renegotiated payment plan; or, c. Households that become categorically eligible for SNAP by reason of becoming a pure SSI household shall be entitled to excess medical expenses for the period for which they are authorized to receive SSI or from the date of the SNAP application, whichever is later. Restored benefits shall be issued if appropriate; or, d. Medical expenses that occur after the date an application is filed and reported at the subsequent application for recertification or periodic report shall be considered if the medical expense has not previously been reported and allowed as a medical deduction. If at recertification the household provides previously unreported		

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		If at recertification the household provides previously unreported medical expenses that occurred prior to the last certification period that are past due, the county department shall review the medical expenses under provisions a through c of this subsection.	medical expenses that occurred prior to the last certification period that are past due, the local office shall review the medical expenses under provisions a through c of this subsection.		
4.407.61(A)	Grammar errors	**4.407.61 Determining Monthly Medical Expenses** A. A household that contains a member who is eligible for a medical expense deduction is eligible for a deduction using either the Standard Medical Expense Deduction (SMED) or using actual medical expenses. Beginning October 1, 2016, the SMED is one hundred sixty five dollars ($165). The smed is used if the total verified medical expenses are greater than thirty five dollars ($35) and less than or equal to the smed. The household may claim actual expenses if the total verified expenses, after deducting the first thirty five dollars (35$), exceed the smed. ***	**4.407.61 Determining Monthly Medical Expenses** A. A household that contains a member who is eligible for a medical expense deduction is eligible for a deduction using either the Standard Medical Expense Deduction (SMED) or using actual medical expenses. Beginning October 1, 2016, the SMED is one hundred sixty-five dollars ($165). The SMED is used if the total verified medical expenses are greater than thirty-five dollars ($35) and less than or equal to the SMED. The household may claim actual expenses if the total verified expenses, after deducting the first thirty-five dollars ($35), exceed the SMED. ***	Correcting incorrect case usage	
4.408	Program name update; and non-standardized language	**4.408 RESOURCE ELIGIBILITY STANDARDS** *** D. As a result of the Food, Conservation and Energy Act of 2008, adjustments to the Food Assistance resource limit will be subject to change annually according to the Consumer Price Index. There are currently two (2) resource limits: 1. One established for households that do contain a member who is elderly and/or a person with a disability; and, 2. Another established for households that do not contain a member who is elderly and/or a person with a disability.	**4.408 RESOURCE ELIGIBILITY STANDARDS** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, and C here, and including D and E.] *** D. As a result of the Food, Conservation, and Energy Act of 2008, adjustments to the SNAP resource limit will be subject to change annually according to the Consumer Price Index. There are currently two (2) resource limits: 1. One established for households that do contain a member who is aged 60 and older and/or a person with a disability; and, 2. Another established for households that do not	Updating Food Assistance to SNAP; and standardizing language	

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		E. The resource limits are as follows: Effective October 1, 2017, the resource limit for households that do contain a member who is elderly and/or a person with a disability is three thousand five hundred ($3,500). The resource limit for households that do not contain a member who is elderly and/or a person with a disability is two thousand two hundred fifty dollars ($2,250).	contain a member who is aged 60 and older and/or a person with a disability. E. The resource limits are as follows: Effective October 1, 2017, the resource limit for households that do contain a member who is aged 60 and older and/or a person with a disability is three thousand five hundred ($3,500). The resource limit for households that do not contain a member who is aged 60 and older and/or a person with a disability is two thousand two hundred fifty dollars ($2,250).		
4.408.1	Spelling error	**4.408.1 Determining the Value of Resources** The value of nonexempt household resources at the time the application is flied must be determined from applicant statements, documents, and/or from collateral contacts when household assessment is uncertain or questionable. *** B. Valuation of Non-Liquid Resources Except for real property, non-exempt non-liquid resources shall have a fair market value as determined from the best source available (such as, but not limited to, blue book, local dealer, or equivalent verifiable Internet web site) less verified encumbrances. If warranted, the eligibility technician worker should adjust the market value for poor or unusable condition of the property before assigning a resource value. The eligibility technician worker shall annotate the case record to show source and computation used to determine resource value. The value of real property, such as buildings, land, or vacation property, unless exempt as income producing may be obtained by using the actual value reported by a county assessor or, if not reported, the current assessed valuation, accomplished in accordance with state law, and dividing the value by the appropriate	**4.408.1 Determining the Value of Resources** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section A here, including unnumbered section and B.] The value of nonexempt household resources at the time the application is filed must be determined from applicant statements, documents, and/or from collateral contacts when household assessment is uncertain or questionable. *** B. Valuation of Non-Liquid Resources Except for real property, non-exempt non-liquid resources shall have a fair market value as determined from the best source available (such as, but not limited to, blue book, local dealer, or equivalent verifiable Internet web site) less verified encumbrances. If warranted, the eligibility technician worker should adjust the market value for poor or unusable condition of the property before assigning a resource value. The eligibility technician worker shall annotate the case record to show source and computation used to determine resource value. The value of real property, such as buildings, land, or vacation property, unless exempt as income producing may be obtained by using the actual value reported by a	Correcting incorrect spelling	

		percentage rate of assessment for real property to derive fair market value and subtracting the amount the household currently owes on the property.	county assessor or, if not reported, the current assessed valuation, accomplished in accordance with state law, and dividing the value by the appropriate percentage rate of assessment for real property to derive fair market value and subtracting the amount the household currently owes on the property.		
4.408.2	Program name update	**4.408.2 Transfer of Resources** At the time of application, households not eligible under expanded or basic categorical eligibility rules shall be asked to provide information regarding any resources which any household member, ineligible non-citizen, or disqualified person whose resources are being considered available to the household has transferred within the three (3) month period immediately preceding the date of application. Households that have transferred resources knowingly for the purpose of qualifying or attempting to qualify for Food Assistance benefits shall be disqualified from participation in the program for up to one (1) year from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three (3) month period prior to application, or if they are transferred knowingly after the household is determined eligible for benefits. A. Eligibility for the program shall not be affected by the following transfers: 1. Resources that would not otherwise affect eligibility, such as resources consisting of excluded person property such as furniture, or of money that when added to other household resources, totaled less at the time of the transfer than the allowable resource limits. 2. Resources that are sold or traded at, or near, fair market value. 3. Resources that are transferred between	**4.408.2 Transfer of Resources** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section C here, and including A and B.] At the time of application, households not eligible under expanded or basic categorical eligibility rules shall be asked to provide information regarding any resources which any household member, ineligible non-citizen, or disqualified person whose resources are being considered available to the household has transferred within the three (3) month period immediately preceding the date of application. Households that have transferred resources knowingly for the purpose of qualifying or attempting to qualify for SNAP benefits shall be disqualified from participation in the program for up to one (1) year from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three (3) month period prior to application, or if they are transferred knowingly after the household is determined eligible for benefits. A. Eligibility for the program shall not be affected by the following transfers: 1. Resources that would not otherwise affect eligibility, such as resources consisting of excluded person property such as furniture, or of money that when added to other household resources, totaled less at the time of the transfer than the allowable resource limits. 2. Resources that are sold or traded at, or near, fair market value.	Updating Food Assistance to SNAP	

		members of the same household including ineligible non-citizens or disqualified individuals whose resources are being considered available to the household. 4. Resources that are transferred for reasons other than qualifying or attempting to qualify for Food Assistance benefits, for example a parent placing funds into an educational trust fund. B. In the event the local office establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for Food Assistance benefits, the household shall be sent a notice of denial explaining the reason for and length of disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and the length of disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action has expired, unless the household has requested a fair hearing and continued benefits. The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceed the allowable resource limits. ***	3. Resources that are transferred between members of the same household including ineligible non-citizens or disqualified individuals whose resources are being considered available to the household. 4. Resources that are transferred for reasons other than qualifying or attempting to qualify for SNAP benefits, for example a parent placing funds into an educational trust fund. B. In the event the local office establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for SNAP, the household shall be sent a notice of denial explaining the reason for and length of disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and the length of disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action has expired unless the household has requested a fair hearing and continued benefits. The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceed the allowable resource limits. ***		
4.410	Program name update; and spelling error	**4.410 EXEMPT RESOURCES** In determining the resources for a household, the following shall be excluded from consideration. *** D. Household Goods, Personal Effects, and	**4.410 EXEMPT RESOURCES** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, E, F, H, I J.2, J.4-J.11, J.13, J.14, J.16, and J.17 here, and including D, G, J.1, J.3, J.12, and J.15.]	Updating Food Assistance to SNAP; and correcting spelling error	

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		Retirement Accounts
		
		1. Household goods, personal effects, including one burial plot per household member, the cash value of life insurance policies, and livestock not excluded as income producing property are exempt resources.
		
		2. All retirement accounts with Federal tax preferred retirement status are exempt resources. The following retirement accounts are exempt:
		
		a. Pension or traditional defined benefit plan;
		
		b. 401(K) plan and simple 401(K);
		
		c. 501C (18);
		
		d. 403(A) and 403(B) plans;
		
		e. 408 plans including traditional individual retirement accounts (Roth IRA, SIMPLE IRA, and myRA), traditional Individual Retirement Annuities
		
		f. 457 plan;
		
		g. Federal employee thrift savings plan;
		
		h. Keogh plan;
		
		i. 529A funds including funds in a qualified ABLE program
		
		j. Simplified employer plan;
		
		k. Profit sharing plan; and,
		
		l. Cash balance plans.
			In determining the resources for a household, the following shall be excluded from consideration.
			
			***
			D. Household Goods, Personal Effects, and Retirement Accounts
			
			1. Household goods, personal effects, including one burial plot per household member, the cash value of life insurance policies, and livestock not excluded as income producing property are exempt resources.
			
			2. All retirement accounts with Federal tax preferred retirement status are exempt resources. The following retirement accounts are exempt:
			
			a. Pension or traditional defined benefit plan;
			
			b. 401(K) plan and simple 401(K);
			
			c. 501C (18);
			
			d. 403(A) and 403(B) plans;
			
			e. 408 plans including traditional individual retirement accounts (Roth IRA, SIMPLE IRA, and myRA), traditional Individual Retirement Annuities
			
			f. 457 plan;
			
			g. Federal employee thrift savings plan;
			
			h. Keogh plan;
			
			i. 529A funds including funds in a qualified ABLE program
			
			j. Simplified employer plan;
			
			k. Profit sharing plan; and,		

		3. All tax preferred education accounts are exempt resources. The two types of tax preferred education savings accounts are: a. Section 529 qualified tuition programs, which allow owners to prepay a student's education expenses or to contribute to an account to pay those expenses. b. Coverdell education savings accounts and IRA type of account designed to pay a student's education expense. 4. One bona fide pre-purchased funeral agreement per household member, which may include one burial plot per household member, shall be excluded provided that the agreement does not exceed one thousand five hundred dollars ($1,500) in equity value; the equity value over one thousand five hundred dollars ($1,500) is counted as a resource. If a burial plot is included in the agreement, the burial plot portion will be exempted prior to determining the equity value of the funeral agreement. *** G. Resources with No Significant Return Resources that, as a practical matter, the household is unlikely to be able to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great, shall be considered inaccessible. A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. Verification of the value of a resource to be excluded shall not be required unless the Food Assistance worker determines that the information provided by the household is insufficient to permit a	l. Cash balance plans. 3. All tax deferred education accounts are exempt resources. The two types of tax deferred education savings accounts are: a. Section 529 qualified tuition programs, which allow owners to prepay a student's education expenses or to contribute to an account to pay those expenses. b. Coverdell education savings accounts and IRA type of account designed to pay a student's education expense. 4. One bona fide pre-purchased funeral agreement per household member, which may include one burial plot per household member, shall be excluded provided that the agreement does not exceed one thousand five hundred dollars ($1,500) in equity value; the equity value over one thousand five hundred dollars ($1,500) is counted as a resource. If a burial plot is included in the agreement, the burial plot portion will be exempted prior to determining the equity value of the funeral agreement. *** G. Resources with No Significant Return Resources that, as a practical matter, the household is unlikely to be able to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great, shall be considered inaccessible. A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. Verification of the value of a resource to be excluded shall not be required unless the SNAP worker determines that the information provided by the household		

		determination of the resource value or the worker believes that the information is questionable. This provision regarding no significant return does not apply to negotiable financial instruments. A significant return or a significant amount of funds shall be any return/funds after estimated costs of sale or disposition and taking into account the ownership interest of the household. A significant return or a significant amount of funds is an amount that is estimated to be more than one thousand five hundred dollars ($1,500). *** J. Government Payments The following government payments are received for a specific purpose or services and shall be excluded as a resource for Food Assistance eligibility. 1. P.L. No. 89-642. Section 11b) of the Child Nutrition Act of 1966 excludes the value of assistance to children under this Act from resources for Food Assistance purposes. *** 3. Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended: for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration, Section 312(d) of Disaster Relief Act of 1974. The Disaster Relief Act of 1974. P.L. No 93-288 as amended by P.L. No. 100-707, Section 105(i). the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments	is insufficient to permit a determination of the resource value or the worker believes that the information is questionable. This provision regarding no significant return does not apply to negotiable financial instruments. A significant return or a significant amount of funds shall be any return/funds after estimated costs of sale or disposition and considering the ownership interest of the household. A significant return or a significant amount of funds is an amount that is estimated to be more than one thousand five hundred dollars ($1,500). *** J. Government Payments The following government payments are received for a specific purpose or services and shall be excluded as a resource for SNAP eligibility. 1. P.L. No. 89-642. Section 11b) of the Child Nutrition Act of 1966 excludes the value of assistance to children under this Act from resources for SNAP purposes. *** 3. Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended: for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration, Section 312(d) of Disaster Relief Act of 1974. The Disaster Relief Act of 1974. P.L. No 93-288 as amended by P.L. No. 100-707, Section 105(i). the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments		

		precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for Food Assistance purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. *** 12. A federal earned income tax credit received either as a lump sum or as payments under Section 3507 or the Internal Revenue code for the month of receipt and the following month for the individual and that individual's spouse (P.L. No. 101-508). A federal, state, or local Earned Income Tax Credit (EITC) would be exempted for twelve (12) months from receipt for any household member if the individual receiving the EITC was participating in the Food Assistance Program when the EITC was received and participation continues for twelve (12) months. Temporary non-participation due to administrative reasons, such as a delayed recertification, shall not affect the twelfth (12th) month participation requirement (P.L. No. 103-66, Mickey Leland Childhood Hunger Relief Act of 1993). *** 15. P.L. No. 103-322. Section 230202, 9/13/94. Amendments to Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) provide in part that, notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a federal program or a federally financed state or	precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for SNAP purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. *** 12. A federal earned income tax credit received either as a lump sum or as payments under Section 3507 or the Internal Revenue code for the month of receipt and the following month for the individual and that individual's spouse (P.L. No. 101-508). A federal, state, or local Earned Income Tax Credit (EITC) would be exempted for twelve (12) months from receipt for any household member if the individual receiving the EITC was participating in SNAP when the EITC was received, and participation continues for twelve (12) months. Temporary non-participation due to administrative reasons, such as a delayed recertification, shall not affect the twelfth (12th) month participation requirement (P.L. No. 103-66, Mickey Leland Childhood Hunger Relief Act of 1993). *** 15. P.L. No. 103-322. Section 230202, 9/13/94. Amendments to Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) provide in part that, notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a federal program or a federally financed state or local program would otherwise pay: a. Such crime victim compensation program shall not pay that compensation;		

		local program would otherwise pay: a. Such crime victim compensation program shall not pay that compensation; b. The other program shall make its payments without regard to the existence of the crime victim compensation program. Based on this language, payments received under this program must be excluded from income for Food Assistance purposes. ***	b. The other program shall make its payments without regard to the existence of the crime victim compensation program. Based on this language, payments received under this program must be excluded from income for SNAP purposes. ***		
4.411.1	Program name update; and non-standardized language	**4.411.1 Treatment of Income and Resources of Disqualified and/or Sanctioned Members** A. Individual household members may be disqualified for being ineligible non-citizens, for failure or refusal to obtain or provide a Social Security Number (SSN), for intentional Program violation/fraud, for being a fleeing felon, for failing to comply with a work requirement, or for being a sanctioned ABAWD (Able Bodied Adult Without Dependents) who has received three (3) months of Food Assistance benefits within a thirty-six (36) month period. B. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining members shall be determined as follows: 1. Households containing members disqualified for Intentional Program Violation or fraud, or a work requirement sanction, or classified as a fleeing felon: a. Income, Resources, and Deductible Expenses The income and resources of the disqualified household member(s) shall be counted in	**4.411.1 Treatment of Income and Resources of Disqualified and/or Sanctioned Members** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section B.2.a-B.2.d here and including A, B.1, and B.2.] A. Individual household members may be disqualified for being ineligible non-citizens, for failure or refusal to obtain or provide a SSN, for IPV/fraud, for being a fleeing felon, for failing to comply with a work requirement, or for being a sanctioned ABAWD who has received three (3) months of SNAP benefits within a thirty-six (36) month period. B. During the period in which a household member is disqualified, the eligibility and benefit level of any remaining members shall be determined as follows: 1. Households containing members disqualified for IPV or fraud, or a work requirement sanction, or classified as a fleeing felon: a. Income, Resources, and Deductible Expenses The income and resources of the disqualified household member(s) shall be counted in their entirety. Resources shall only be considered if the	Updating Food Assistance to SNAP; and standardizing acronym use	

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		their entirety. Resources shall only be considered if the household is required to meet the resource standard. The allowable earned income, standard, medical, dependent care, and shelter deductions shall be allowed in their entirety. b. Eligibility and Benefit Level The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified household member will not be included when determining the household size for comparison against any eligibility standard, which includes the gross income and net income eligibility limits or the resource eligibility limits. 2. Households containing members disqualified for being an ineligible non-citizen, for failure or refusal to obtain or provide a Social Security Number (SSN), or sanctioned as an able bodied adult without dependents (ABAWD) who has received three (3) months of Food Assistance benefits in a thirty six (36) month period: ***	household is required to meet the resource standard. The allowable earned income, standard, medical, dependent care, and shelter deductions shall be allowed in their entirety. b. Eligibility and Benefit Level The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified household member will not be included when determining the household size for comparison against any eligibility standard; this includes the gross income and net income eligibility limits or the resource eligibility limits. 2. Households containing members disqualified for being an ineligible non-citizen, for failure or refusal to obtain or provide an SSN, or sanctioned as an ABAWD who has received three (3) months of SNAP benefits in a thirty-six (36) month period: ***		
4.411.2(C)	Program name update	**4.411.2 Treatment of Income and Resources of Other Non-Household Members** C.A person who is an ineligible student for Food Assistance purposes shall be treated as a non-household member. The other members of a household containing the ineligible student may be certified. The income and resources of the ineligible student shall not be considered available to the other household members for determining the household's income resources and deductions nor shall the	**4.411.2 Treatment of Income and Resources of Other Non-Household Members** C. A person who is an ineligible student for SNAP purposes shall be treated as a non-household member. The other members of a household containing the ineligible student may be certified. The income and resources of the ineligible student shall not be considered available to the other household members for determining the household's income resources and deductions nor shall the student be considered in determining the	Updating Food Assistance to SNAP	

		student be considered in determining the household's allotment.	household's allotment.		
4.500(B)	Non-standardized language	**4.500 VERIFICATION AND DOCUMENTATION** *** B. The case record shall consist of statements and documentation regarding the sources and results of verification used to determine a household's eligibility. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility worker's determination. When making a decision of ineligibility, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record. The case record shall also contain all correspondence pertaining to fair hearings and administrative disqualification hearings. Information to retain in the case record for fair hearings shall include, at a minimum, the household's request for a fair hearing, the scheduling notice with the hearing date and time, all decisions pertaining to the fair hearing, and any exceptions filed by the county department or the household. Information to retain in the case record for administrative disqualification hearings (ADH) shall include, at a minimum, the notice to the individual of the alleged intentional program violation (IPV)/fraud, any notice given to the household waiving the household's right to a disqualification hearing, the scheduling notice of the disqualification hearing if the waiver is not signed and returned, all decisions issued regarding the outcome of the ADH hearing, and the	**4.500 VERIFICATION AND DOCUMENTATION** [PUBLICHSER NOTE NOT FOR PUBLICATION: We are omitting sections A, C, D, and E here; including B.] *** B. The case record shall consist of statements and documentation regarding the sources and results of verification used to determine a household's eligibility. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility technician's determination. When ineligibility is determined, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record. The case record shall also contain all correspondence pertaining to fair hearings and administrative disqualification hearings. Information to retain in the case record for fair hearings shall include, at a minimum, the household's request for a fair hearing, the scheduling notice with the hearing date and time, all decisions pertaining to the fair hearing, and any exceptions filed by the local office or the household. Information to retain in the case record for administrative disqualification hearings (ADH) shall include, at a minimum, the notice to the individual of the alleged intentional program violation (IPV)/fraud, any notice given to the household waiving the	Standardizing language	

		disqualification notice sent to the household notifying the individual of the disqualification period. ***	household's right to a disqualification hearing, the scheduling notice of the disqualification hearing if the waiver is not signed and returned, all decisions issued regarding the outcome of the ADH hearing, and the disqualification notice sent to the household notifying the individual of the disqualification period. ***		
4.501	Non-standardized language	**4.501 PRUDENT PERSON PRINCIPLE** The rules contained herein are intended to be sufficiently flexible to allow the eligibility worker to exercise reasonable judgment in executing his/her responsibilities. In this regard, the prudent person principle may be applied. The term prudent person principle refers to reasonable judgments made by an individual in a given case. In making an eligibility decision, the eligibility worker should consider whether his/her judgment is reasonable, based on experience and knowledge of the program.	**4.501 PRUDENT PERSON PRINCIPLE (PPP)** The rules contained herein are intended to be sufficiently flexible to allow the eligibility technician to exercise reasonable judgment in executing his/her responsibilities when determining SNAP eligibility, also known as PPP. In making an eligibility decision, the eligibility technician should consider whether his/her judgment is reasonable, based on experience and knowledge of SNAP.	Standardizing language	
4.502	Program name update; non-standardized language and acronyms; repeated language; formatting issues	**4.502 VERIFICATION REQUIREMENTS AT APPLICATION, REDETERMINATION, AND PERIODIC REPORT** A. Verification Requirements at Application 1. Expedited Service Requirements Only verification of the identity of the applicant is required. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. No requirement for a specific document may be imposed. Client declaration of Social Security Number(s) and residency shall be accepted.	**4.502 VERIFICATION REQUIREMENTS AT APPLICATION, RECERTIFICATION, AND PERIODIC REPORT** A. Verification Requirements at Application 1. Expedited Service Requirements Only verification of the identity of the applicant is required. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. No requirement for a specific document may be imposed. Client declaration of Social Security Number(s) and residency shall be accepted. Client declaration of other household circumstances	Updating Food Assistance to SNAP; standardizing language and acronyms; removal of repeated sentence; and reformatting section for clarify	

		Client declaration of other household circumstances shall be accepted when determining eligibility for expedited service, and verification of any client-declared information shall be postponed and verified prior to certification. 2. The following information shall be verified prior to certification: a. Identity of the applicant; b. Household's gross nonexempt income; c. Information available through IEVS, including Social Security Numbers (SSNs) for all household members; d. Non-citizen status of persons identified as non-citizens on the application; e. Residency, except for homeless households, or households newly arrived in the state or county for whom third-party verification cannot reasonably be obtained. 3. The household shall be given a reasonable opportunity to submit verification of certain expenses in order to receive expense deductions and exclusions. If a deductible expense must be verified and obtaining verification may delay the household's certification, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction or exclusion for the claimed but unverified expense. If the expense cannot be verified within thirty (30) calendar days of the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction or exclusion for the unverified expense.	shall be accepted when determining eligibility for expedited service, and verification of any client-declared information shall be postponed and verified prior to certification. 2. The following information shall be verified prior to certification: a. Identity of the applicant; b. Household's gross nonexempt income; c. Information available through IEVS, including Social Security Numbers (SSNs) for all household members; d. Non-citizen status of persons identified as non-citizens on the application; e. Residency, except for homeless households, or households newly arrived in the state or county for whom third-party verification cannot reasonably be obtained. 3.The household shall be given a reasonable opportunity to submit verification of certain expenses to receive expense deductions and exclusions. If a deductible expense must be verified and obtaining verification may delay the household's certification, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction or exclusion for the claimed but unverified expense. If the expense cannot be verified within thirty (30) calendar days of the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction or exclusion for the unverified expense. These expenses are:		

		a. Allowable medical expenses less reimbursement; b. Legally-obligated child support payments; c. Dependent care expenses; and, 4. For households eligible under basic or expanded categorical eligibility rules, verification of resources, gross and net income, SSN information, sponsored non-citizen information, and residency beyond that gathered by the public assistance program that confers eligibility shall not be required unless these eligibility factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. The local office shall verify that each member receives benefits or services from the program that confers basic or expanded categorical eligibility. 5. For households subject to an asset test, the household's written declaration of resources in excess of the resource limit is an acceptable form of verification. B. Verification Requirements at Redetermination and Periodic Report 1. Eligibility factors not verified by the Income and Eligibility Verification System (IEVS) should be verified at redetermination only if they are incomplete, inaccurate, questionable, inconsistent, or outdated and would affect a household's eligibility or benefit level. Unchanged information shall not be verified unless the information is outdated. 2. A change in total monthly earned income of	a. Allowable medical expenses less reimbursement; b. Legally-obligated child support payments; c. Dependent care expenses; and, d. Shelter expenses, if questionable and verification has been requested. 4. For households eligible under basic or expanded categorical eligibility rules, verification of resources, gross and net income, SSN information, sponsored non-citizen information, and residency beyond that gathered by the PA program that confers eligibility shall not be required unless these eligibility factors are not already collected and verified by the other program, are considered questionable, or are unavailable to SNAP. The local office shall verify that each member receives benefits or services from the program that confers basic or expanded categorical eligibility. 5. For households subject to an asset test, the household's written declaration of resources more than the resource limit is an acceptable form of verification. B. Verification Requirements at Redetermination and Periodic Report 1. Eligibility factors not verified by the Income and Eligibility Verification System (IEVS) should be verified at redetermination only if they are incomplete, inaccurate, questionable, inconsistent, or outdated and would affect a household's eligibility or benefit level. Unchanged information shall not be verified unless the information is outdated.		

		one hundred dollars ($100) or more for each member must be verified at redetermination. 3. At redetermination, all households shall verify the following information if the source has changed or the amount has changed by more than twenty-five dollars ($25) since the last time they were verified: a. Changes in unearned income; b. Allowable medical expenses; c. Legally-obligated child support; d. Dependent care expenses; e. Verification of the above factors, is optional if information is unchanged or changes by twenty five dollars ($25) or less. 4. A reported Social Security Number(s) not verified at initial certification and newly obtained Social Security Numbers shall be verified through the IEVS OR SOLQ-I. 5. For households subject to an asset test, the household's written declaration of resources in excess of the resource limit is an acceptable form of verification. 6. If there has been a change in a deductible expense that must be verified and obtaining verification delays the household's redetermination processing, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction for the claimed but unverified expense.	2. A change in total monthly income of fifty ($50) or more for each member must be verified at recertification. If the source of income has not changed and if the amount is unchanged or has changed by fifty dollars ($50) or less, verification is not required unless the information is unclear, questionable or outdate. 3. At recertification, all households shall verify the following information if the source has changed, or the amount has changed by more than twenty-five dollars ($25) since the last time they were verified: a. Dependent care expenses; b. Allowable medical expenses; c. Legally obligated child support; 4. A reported Social Security Number(s) not verified at initial certification and newly obtained Social Security Numbers shall be verified through the IEVS or SOLQ-I. 5. For households subject to an asset test, the household's written declaration of resources more than the resource limit is an acceptable form of verification. 6. If there has been a change in a deductible expense that must be verified and obtaining verification delays the household's redetermination processing, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction for the claimed but unverified expense. C. Verification Requirements at Periodic Report 1. The household shall verify the following changes in		

			circumstances at the time of periodic report: a. A change of more than $100 in the amount of unearned income. b. A change in the source of income, including starting a job. c. Acquisition of a licensed vehicle that is not fully excludable, if resource limits apply. d. A change in liquid resources, unless excluded, if resource limits apply. e. Changes in the legal obligation to pay child support. f. If a member of the household won substantial lottery or gambling winnings. g. Allowable medical expenses to receive an increase in the allowed expense or add a medical expense. 2. Previously reported medical and shelter expenses used to establish the 24-month certification should continue through the end of 24-month certification period unless: a. An increase in medical expenses is verified, or b. An increase in shelter expenses is reported.		
4.503	Non-standardized language	**4.503 CASE DOCUMENTATION** The case record shall consist of statements and documentation regarding the sources and results of verification used to determine eligibility and ineligibility. Such statements shall be entered into a physical case file and/or the statewide automated system. Such statements must be sufficiently detailed to support the determination of	**4.503 CASE DOCUMENTATION** The case record shall consist of statements and documentation regarding the sources and results of verification used to determine eligibility and ineligibility. Such statements shall be entered into a physical case file and/or the statewide automated system. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility	Standardizing language	

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		eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility worker's determination. When making a decision of ineligibility, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record. The case record shall show the names of the employers and others contacted; the dates and amounts of wage stubs and statements; the figures used to arrive at monthly gross income; the household's responsibility to pay utilities; and the method of verifying other information, including non-citizen status, if applicable. A notation shall be made to indicate which household members completed work registration forms and the date completed.	and to permit a reviewer to determine the reasonableness of the eligibility technician's determination. When ineligibility is determined, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record. The case record shall show the names of the employers and others contacted; the dates and amounts of wage stubs and statements; the figures used to arrive at monthly gross income; the household's responsibility to pay utilities; and the method of verifying other information, including non-citizen status, if applicable. A notation shall be made to indicate which household members completed work registration forms and the date completed.		
4.504	Non-standardized language	**4.504 SOURCES OF VERIFICATION** The local office shall accept any pertinent documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application, redetermination, periodic report form, or change report form. If written verification cannot be obtained, the eligibility worker shall substitute an acceptable collateral contact.	**4.504 SOURCES OF VERIFICATION** The local office shall accept any pertinent documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application, recertification, PRF, or reported changes. If written verification cannot be obtained, the eligibility technician shall substitute an acceptable collateral contact.	Standardizing language	
4.502	Program name update; and non-standardized language	**4.504.2 Collateral Contacts** *** B. Confidentiality shall be maintained when talking with collateral contacts. The local office shall disclose only the information that is absolutely necessary to get information being sought. When talking with collateral contacts, the local office shall avoid disclosing that the household has	**4.504.2 Collateral Contacts** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A and D here, including B and C.] *** B. Confidentiality shall be maintained when talking with collateral contacts. The local office shall disclose only the	Updating Food Assistance to SNAP; and standardizing language	

		applied for Food Assistance. C. If the household fails to provide a collateral contact or provides a contact that is unacceptable to the eligibility worker, the worker may select a collateral contact that can provide information that is needed. ***	information that is necessary to get information being sought. When talking with collateral contacts, the local office must not state that an individual or household has applied for SNAP. C. If the household fails to provide a collateral contact or provides a contact that is unacceptable to the eligibility technician, the technician may select a collateral contact that can provide information that is needed. ***		
4.504.5	Program name update	**4.504.5 Colorado Income Eligibility Verification System (IEVS)** A. The Colorado Income and Eligibility Verification System (IEVS) provides for the exchange of information on Food Assistance Program recipients with the Social Security Administration (SSA), Internal Revenue Service (IRS), and the Colorado Department of Labor and Employment (DOLE). B. At initial certification and redetermination, all applicants for Food Assistance benefits shall be notified through a written statement provided on or with the application form of the following information: 1. Information available through the IEVS will be requested and verified through collateral sources when discrepancies are found by the agency. 2. Information available through the IEVS shall be used and that such information will be used and may affect the household's eligibility and level of benefits. ***	**4.504.5 Colorado Income Eligibility Verification System (IEVS)** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections C, D, E, F, G, and H here, and including A and B.] A. The Colorado Income and Eligibility Verification System (IEVS) provides for the exchange of information on SNAP recipients with the Social Security Administration (SSA), Internal Revenue Service (IRS), and the Colorado Department of Labor and Employment (DOLE). B. At initial certification and recertification, all applicants for SNAP shall be notified through a written statement provided on or with the application form of the following information: 1. Information available through the IEVS will be requested and verified through collateral sources when discrepancies are found by the agency. 2. Information available through the IEVS shall be used and that such information will be used and may affect the household's eligibility and level of benefits. ***	Updating Food Assistance to SNAP	
4.504.6	Program name update; non-standardized	**4.504.6 Information Considered Verified Upon Receipt** ***	**4.504.6 Information Considered Verified Upon Receipt** [PUBLISHER NOTE NOT FOR PUBLICATION: We are	Updating Food Assistance to SNAP;	

	language and acronyms; and incorrect language	B. Information that is considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households. Information considered verified upon receipt shall be acted on at the time of application, recertification, periodic report, and during a household's certification period if the information causes a change in the Food Assistance benefit amount. A household shall not be convicted of fraud for not reporting a change in the information it is not required to report. *** D. The local office shall consider only the following information as verified upon receipt: 1. Social Security and SSI benefit amounts obtained from SSA. SSI and benefit amounts obtained from the SSA are considered reported and verified on the day the information is first known to the agency, either through the IEVS, SDX, BENDEX or another automated interface of information, whichever is sooner. 2. Death information received from the Burial Assistance program. Death information received from the Burial Assistance program is considered reported and verified on the day the information is first known to the agency. 3. Unemployment insurance benefits (UIB) that are reported through the IEVS and obtained through the Department of Labor and Employment (DOLE).	omitting sections A and C here, and including B and D.] *** B. Information that is considered VUR shall be acted upon for all households. Information considered VUR shall be acted on at the time of application, recertification, periodic report, and during a household's certification period if the information causes a change in the SNAP benefit amount. A household shall not be convicted of fraud for not reporting a change in the information it is not required to report. *** D. The local office shall consider only the following information as verified upon receipt: 1. Social Security and SSI benefit amounts obtained from SSA. SSI and benefit amounts obtained from the SSA are considered reported and verified on the day the information is first known to the agency, either through the IEVS, SDX, BENDEX or another automated interface of information, whichever is sooner. 2. Death information received from the Burial Assistance program. Death information received from the Burial Assistance program is considered reported and verified on the day the information is first known to the agency. 3. Unemployment insurance benefits (UIB) that are reported through the IEVS and obtained through the Department of Labor and Employment (DOLE). The UIB information shall be considered reported and verified on the date of the IEVS notification. Advance notice of adverse action shall be given when acting on	standardizing language and acronyms; and removal of incorrect language	

		The UIB information shall be considered reported and verified on the date of the IEVS notification. Advance notice of adverse action shall be given when acting on the change in information. 4. PA benefit amounts (Colorado Works, Aid to the Needy Disabled (AND) program consisting of AND-State Only (AND-SO) and AND-Colorado Supplement (AND-CS), Home Care Allowance (HCA), and Old Age Pension (OAP), obtained from the State Department. Such information shall be considered reported and verified on the day the public assistance benefit amount is authorized. 5. Information that is reported and verified to a public assistance program which results in a change to the PA benefit amount and that meets the Food Assistance regulations for verification. Such information shall be considered reported and verified on the day the public assistance program processes the change and authorizes the new PA benefit amount. 6. Child support income and expense amounts obtained through the ACSES. Such information is considered reported and verified on the day the information is reported through an automated interface with ACSES. 7. Non-compliance information obtained from EF agencies of the failure of an ABAWD to meet work requirements. 8. Colorado IPVs. 9. Information obtained from the SAVE system regarding non-citizen status.	the change in information. 4. PA benefit amounts (Colorado Works, Aid to the Needy Disabled (AND) program consisting of AND-State Only (AND-SO) and AND-Colorado Supplement (AND-CS), Home Care Allowance (HCA), and Old Age Pension (OAP), obtained from the State Department. Such information shall be considered reported and verified on the day the public assistance benefit amount is authorized. 5. Information that is reported and verified to a public assistance program which results in a change to the PA benefit amount and that meets the Food Assistance regulations for verification. Such information shall be considered reported and verified on the day the public assistance program processes the change and authorizes the new PA benefit amount. 6. Child support income and expense amounts obtained through the ACSES. Such information is considered reported and verified on the day the information is reported through an automated interface with ACSES. 7. Non-compliance information obtained from EF agencies of the failure of an ABAWD to meet work requirements. 8.Colorado IPVs. 9. Information obtained from the SAVE system regarding non-citizen status. 10. Changes in household composition that are		

		10. Changes in household composition that are reported and verified and result in one or more members being removed from one Food Assistance household and added to a new or existing Food Assistance household. Duplicate benefits shall not be issued for a particular individual when removing that individual from one Food Assistance household and adding him/her to a new Food Assistance household. 11. Changes in household composition that are reported and verified by child welfare agencies and result in a child being removed from one Food Assistance household and added to a new or existing Food Assistance household. 12. The disqualification of a household member who is determined to be a fleeing felon or a probation or parole violator.	reported and verified and result in one or more members being removed from one SNAP household and added to a new or existing SNAP household. Duplicate benefits shall not be issued for a particular individual when removing that individual from one SNAP household and adding him/her to a new SNAP household. 11. Changes in household composition that are reported and verified by child welfare agencies and result in a child being removed from one SNAP household and added to a new or existing SNAP household. 12. The disqualification of a household member who is determined to be a fleeing felon or a probation or parole violator.		
4.504.61	Program name update; and non-standardized acronym	**4.504.61 Information Not Considered Verified Upon Receipt** A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's Food Assistance benefits during the certification period. B. The following sources of information shall not be considered as verified upon receipt: 1. Death information received from a source other than the Burial Assistance program. 2. Veterans Assistance (VA) benefit amounts obtained through the IEVS.	**4.504.61 Information Not Considered Verified Upon Receipt** A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's SNAP benefits during the certification period. B. The following sources of information shall not be considered as verified upon receipt: 1. Death information received from a source other than the Burial Assistance program. 2. Veterans Assistance (VA) benefit amounts obtained through the IEVS.	Updating Food Assistance to SNAP; and standardizing acronym usage	

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		3. Wage data obtained through the IEVS and the DOLE. 4. IRS income and asset information obtained through the IEVS. 5. Information regarding railroad retirement benefits obtained through the ievs. 6. Information received from the Public Assistance Reporting and Information System (PARIS). 7. Prisoner information received during the certification period. 8. Information received from the National Database of New Hires (NDNH). 9. Social Security benefit amounts reported via an award letter given by the household. 10. IPV/disqualification data from another state as reported through the disqualified recipient database.	3. Wage data obtained through the IEVS and the DOLE. 4. IRS income and asset information obtained through the IEVS. 5. Information regarding railroad retirement benefits obtained through IEVS. 6. Information received from the Public Assistance Reporting and Information System (PARIS). 7. Prisoner information received during the certification period. 8. Information received from the National Database of New Hires (NDNH). 9. Social Security benefit amounts reported via an award letter given by the household. 10. IPV/disqualification data from another state as reported through the disqualified recipient database.		
4.505(A)	Program name update	**4.505 VERIFICATION OF NON-FINANCIAL INFORMATION** A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's Food Assistance benefits during the certification period.	**4.505 VERIFICATION OF NON-FINANCIAL INFORMATION** A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's SNAP benefits during the certification period.	Updating Food Assistance to SNAP	
4.505.1(C)	Program name update; and non-standardized	**4.505.1 Verification of Identity** ***	**4.505.1 Verification of Identity** *** C. When obtaining an EBT card, a household shall not be	Updating Food Assistance to SNAP; and standardizing	

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	acronym use	C. When obtaining an Electronic Benefit Transfer (EBT) card, a household shall not be required to provide verification beyond what was utilized to establish identity when determining Food Assistance eligibility. This includes verification through a collateral contact.	required to provide verification beyond what was utilized to establish identity when determining SNAP eligibility. This includes verification through a collateral contact.	acronym use	
4.505.3(B)	Program name update; and non-standardized language	**4.505.3 Verification of Residency** *** B. If the eligibility worker and applicant have made reasonable efforts to verify residency and it has proved impossible, the household may be certified, if otherwise eligible. If an individual's county residency cannot be verified, but the individual's Colorado residency is not questionable, then the individual shall be certified if otherwise eligible and not participating in another Food Assistance household. ***	**4.505.3 Verification of Residency** *** B. If the eligibility technician and applicant have made reasonable efforts to verify residency and it has proved impossible, the household may be certified, if otherwise eligible. If an individual's county residency cannot be verified, but the individual's Colorado residency is not questionable, then the individual shall be certified if otherwise eligible and not participating in another SNAP household. ***	Updating Food Assistance to SNAP; and standardizing language	
4.505.4(C)	Program name update	**4.505.4 Verification of Household Composition** *** C. A household or applicant that requests benefits for a child that is already receiving benefits in another household is responsible for verifying that they provide the child with a majority of his or her meals prior to receiving benefits for that child. When determining majority of meals for shared living arrangements, acceptable documentation includes, but is not limited to: custody arrangements, school enrollment forms, dependent care forms, a statement from each household, or any other document that can reasonably be used to determine meals. One household's written or verbal statement regarding its provision of the majority of the meals shall not be the only verification used when the statement results in removing a child from one Food Assistance household and placing the child in another Food	**4.505.4 Verification of Household Composition** *** C. A household or applicant that requests benefits for a child that is already receiving benefits in another household is responsible for verifying that they provide the child with a majority of his or her meals prior to receiving benefits for that child. When determining majority of meals for shared living arrangements, acceptable documentation includes, but is not limited to custody arrangements, school enrollment forms, dependent care forms, a statement from each household, or any other document that can reasonably be used to determine meals. One household's written or verbal statement regarding its provision of most of the meals shall not be the only verification used when the statement results in removing a	Updating Food Assistance to SNAP	

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		Assistance household. A calendar completed by the household showing how many meals it provides a child shall be considered a written statement from the household. If both households that are requesting assistance for a child each provide a verbal or written statement regarding how many meals each provide, then both households' statements shall be used as verification to determine who provides the majority of the child's meals.	child from one SNAP household and placing the child in another SNAP household. A calendar completed by the household showing how many meals it provides a child shall be considered a written statement from the household. If both households that are requesting assistance for a child each provide a verbal or written statement regarding how many meals each provides, then both households' statements shall be used as verification to determine who provides most of the child's meals.		
4.505.51(B)	Non-standardized language	**4.505.51 Verification of Questionable Citizenship** *** B. Application of the above criteria by the eligibility worker must not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or American Indians shall not be targeted for special verification. The eligibility worker shall not rely on a surname, accent or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the eligibility worker rely on a lack of English speaking, reading or writing ability as grounds to question a claim to citizenship. ***	**4.505.51 Verification of Questionable Citizenship** *** B. Application of the above criteria by the eligibility technician must not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or American Indians shall not be targeted for special verification. The eligibility technician shall not rely on a surname, accent or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the eligibility technician rely on a lack of English speaking, reading, or writing ability as grounds to question a claim to citizenship. ***	Standardizing language	
4.505.6	Program name update; and non-standardized language	**4.505.6 Verification of Non-citizen Status** A. All applicants for Food Assistance benefits shall be notified on the application form that the non- citizen status of any household member will be subject to verification by the U.S. Citizenship and Immigration Service (USCIS) through the submission of information from the application to the USCIS. The information received from the USCIS may affect the household's eligibility and level of benefits. The application shall contain a statement signed by an adult representative from each household which attests, under penalty of perjury, to citizenship or non-citizen status of each member.	**4.505.6 Verification of Non-citizen Status** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section B, D, E, F, G, H, I, and J here, and including A and C.] A. All applicants for SNAP shall be notified on the application form that the non-citizen status of any household member will be subject to verification by the U.S. Citizenship and Immigration Service (USCIS) through the submission of information from the application to the USCIS. The information received from the USCIS may affect the household's eligibility and level of benefits. The	Updating Food Assistance to SNAP; and standardizing language	

		*** C. The USCIS Systematic Alien Verification for Entitlement (SAVE) system will verify the alien status of applicant non-citizens. The use of SAVE shall be documented in the case record. The record will contain the date that the primary or secondary request was submitted, along with a copy of the Form G-845 when applicable, and any response to the request for verification. 1. If the non-citizen status is not verified in the primary SAVE verification process, a USCIS Form G-845 will be submitted with a photocopy of the non-citizen's document to the Colorado Refugee Service Program (CRSP). 2. If the proper USCIS documentation is not available, the non-citizen may state the reason and submit other conclusive verification. The local office shall accept other forms of documentation or corroboration from the USCIS that the non-citizen is classified pursuant to Section 207, Section 208, or Section 243(h) of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act, which is codified throughout Title 8 of the United States Code. The federal references do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository.	application shall contain a statement signed by an adult representative from each household which attests, under penalty of perjury, to citizenship or non-citizen status of each member. *** C. The USCIS Systematic Alien Verification for Entitlement (SAVE) system will verify the alien status of applicant non-citizens. The use of SAVE shall be documented in the case record. The record will contain the date that the primary or secondary request was submitted, along with a copy of the Form G-845 when applicable, and any response to the request for verification. 1. If the non-citizen status is not verified in the primary SAVE verification process, a USCIS Form G-845 will be submitted with a photocopy of the non-citizen's document to the Colorado Refugee Service Program (CRSP). 2. If the proper USCIS documentation is not available, the non-citizen may state the reason and submit other conclusive verification. The local office shall accept other forms of documentation or corroboration from the USCIS that the non-citizen is classified pursuant to Section 207, Section 208, or Section 243(h) of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act, which is codified throughout Title 8 of the United States Code. The federal references do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection. ***		

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4.505.61	Program name update; and non-standardized use of acronyms	**4.505.61 Verification of SSA Forty Work Quarters** The Social Security Administration's Quarters of Coverage History System (QCHS) is available for purposes of verifying whether a lawful permanent resident has earned or can receive credit for forty (40) qualifying quarters. If the individual does not have documentation, he/she cannot participate until verification of forty (40) quarters of work is received from either the Social Security Administration (SSA) or the individual. If the Social Security Administration determines that its existing records do not verify that an individual claiming forty (40) credits or quarters in fact has the forty (40) credits or quarters and the individual believes the Social Security Administration records are not correct, the Social Security Administration will work with the individual to determine whether the additional credits or quarters can be established. The individual should be advised that he/she has the option of working with the Social Security Administration and that if he or she exercises this option and obtains a statement from SSA indicating that the number of credits or quarters is under review, he/she can continue to receive Food Assistance for up to six (6) additional months from the date of the original determination of insufficient quarters. A. No such qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to a non-citizen if the non-citizen, parent of the non-citizen, or spouse of such non-citizen actually received any federal means-tested public benefit during the period for which such qualifying quarter of coverage is so credited. B. The local office must evaluate quarters of coverage and receipt of federal means-tested public benefits on a calendar year basis. The local office must first determine the number of quarters creditable in a	**4.505.61 Verification of SSA Forty Work Quarters** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section C here, and including A and B.] The SSA Quarters of Coverage History System (QCHS) is available for purposes of verifying whether a lawful permanent resident has earned or can receive credit for forty (40) qualifying quarters. If the individual does not have documentation, he/she cannot participate until verification of forty (40) quarters of work is received from either the SSA or the individual. If the SSA determines that its existing records do not verify that an individual claiming forty (40) credits or quarters in fact has the forty (40) credits or quarters and the individual believes the SSA records are not correct, the SSA will work with the individual to determine whether the additional credits or quarters can be established. The individual should be advised that he/she has the option of working with the SSA and that if he or she exercises this option and obtains a statement from SSA indicating that the number of credits or quarters is under review, he/she can continue to receive SNAP benefits for up to six (6) additional months from the date of the original determination of insufficient quarters. A. No such qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to a non-citizen if the non-citizen, parent of the non-citizen, or spouse of such non-citizen received any federal means-tested public benefit during the period for which such qualifying quarter of coverage is so credited. B. The local office must evaluate quarters of coverage and receipt of federal means-tested public benefits on a calendar year basis. The local office must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the non-citizen (or the	Updating Food Assistance to SNAP; and standardizing use of acronyms	

		calendar year, then identify those quarters in which the non-citizen (or the parent(s) or spouse of the non-citizen) received federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the non-citizen in that calendar year. However, if the non-citizen earns the fortieth (40th) quarter of coverage prior to applying for Food Assistance or any other federal means-tested public benefit in that same quarter, the local office must allow that quarter toward the forty (40) qualifying quarters total. ***	parent(s) or spouse of the non-citizen) received federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the noncitizen in that calendar year. However, if the non-citizen earns the fortieth (40th) quarter of coverage prior to applying for SNAP or any other federal means-tested public benefit in that same quarter, the local office must allow that quarter toward the forty (40) qualifying quarters total. ***		
4.505.7	Program name update	**4.505.7 Verification of Non-citizen Sponsorship** A. The local office shall verify the following information at the time of initial application and recertification: 1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if living with the sponsor) at the time of the non-citizen's application for Food Assistance. ***	**4.505.7 Verification of Non-citizen Sponsorship** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A.2-A.4, B, and C here, and including A.1.] A. The local office shall verify the following information at the time of initial application and recertification: 1.The income and resources of the non-citizen's sponsor and the sponsor's spouse (if living with the sponsor) at the time of the non-citizen's application for SNAP. ***	Updating Food Assistance to SNAP	
4.505.8	Program name update; and non-standardized use of acronyms	**4.505.8 Verification of Disqualified Member Data** At the time of application and when adding a new member to a Food Assistance household, the office shall verify data with the national IPV/disqualification database for all household members age eighteen (18) or older to determine if any members have an active intentional Program violation (IPV)/ disqualification from another state which requires a portion, or the entirety of, the disqualification period to be served in Colorado. Application processing shall not be delayed while awaiting verification from another state. The local office shall ensure that:	**4.505.8 Verification of Disqualified Member Data** At the time of application and when adding a new member to a SNAP household, the office shall verify data with the national IPV/disqualification database for all household members aged eighteen (18) or older to determine if any members have an active IPV / disqualification from another state which requires a portion, or the entirety of, the disqualification period to be served in Colorado. Application processing shall not be delayed while awaiting verification from another state. The local office shall ensure that: A. Disqualifications from another state due to a drug-	Updating Food Assistance to SNAP; standardizing acronyms	

		A. Disqualifications from another state due to a drug-related felony or any other disqualification that is not pursued in Colorado due to a waiver or state statute shall not be acted upon; B. IPVs/disqualifications from another state must be independently verified with the originating state prior to taking any action to reduce, suspend, deny, or terminate benefits, if the client is unable to attest to the accuracy of the disqualification; C. States shall be given twenty (20) calendar days to respond to a request for verification. If verification cannot be provided by the other state, then the disqualification shall not be acted upon. Local offices shall be given twenty (20) calendar days to respond to another state's request of obtaining verification of a Colorado IPV. If the county department cannot provide verification, then steps shall be taken to remove the IPV from the national database. D. Once independent verification is received, adverse action shall be granted prior to benefits being reduced, suspended, denied, or terminated; and, E. The disqualified individual shall be provided an opportunity to appeal any adverse action. If the local office issues benefits to an individual while awaiting verification of an IPV disqualification, the benefits issued while awaiting such verification may be claimed back if it is determined that the individual was disqualified from the program at the time the benefits were issued.	related felony or any other disqualification that is not pursued in Colorado due to a waiver or state statute shall not be acted upon; B. IPVs/disqualifications from another state must be independently verified with the originating state prior to taking any action to reduce, suspend, deny, or terminate benefits, if the client is unable to attest to the accuracy of the disqualification; C. States shall be given twenty (20) calendar days to respond to a request for verification. If verification cannot be provided by the other state, then the disqualification shall not be acted upon. Local offices shall be given twenty (20) calendar days to respond to another state's request of obtaining verification of a Colorado IPV. If the local office cannot provide verification, then steps shall be taken to remove the IPV from the national database. D. Once independent verification is received, adverse action shall be granted prior to benefits being reduced, suspended, denied, or terminated; and, E. The disqualified individual shall be provided an opportunity to appeal any adverse action. If benefits are issued by the local office to an individual while awaiting verification of an IPV disqualification, the benefits issued while awaiting such verification may be claimed back if it is determined that the individual was disqualified from the program at the time the benefits were issued.		
4.506	Program name update; non-standardized language;	**4.506 VERIFICATION OF INCOME** Monthly, gross nonexempt income shall be verified prior to initial certification, unless the household is entitled to	**4.506 VERIFICATION OF INCOME** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting B, D, and E here, and including A and C.]	Updating Food Assistance to SNAP; standardizing	

	language that has no federal regulatory basis	expedited service and postponed verification for one month. Income is also verified at redetermination and periodic report when a household reports that the amount of income has changed more than twenty-five dollars ($25) or the source of income has changed. A. Responsibility 1. Applicants are primarily responsible for furnishing income verification documents, a collateral contact, or the authorization needed to secure sufficient information to allow written or verbal verification by the eligibility worker. For public assistance (PA) recipients, the PA case record will normally be used as the source of verification. 2. Means of income verification include pension award letters, check stubs, employer letters, and collateral contacts with employers, agencies or other persons having knowledge of the household's circumstances. 3. When a collateral contact designated by the household cannot be expected to provide accurate third party verification, the local office shall ask the household to designate an acceptable collateral contact, provide an alternative form of verification or substitute a home visit. 4. In some instances, however, all attempts to verify income may be unsuccessful because the person or organization has failed to cooperate with the household. A cooperating applicant shall not be denied solely because a third party refuses to provide verification. The eligibility worker shall, in consultation with the applicant or other sources, arrive at a figure to be used for certification purposes and annotate the household's case	Monthly, gross nonexempt income shall be verified prior to initial certification, unless the household is entitled to expedited service and postponed verification for one month. Income is also verified at redetermination and periodic report when a household reports that the amount of income has changed more than twenty-five dollars ($25) or the source of income has changed. A. Responsibility 1. Applicants are primarily responsible for furnishing income verification documents, a collateral contact, or the authorization needed to secure sufficient information to allow written or verbal verification by the eligibility technician. For PA recipients, the PA case record will normally be used as the source of verification. 2. Means of income verification include pension award letters, check stubs, employer letters, and collateral contacts with employers, agencies or other persons having knowledge of the household's circumstances. 3. When a collateral contact designated by the household cannot be expected to provide accurate third-party verification, the local office shall ask the household to designate an acceptable collateral contact, provide an alternative form of verification or substitute a home visit. 4. In some instances, however, all attempts to verify income may be unsuccessful because the person or organization has failed to cooperate with the household. A cooperating applicant shall not be denied solely because a third-party refuses to provide verification. The eligibility technician shall, in consultation with the applicant or other sources, arrive at a figure to be	language; and removal of language with no federal regulatory basis	

		record with information used to make an eligibility determination. *** C. Self-Employment Self-employment verification may consist of tax documents, self-employment ledgers maintained by the household, receipts, or other documents used for verifying and documenting the household's self-employment income and expenses. If, at the time of initial certification, a household is recently self-employed or does not have adequate documentation of the household's self-employment income and expenses, the eligibility worker shall use the best information available to determine the household's monthly income. The household shall be encouraged to keep records of income and expenses for subsequent certifications. No specific verification shall be required and the documentation provided by the household shall be accepted unless questionable. *** F. Cases of No Reported Income 1. In addition to verifying reported income, the eligibility worker may have occasion to explore the possibility of unreported income. Prior to determining the eligibility of households who report no income or income so low as to place them at the maximum benefit level without consideration of deductible expenses, the eligibility worker must, through in-depth interviewing techniques, determine how the household maintains its existence and meets ongoing maintenance expenses. Collateral contact with a person or persons knowing the household's circumstances is recommended. The	used for certification purposes and annotate the household's case record with information used to make an eligibility determination. *** C. Self-Employment Self-employment verification may consist of tax documents, self-employment ledgers maintained by the household, receipts, or other documents used for verifying and documenting the household's self-employment income and expenses. If, at the time of initial certification, a household is recently self-employed or does not have adequate documentation of the household's self-employment income and expenses, the eligibility technician shall use the best information available to determine the household's monthly income. The household shall be encouraged to keep records of income and expenses for subsequent certifications. Documentation provided by the household shall be accepted unless questionable. No specific verification shall be required. *** F. Cases of No Reported Income 1. The existence of resources, unpaid bills, and/or credit might be an explanation of how the household exists with no income or income so low as to place them at the maximum benefit level without consideration of deductible expenses. The applicant's statement of no income is acceptable, unless otherwise questionable. 2. When exploring the possibility of unreported income or how the household is meeting its expenses, the local office shall not initiate a request for verification of such information but shall explore how the household is meeting its needs through an interview. If, at the time of recertification, the local office needs to explore		

		existence of resources might be an explanation of how the household exists at the level of income reported. 2. When exploring the possibility of unreported income or how the household is meeting its expenses, the local office shall not initiate a request for verification of such information, but shall explore how the household is meeting its needs through an interview. If, at the time of recertification, the local office needs to explore the possibility of unreported income or how the household is meeting its needs, the household shall be contacted by telephone to resolve the discrepancy. If the household cannot be contacted, then the interview process outlined in Section 4.204 can be initiated.	the possibility of unreported income or how the household is meeting its needs, the household shall be contacted by telephone to resolve the discrepancy. If the household cannot be contacted, then the interview process outlined in Section 4.204 can be initiated.		
4.601(B)	Outdated language	**4.601 GENERAL REQUIREMENTS FOR REPORTING CHANGES** *** B. Households shall be required to report the increase in income no later than ten (10) calendar days from the end of the calendar month in which the change occurred. The local office has up to ten (10) calendar days to act on the information from the date the change is considered reported. ***	**4.601 GENERAL REQUIREMENTS FOR REPORTING CHANGES** *** B. Households shall be required to report the increase in income no later than ten (10) calendar days from the end of the calendar month in which the change occurred. The local office has up to ten (10) calendar days to act on the information from the date the change is considered reported. ***	Removing language that is no longer applicable	
4.603(A)	Program name update	**4.603 HOUSEHOLD RESPONSIBILITY TO REPORT CHANGES** A. Applicant households shall report all changes related to their Food Assistance eligibility and benefits at the certification interview, including any changes that occurred between the date an application is submitted and the date of the interview. If a change is reported in an initial month and the application has not yet been processed, the local office shall act on the most current information.	**4.603 HOUSEHOLD RESPONSIBILITY TO REPORT CHANGES** A. Applicant households shall report all changes related to their SNAP eligibility and benefits at the certification interview, including any changes that occurred between the date an application is submitted and the date of the interview. If a change is reported in an initial month and the application has not yet been processed, the local office shall act on the most current information.	Updating Food Assistance to SNAP	

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4.604	Program name update; and non-standardized language	**4.604 ACTION ON REPORTED CHANGES** Changes shall be acted on in accordance with the following guidelines: A. General Requirements Changes to a household's circumstances shall be acted on prospectively and processed within ten (10) calendar days from the date the change is considered to be reported. Changes reported by households shall be documented in the Food Assistance case record to indicate the change and the date that the change was reported. If the reported change causes a change to the household's allotment, a notice of action form shall be issued to inform the household of a new basis of issuance and/or a supplemental allotment. If a supplemental allotment is to be issued, the amount of the supplemental allotment shall be the difference between the allotment the household is eligible to receive, due to the reported change, and the allotment the household actually received for the current month. The household's total monthly allotment shall be increased for all subsequent months of the certification period that are affected by the change. *** C. Changes Resulting In an Increase 1. The county local office shall act on any change reported by the household that will increase benefits. The increased allotment shall be made no later than the first allotment issued ten (10) or more calendar days after the change is considered to be reported. Any increase in benefits resulting from a change shall take effect the month following the month the change is	**4.604 ACTION ON REPORTED CHANGES** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, D, E, F, and H here, and including A, C, and G.] Changes shall be acted on in accordance with the following guidelines: A. General Requirements Changes to a household's circumstances shall be acted on prospectively and processed within ten (10) calendar days from the date the change is reported. Changes reported by households shall be documented in the SNAP case record to indicate the change and the date that the change was reported. If the reported change causes a change to the household's allotment, a notice of action form shall be issued to inform the household of a new basis of issuance and/or a supplemental allotment. If a supplemental allotment is to be issued, the amount of the supplemental allotment shall be the difference between the allotment the household is eligible to receive, due to the reported change, and the allotment the household received for the current month. The household's total monthly allotment shall be increased for all subsequent months of the certification period that are affected by the change. *** C. Changes Resulting in an Increase 1. The county local office shall act on any change reported by the household that will increase benefits. The increased allotment shall be made no later than the first allotment issued ten (10) or more calendar days after the change is reported. Any increase in benefits resulting from a change shall take effect the month following the month the change is considered	Updating Food Assistance to SNAP; and standardizing language.	

		considered reported. Therefore, if such a change is reported after the twentieth (20th) of a month, and it is not possible to adjust the following month's allotment before the household's next normal issuance day, a supplemental allotment (in addition to the previously authorized monthly allotment) must be issued within ten (10) calendar days from the date the change was considered to be reported. A supplemental allotment shall not be issued for the month in which the change occurred. 2. Changes that result in increased Food Assistance benefits for a household must be verified by the household within ten (10) calendar days from the date the change is reported. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. Changes that result in increased Food Assistance benefits for a household must be verified prior to adjusting the household's allotment. *** G. Changes in Household Composition 1. Changes in household composition shall be acted on prospectively for the following month when the local office is able to affect the change prior to the determination of the household's allotment for that month. Anticipated income, deductions and other financial and non-financial criteria of the new member shall be considered in the prospective determination. The anticipated income, deductions, and other financial and non-financial criteria of a removed member shall no longer be considered when determining the household's eligibility.	reported. Therefore, if such a change is reported after the twentieth (20th) of a month, and it is not possible to adjust the following month's allotment before the household's next normal issuance day, a supplemental allotment (in addition to the previously authorized monthly allotment) must be issued within ten (10) calendar days from the date the change was reported. A supplemental allotment shall not be issued for the month in which the change occurred. 2. Changes that result in increased SNAP benefits for a household must be verified by the household within ten (10) calendar days from the date the change is reported. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. Changes that result in increased SNAP benefits for a household must be verified prior to adjusting the household's allotment. *** G. Changes in Household Composition 1. Changes in household composition shall be acted on prospectively for the following month when the local office is able to affect the change prior to the determination of the household's allotment for that month. Anticipated income, deductions and other financial and non-financial criteria of the new member shall be considered in the prospective determination. The anticipated income, deductions, and other financial and non-financial criteria of a removed member shall no longer be considered when determining the household's eligibility. 2. Individuals Disqualified During the Certification Period When an individual is disqualified during the household's certification period, the local office shall determine the eligibility or ineligibility of the remaining		

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Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		2. Individuals Disqualified During the Certification Period When an individual is disqualified during the household's certification period, the Food Assistance certification office shall determine the eligibility or ineligibility of the remaining household members based on information contained in the case record. If information in the case record is insufficient, additional information shall be obtained as needed. a. If a household's benefits are reduced or terminated within the certification period because one or more of its members was disqualified for intentional program violation/fraud, the local office shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member(s) is notified of his or her disqualification. b. If a household's benefits are reduced or terminated within the certification period because one or more of its members is disqualified for being an ineligible noncitizen, noncompliance with a work requirement, or for failure or refusal to obtain or provide a Social Security Number, the local office shall send a Notice of Adverse Action which informs the household of the disqualification, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the disqualified member must take to end the disqualification. ***	household members based on information contained in the case record. If information in the case record is insufficient, additional information shall be obtained as needed. a. If a household's benefits are reduced or terminated within the certification period because one or more of its members was disqualified for intentional program violation/fraud, the local office shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member(s) is notified of his or her disqualification. b. If a household's benefits are reduced or terminated within the certification period because one or more of its members is disqualified for being an ineligible noncitizen, noncompliance with a work requirement, or for failure or refusal to obtain or provide a Social Security Number, the local office shall send a Notice of Adverse Action which informs the household of the disqualification, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the disqualified member must take to end the disqualification. ***		
4.604.1	Program name update; and non-	**4.604.1 Verification of Reported Changes** Changes that affect an allotment may require additional	**4.604.1 Verification of Reported Changes** Before action is taken on reported changes and to determine	Updating Food Assistance to SNAP; and	

	standardized language	verification prior to taking action. A. Unclear Information 1. If the local county office receives information about changes in a household's circumstances but cannot determine if or how the change will affect the household's benefits and the unclear information is: a. Fewer than sixty (60) days old relative to the current month of participation; and b. Was required to have been reported per simplified reporting rules; or c. Appears to present significantly conflicting information about the household's circumstances from that used by the agency at the time of certification, including changes to the household's categorical eligibility tier, then; The local office shall send a verification request notice requesting the household to provide the specific information or verification within the ten (10) calendar days plus one (1) additional calendar day for mailing time period. Households participating in the Address Confidentiality Program (ACP) shall receive five (5) additional calendar days for mailing time. The local office shall offer assistance in obtaining the verification if the household cannot obtain the information. If the household fails or refuses to provide the verification or to request assistance with obtaining the verification within the ten (10)	the effect on benefits, additional verification is required in the following instances: A. Unclear Information 1. If the local office receives information about changes in a household's circumstances but cannot determine if or how the change will affect the household's benefits and the unclear information is: a. Fewer than sixty (60) days old relative to the current month of participation; and b. Was required to have been reported per simplified reporting rules; or c. Appears to present significantly conflicting information about the household's circumstances from that used by the agency at the time of certification, including changes to the household's categorical eligibility tier, then; The local office shall send a verification request notice requesting the household to provide the specific information or verification within the ten (10) calendar days plus one (1) additional calendar day for mailing. Households participating in the Address Confidentiality Program (ACP) shall receive five (5) additional calendar days for mailing time. The local office shall assist the client in obtaining the verification if the household cannot obtain the information. If the household fails or refuses to provide the verification or to request assistance with obtaining the verification within the ten (10) calendar days plus one (1) additional calendar day for mailing timeframe, or five (5) additional calendar days	standardizing language	

		calendar days plus one (1) additional calendar day for mailing timeframe, or five (5) additional calendar days mailing time for ACP households, the process for closing the case shall be initiated. The Notice of Action Form shall advise the household that a change occurred that could not be acted upon, that the case is being closed, and that the household must provide the needed verification if it wishes to continue participation in the program. The household may be required to reapply if the household takes the required action after a break in benefits of more than thirty (30) calendar days. 2. If the information is more than sixty (60) days old relative to the current month of participation, was not required to be reported, or does not present significantly conflicting information from that used by the agency at the time of certification, the agency shall not act on this information or require the household to provide the information until the household's next recertification or periodic report. 3. Changes which result in increased Food Assistance benefits for a household shall be verified prior to adjusting the household's allotment. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. B. Computer Matches Not Considered Verified Upon Receipt When information is received from a Prisoner Verification System indicating an individual is currently being held in a federal, state, or local detention or correctional institution for more than thirty (30) days or	mailing time for ACP households, the process for closing the case shall be initiated. The Notice of Action Form shall advise the household that a change occurred that could not be acted upon, that the case is being closed, and that the household must provide the needed verification if it wishes to continue participation in the program. The household may be required to reapply if the household takes the required action after a break in benefits of more than thirty (30) calendar days. 2. If the information is more than sixty (60) days old relative to the current month of participation, was not required to be reported, or does not present significantly conflicting information from that used by the agency at the time of certification, the agency shall not act on this information or require the household to provide the information until the household's next recertification or periodic report. 3. Changes which result in increased SNAP benefits for a household shall be verified prior to adjusting the household's allotment. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. B. Computer Matches Not Considered Verified Upon Receipt When information is received from a Prisoner Verification System indicating an individual is currently being held in a federal, state, or local detention or correctional institution for more than thirty (30) days or information is received from a Deceased Matching System indicating a household member has recently died, a notice of match shall be sent to the affected household prior to taking action to adjust or terminate the household's benefits. The notice of match shall explain what information is needed to challenge the match and the consequences of		

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		information is received from a Deceased Matching System indicating a household member has recently died, a notice of match shall be sent to the affected household prior to taking action to adjust or terminate the household's benefits. The notice of match shall explain what information is needed to challenge the match and the consequences of failing to respond. The notice shall provide the household with ten (10) calendar days plus one (1) additional calendar day for mailing time to respond. Households participating in the Address Confidentiality Program (ACP) shall be provided five (5) additional calendar days for mailing time. If the household substantiates the match, fails to respond to the notice, or fails to provide sufficient verification to challenge the match results, the agency shall remove the subject individual from the Food Assistance household and adjust benefits accordingly following the procedures outlined in Section 4.604. If the household provides sufficient verification that the match is invalid, no further action shall be taken to remove the subject individual or adjust the household's benefits. The case record shall be documented accordingly.	failing to respond. The notice shall provide the household with ten (10) calendar days plus one (1) additional calendar day for mailing time to respond. Households participating in the ACP shall be provided five (5) additional calendar days for mailing time. If the household substantiates the match, fails to respond to the notice, or fails to provide sufficient verification to challenge the match results, the agency shall remove the subject individual from the SNAP household and adjust benefits accordingly following the procedures outlined in Section 4.604. If the household provides sufficient verification that the match is invalid, no further action shall be taken to remove the subject individual or adjust the household's benefits. The case record shall be documented accordingly.		
4.605	Program name update; and unclear language	**4.605 FAILURE TO REPORT CHANGES** If Food Assistance benefits are over-issued because a household fails to timely report changes as required, a claim shall be established and a notice of overpayment and a repayment agreement will be mailed. If the discovery is made within the certification period, the household must be given advance notice of adverse action if its benefits are to be reduced.	**4.605 FAILURE TO REPORT CHANGES** If SNAP benefits are over-issued because a household fails to timely report changes as required, a claim shall be established. Upon the establishment of a claim, a notice of overpayment, a detailed explanation of why the claim was established, and a repayment agreement will be mailed to the household. If the discovery is made within the certification period, the household must be given advance notice of adverse action if its benefits are to be reduced.	Updating Food Assistance to SNAP; adding language to clarify requirements per Federal regulations	
4.606	Program name	**4.606 HANDLING PUBLIC ASSISTANCE (PA)**	**4.606 PA HOUSEHOLD CHANGES**	Updating Food	

	update; non-standardized language and acronyms	**HOUSEHOLD CHANGES** A. Households that receive public assistance benefits which report a change in circumstances to the public assistance worker shall be considered to have reported the change for Food Assistance purposes. Information that is reported and verified to a public assistance (PA) program which results in a change to the PA benefit amount and that meets the Food Assistance rules for verification shall be considered verified upon receipt. The date the change is considered reported and verified is the date the public assistance program processes the change and authorizes the new PA benefit amount. When acting on information considered verified upon receipt, advance notice of adverse action is required, except as noted in Section 4.608.1. B. When there is a change in a public assistance case and the county has sufficient information to make the corresponding Food Assistance adjustment, the county shall follow the guidelines listed below. 1. If the change in household circumstances requires a reduction or termination of both public assistance and Food Assistance, the following action will be required: a. Send Notices of Adverse Action for both programs simultaneously with both notices bearing the same effective date. b. If a household requests a fair hearing any time prior to the effective date of the Notice of Adverse Action, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the Notice of Adverse Action, unless the household specifically waives continuation of	A. Households that receive PA benefits which report a change in circumstances to the PA worker shall be considered to have reported the change for SNAP purposes. Information that is reported and verified to a PA program which results in a change to the PA benefit amount and that meets the SNAP rules for verification shall be considered VUR. The date the change is considered reported and verified is the date the PA program processes the change and authorizes the new PA benefit amount. When acting on information considered VUR, advance notice of adverse action is required, except as noted in Section 4.608.1. B. When there is a change in a PA case and the county has sufficient information to make the corresponding SNAP adjustment, the county shall follow the guidelines listed below. 1. If the change in household circumstances requires a reduction or termination of both PA and SNAP, the following action will be required: a. Send NOAs for both programs simultaneously with both notices bearing the same effective date. b. If a household requests a fair hearing any time prior to the effective date of the Notice of Adverse Action, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the Notice of Adverse Action, unless the household specifically waives continuation of benefits. Continued benefits shall not be issued for a period beyond the end of the current certification period. C. If the household appeals only a PA adverse action and is granted interim relief, SNAP benefits authorized prior to the adverse action shall	Assistance to SNAP; and standardizing language and acronyms	

		benefits. Continued benefits shall not be issued for a period beyond the end of the current certification period. c. If the household appeals only a PA adverse action and is granted interim relief, Food Assistance benefits authorized prior to the adverse action shall continue or be restored. However, the household must reapply if the Food Assistance certification period expires before the hearing process is completed. d. If the household does not appeal the adverse action to decrease the public assistance or Food Assistance benefits within the adverse action period, the changes shall be made in accordance with timeframes outlined in Section 4.603. 2. If the change requires a reduction or termination of public assistance and/or increases in Food Assistance, the following action will be required: a. A public assistance Notice of Adverse Action shall be issued to the household and Food Assistance benefits shall not be increased until the adverse action period expires. If the household does not appeal, the increase shall be effective in accordance with Section 4.604. The time limit for taking the action to increase Food Assistance benefits shall be calculated from the date the PA Notice of Adverse Action expires. The Notice of Adverse Action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP).	continue or be restored. However, the household must reapply if the SNAP certification period expires before the hearing process is completed. d. If the household does not appeal the adverse action to decrease the PA or SNAP benefits within the adverse action period, the changes shall be made in accordance with timeframes outlined in Section 4.603. 2. If the change requires a reduction or termination of PA benefits and/or increases in SNAP benefits, the following action will be required: a. A PA Notice of Adverse Action shall be issued to the household and SNAP benefits shall not be increased until the adverse action period expires. If the household does not appeal, the increase shall be effective in accordance with Section 4.604. The time limit for taking the action to increase SNAP benefits shall be calculated from the date the PA Notice of Adverse Action expires. The Notice of Adverse Action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP). b. If the household requests a PA state appeal and is granted interim relief, the household is entitled only to SNAP benefits that were authorized immediately prior to the PA adverse action and action must be taken to correct the current basis of issuance. A SNAP claim must be made against the household if there was an over-issuance for the period pending the appeal decision. 3. When there is a change in a PA case which results in a termination of PA but there is insufficient information to determine SNAP eligibility, the county		

		b. If the household requests a PA state appeal and is granted interim relief, the household is entitled only to Food Assistance benefits that were authorized immediately prior to the PA adverse action and action must be taken to correct the current basis of issuance. A Food Assistance claim must be made against the household if there was an overissuance for the period pending the appeal decision. 3. When there is a change in a PA case which results in a termination of PA but there is insufficient information to determine Food Assistance eligibility, the county shall follow the guidelines listed below: a. The PA Advance Notice of Adverse Action and a verification request notice are issued simultaneously. The public assistance notice makes the action effective on the last day of the month the notice is sent (or the last day of the following month, as appropriate, to allow for the required advance notice period). The routine extension on Food Assistance notices allows the household time to reapply for benefits at the appropriate local office. The verification request notice shall advise the household of the information that needs to be verified for the household to continue to receive Food Assistance benefits. The worker shall not take any further action until the PA Notice of Adverse Action period expires or until the household requests a fair hearing. If the household does not appeal the PA action and request a continuation of benefits, the agency may resume action on the reported change.	shall follow the guidelines listed below: a. The PA Advance Notice of Adverse Action and a verification request notice are issued simultaneously. The PA notice makes the action effective on the last day of the month the notice is sent (or the last day of the following month, as appropriate, to allow for the required advance notice period). The routine extension on SNAP notices allows the household time to reapply for benefits at the appropriate local office. The verification request notice shall advise the household of the information that needs to be verified for the household to continue to receive SNAP benefits. The worker shall not take any further action until the PA Notice of Adverse Action period expires or until the household requests a fair hearing. If the household does not appeal the PA action and request a continuation of benefits, the agency may resume action on the reported change. Depending on the response or non-response to the verification request, the eligibility technician shall adjust the household's benefits if the verification of the household circumstances is received or issue a Notice of Adverse Action to close the household's case if the household does not respond or refuses to provide information. b. Households requesting a SNAP appeal may be entitled to continued benefits. c. If the household requests only a PA state appeal and is granted interim relief, SNAP benefits authorized immediately prior to the adverse action will continue or be restored. 4. If the situation does not require a PA Notice of		

		Depending on the response or non-response to the verification request, the worker shall adjust the household's benefits if the verification of the household circumstances are received, or issue a Notice of Adverse Action to close the household's case if the household does not respond or refuses to provide information. b. Households requesting a Food Assistance appeal may be entitled to continued benefits. c. If the household requests only a public assistance state appeal and is granted interim relief, Food Assistance benefits authorized immediately prior to the adverse action will continue or be restored. 4. If the situation does not require a PA Notice of Adverse Action, the county local office shall take action based on the normal change reporting processing time frames and provide proper noticing as described in this section. C. Local offices shall ensure that there is no increase in Food Assistance benefits to households as the result of a penalty being imposed for an intentional program violation (IPV) or failure to comply with program requirements for a federal, state, or local means-tested program that distributes publicly funded benefits. The local office shall calculate the Food Assistance allotment using the benefit amount that would be issued by that program if no penalty had been imposed to reduce the benefit amount. A situation where benefits of the other program are being frozen at the current level shall not constitute a penalty subject to these provisions. Changes in household circumstances that are not related to the penalty and	Adverse Action, the county local office shall act based on the normal change reporting processing time frames and provide proper noticing as described in this section. C. Local offices shall ensure that there is no increase in SNAP benefits to households as the result of a penalty being imposed for an IPV or failure to comply with program requirements for a federal, state, or local means-tested program that distributes publicly funded benefits. The local office shall calculate the SNAP allotment using the benefit amount that would be issued by that program if no penalty had been imposed to reduce the benefit amount. A situation where benefits of the other program are being frozen at the current level shall not constitute a penalty subject to these provisions. Changes in household circumstances that are not related to the penalty and result in an increase in SNAP benefits shall also not be affected by these provisions.		

		result in an increase in Food Assistance benefits shall also not be affected by these provisions.			
4.607	Program name update; and non-standardized acronyms and language	**4.607 MASS CHANGES** There are certain changes that occur which are not caused by the household and which affect a mass portion of the Food Assistance caseload simultaneously. Such adjustments go into effect for all households at a specific point in time, and the local office will have full prior knowledge of the change. Such changes are generally initiated as a result of a change in state or federal regulations. When such changes occur, the local office shall be responsible for making the appropriate adjustments in the household's eligibility or allotment as directed by the State Department and noticing the client as outlined below: A. Federal adjustments to eligibility standards, allotments, and deductions; state adjustments to the Standard Utility Allowance; and any federal reduction, cancellation, or suspension of Food Assistance Program benefits. These mass changes shall not require Advance Notice of Adverse Action to affected households; however, households shall be notified of such changes through the news media; posters in certification or issuance offices, or other locations frequented by participating households; or general notices mailed to participating households. Adjustments to federal standards and state adjustments to utility standards shall be implemented prospectively. B. Mass changes in public assistance grants, such as state-only Old Age Pension and Aid to the Needy Disabled; and Cost of Living Adjustments (COLA) and increases in federal RSDI, SSI benefits (Title XVI), and SSA (Title II). These mass changes shall require a Notice of	**4.607 MASS CHANGES** There are certain changes that occur which are not caused by the household and which affect a mass portion of the SNAP caseload simultaneously. Such adjustments go into effect for all households at a specific point in time, and the local office will have full prior knowledge of the change. Such changes are generally initiated because of a change in state or federal regulations. When such changes occur, the local office shall be responsible for making the appropriate adjustments in the household's eligibility or allotment as directed by the State Department and noticing the client as outlined below: A. Federal adjustments to eligibility standards, allotments, and deductions; state adjustments to the Standard Utility Allowance; and any federal reduction, cancellation, or suspension of SNAP benefits. These mass changes shall not require Advance Notice of Adverse Action to affected households; however, households shall be notified of such changes through the news media; posters in certification or issuance offices, or other locations frequented by participating households; or general notices mailed to participating households. Adjustments to federal standards and state adjustments to utility standards shall be implemented prospectively. B. Mass changes in public assistance grants, such as state-only OAP and AND; and Cost of Living Adjustments (COLA) and increases in federal RSDI, SSI benefits (Title XVI), and SSA (Title II). These mass changes shall require a Notice of Adverse Action when SNAP benefits are decreased or terminated. Such notice for these mass changes shall be provided to the household as much before the household's scheduled issuance date as reasonably possible, although the notice	Updating Food Assistance to SNAP; and standardizing acronyms and language	

		Adverse Action when food assistance benefits are decreased or terminated. Such notice for these mass changes shall be provided to the household as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance Notice of Adverse Action, per Section 4.608. Mass changes shall be processed prospectively for all households. 1. At a minimum, affected households shall be informed of: a. The general nature of the change; b. Examples of the change's effect on household's allotments; c. The month in which the change will take effect; d. The household's right to a fair hearing; e. The household's right to receive a continuation of benefits if the following criteria are met: 1) The household has not specifically waived its right to a continuation of benefits; 2) The household requests a fair and the request for a hearing is based upon improper computation of Food Assistance eligibility or benefits, or upon misapplication or misinterpretation of state rules, or federal law or regulation. f. The household's liability for any over-issued benefits if the hearing decision is	need not be given any earlier than the time required for advance Notice of Adverse Action, per Section 4.608. Mass changes shall be processed prospectively for all households. 1. At a minimum, affected households shall be informed of: a. The general nature of the change; b. Examples of the change's effect on household's allotments; c. The month in which the change will take effect; d. The household's right to a fair hearing; e. The household's right to receive a continuation of benefits if the following criteria are met: 1) The household has not specifically waived its right to a continuation of benefits; 2) The household requests a fair and the request for a hearing is based upon improper computation of SNAP eligibility or benefits, or upon misapplication or misinterpretation of state rules, or federal law or regulation. f. The household's liability for any over-issued benefits if the hearing decision is adverse; g. General information on whom to contact for additional information. 2. Processing Mass Changes in PA PA grant cost-of-living increases and SSA/SSI cost-of-living increases are treated as mass changes in SNAP. Mass changes shall be processed prospectively for all		

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		adverse; g. General information on whom to contact for additional information. 2. Processing Mass Changes in Public Assistance (PA) Public assistance grant cost-of-living increases and SSA/SSI cost-of-living increases are treated as mass changes in the Food Assistance Program. Mass changes shall be processed prospectively for all households. Food assistance benefits shall be recomputed and the change shall be effective in the same month as the change in the PA grant. If the local office has at least thirty (30) calendar days' advance knowledge of the amount of the public assistance adjustment, the Food Assistance benefits shall be recomputed and the change shall be effective in the same month as the change in the PA grant. In cases where the local office does not have thirty (30) calendar days' advance notice, the Food Assistance change shall be made effective no later than the month following the month in which the PA grant was changed.	households. SNAP benefits shall be recalculated, and the change shall be effective in the same month as the change in the PA grant. If the local office has at least thirty (30) calendar days' advance knowledge of the amount of the PA adjustment, the SNAP benefits shall be recalculated, and the change shall be effective in the same month as the change in the PA grant. In cases where the local office does not have thirty (30) calendar days' advance notice, the SNAP change shall be made effective no later than the month following the month in which the PA grant was changed.		
4.608(D)	Non-standardized language	**4.608 ADVANCE NOTICE OF ADVERSE ACTION** *** D. The participant household may also, prior to the effective date of the Notice of Adverse Action, either before or after the conference, appeal the proposed action. Households that timely request a hearing may be entitled to continued benefits. The eligibility worker shall explain to the household that a demand will be made for the amount of any benefits determined by the hearing officer to have been over-issued.	**4.608 ADVANCE NOTICE OF ADVERSE ACTION** *** D. The participant household may also, prior to the effective date of the Notice of Adverse Action, either before or after the conference, appeal the proposed action. Households that timely request a hearing may be entitled to continued benefits. The eligibility technician shall explain to the household that a demand will be made for the amount of any benefits determined by the hearing officer to have been over-issued.	Standardizing language	
4.608.1	Program name	**4.608.1 Changes Not Requiring Advance Notice of**	**4.608.1 Changes Not Requiring Advance Notice of Adverse**	Updating Food	

	update; non-standardized language and acronyms	**Adverse Action** Advance Notice of Adverse Action may be given, but is not required in the following situations: A. The Food Assistance Program Division initiates mass changes outlined in Section 4.607, paragraph A. Such changes must be publicized in advance. Announcements may be handed out or mailed to affected participant households. *** F. The household applied for public assistance (PA) and Food Assistance jointly and has been receiving Food Assistance benefits pending the approval of the PA grant and was notified at the time of certification that Food Assistance benefits would be reduced upon approval of the PA grant. *** J. Converting a household from cash and/or Food Assistance repayment for claims to allotment reduction as a result of a failure to make agreed-on repayments. *** L. A change that is reported at redetermination for a household certified for six (6) months, or at periodic report for a household certified for twenty-four (24) months, which results in a decrease to the household's Food Assistance allotment.	**Action** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, C, D, E, G, H, I, and K here and including A, F, and J.] Advance Notice of Adverse Action may be given, but is not required in the following situations: A. The state department initiates mass changes outlined in Section 4.607, paragraph A. Such changes must be publicized in advance. Announcements may be handed out or mailed to affected participant households. *** F. The household applied for PA and SNAP jointly and has been receiving SNAP benefits pending the approval of the PA grant and was notified at the time of certification that SNAP benefits would be reduced upon approval of the PA grant. *** J. Converting a household from cash and/or SNAP repayment for claims to allotment reduction because of a failure to make agreed-on repayments. *** L. A change that is reported at recertification for a household certified for six (6) months, or at periodic report for a household certified for twenty-four (24) months, which results in a decrease to the household's SNAP allotment.	Assistance to SNAP; standardizing language and acronyms	
4.609	Lack of non-standard acronyms	**4.609 TRANSITIONAL FOOD ASSISTANCE**	**4.609 TRANSITIONAL FOOD ASSISTANCE (TFA)**	Standardizing acronyms	
4.609.1	Program name update; non-	**4.609.1 GENERAL ELIGIBILITY GUIDELINES [Rev. eff. 2/1/16]**	**4.609.1 GENERAL ELIGIBILITY GUIDELINES [Rev. eff. 2/1/16]**	Updating Food Assistance to	

	standardized use of acronyms	A. Households that receive Food Assistance and Colorado Works basic cash assistance that become ineligible for continued receipt of Colorado Works basic cash assistance as a result of changes in household income are eligible to receive Transitional Food Assistance (TFA), as provided for within this section. Colorado works diversion payments are not considered basic cash assistance. Colorado works basic cash assistance is defined in Section 3.601 of the Code of Colorado Regulations (9 CCR 2503-6). B. Households that are eligible to receive Transitional Food Assistance will have the Food Assistance benefit amount continued for five (5) months. The household's Food Assistance allotment will be continued in an amount based on what the household received prior to when the household's income made them ineligible for Colorado Works basic cash assistance. Only the following four (4) changes will be acted upon when determining the Food Assistance allotment that is to be continued. 1. The loss of the Colorado Works cash grant; 2. Changes in household composition that result in a household member leaving and applying for Food Assistance in another household; 3. Updates to the Food Assistance eligibility standards that change each October 1 as a result of the annual cost-of-living adjustments (see Section 4.607); and, 4. Imposing an intentional program violation disqualification. C. When the Food Assistance benefit amount is continued, the household's existing certification period shall end, and the household shall be assigned a new	A. Households that receive SNAP and CW basic cash assistance that become ineligible for continued receipt of CW basic cash assistance because of changes in household income are eligible to receive TFA, as provided for within this section. CW diversion payments are not considered basic cash assistance. CW basic cash assistance is defined in Section 3.601 of the Code of Colorado Regulations (9 CCR 2503-6). B. Households that are eligible to receive TFA will have the SNAP benefit amount continued for five (5) months. The household's SNAP allotment will be continued in an amount based on what the household received prior to when the household's income made them ineligible for CW basic cash assistance. Only the following four (4) changes will be acted upon when determining the SNAP allotment that is to be continued. 1. The loss of the CW cash grant; 2. Changes in household composition that result in a household member leaving and applying for SNAP in another household; 3.Updates to the SNAP eligibility standards that change each October 1 because of the annual cost-of-living adjustments (see Section 4.607); and, 4. Imposing an IPV disqualification. C. When the SNAP benefit amount is continued, the household's existing certification period shall end, and the household shall be assigned a new five (5) month certification period. The recertification requirements that would normally apply when the household's certification period ends must be postponed until the end of the five (5) month transitional certification period. D. Households who are denied or not eligible for TFA must	SNAP; standardizing acronyms	

		five (5) month certification period. The recertification requirements that would normally apply when the household's certification period ends must be postponed until the end of the five (5) month transitional certification period. D. Households who are denied or not eligible for Transitional Food Assistance must have continued eligibility and benefit level determined in accordance with Section 4.604. E. The following households are not eligible to receive Transitional Food Assistance: 1. Households leaving the Colorado Works program due to a Colorado Works sanction; or, 2. Households that are ineligible to receive Food Assistance because all individuals in the household meet one of the following criteria: a. Disqualified for intentional program violation; b. Ineligible for failure to comply with a work requirement; c. Ineligible student; d. Ineligible non-citizen; e. Disqualified for failing to provide information necessary for making a determination of eligibility or for completing any subsequent review of its eligibility; f. Disqualified for receiving Food Assistance benefits in more than one household in the same month;	have continued eligibility and benefit level determined in accordance with Section 4.604. E. The following households are not eligible to receive TFA: 1. Households leaving the CW program due to a CW sanction; or, 2. Households that are ineligible to receive SNAP because all individuals in the household meet one of the following criteria: a. Disqualified for IPV; b. Ineligible for failure to comply with a work requirement; c. Ineligible student; d. Ineligible non-citizen; e. Disqualified for failing to provide information f. Disqualified for receiving SNAP benefits in more than one household in the same month; g. Disqualified for being a fleeing felon; h. ABAWDs who fail to comply with the requirements of Section 4.310.		

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		g. Disqualified for being a fleeing felon; h. Able-bodied adults without dependents who fail to comply with the requirements of Section 4.310.			
4.609.4	Program name update; and non-standardized acronyms	**4.609.4 HOUSEHOLDS WHO RETURN TO COLORADO WORKS DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]** If a household receiving Transitional Food Assistance returns to Colorado Works during the transitional period, the local office shall complete the recertification process for Food Assistance to determine the household's continued eligibility and benefit amount. If the household remains eligible for Food Assistance, the household shall be assigned a new certification period.	**4.609.4 HOUSEHOLDS WHO RETURN TO COLORADO WORKS (CW) DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]** If a household receiving TFA returns to CW during the transitional period, the local office shall complete the recertification process for SNAP to determine the household's continued eligibility and benefit amount. If the household remains eligible for SNAP, the household shall be assigned a new certification period.	Updating Food Assistance to SNAP; and standardizing acronyms	
4.609.5(A)	Program name update; and non-standardized language	**4.609.5 HOUSEHOLDS WHO REAPPLY FOR FOOD ASSISTANCE DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]** A. At any time during the transitional period, the household may submit an application for recertification to determine if the household is eligible for a higher Food Assistance allotment. In determining if the household is eligible for a higher allotment, all changes in household circumstances shall be acted upon.	**4.609.5 HOUSEHOLDS WHO REAPPLY FOR SNAP DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]** A. At any time during the transitional period, the household may apply for recertification to determine if the household is eligible for a higher SNAP allotment. In determining if the household is eligible for a higher allotment, all changes in household circumstances shall be acted upon.	Updating Food Assistance to SNAP; and standardizing language	
4.609.6	Program name update; and non-standardized	**4.609.6 TRANSITIONAL NOTICE REQUIREMENTS [Rev. eff. 2/1/16]**	**4.609.6 TRANSITIONAL NOTICE REQUIREMENTS [Rev. eff. 2/1/16]**	Updating Food Assistance to SNAP; standardizing	

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	acronyms	When a household is approved for Transitional Food Assistance, the household shall be notified of the following information: *** C. A statement that if the household returns to Colorado Works during its transitional benefit period, the household must undergo the recertification process to determine the household's continued eligibility and Food Assistance allotment for Food Assistance; and, ***	[PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, D, E, and F here and including C] When a household is approved for TFA, the household shall be notified of the following information: *** C. A statement that if the household returns to CW during its TFA period, the household must undergo the recertification process to determine the household's continued eligibility and new SNAP allotment; and, ***	acronyms	
4.610	Program name update	**4.610 REINSTATEMENT OF BENEFITS** A household may be eligible for a reinstatement of benefits, without filing a new application, during the remaining month(s) of the certification period if the reason for the original closure has been resolved and eligibility may be reestablished. The local office may reinstate the household if the household reports and verifies a reported change in circumstances that reestablishes the household's eligibility within 30 calendar days following the date of ineligibility. Within standard processing timeframes, the local office will review the case to determine if the household continues to meet all other eligibility requirements. If eligible for reinstatement, the local	**4.610 REINSTATEMENT OF BENEFITS** A household may be eligible for a reinstatement of benefits, without filing a new application, during the remaining month(s) of the certification period if the reason for the original closure has been resolved and eligibility may be reestablished. The local office may reinstate the household if the household reports and verifies a reported change in circumstances that reestablishes the household's eligibility within 30 calendar days following the date of ineligibility. Within standard processing timeframes, the local office will review the case to determine if the household continues to meet all other eligibility requirements. If eligible for reinstatement, the local office will prorate SNAP benefits from the date the household took all required action(s) to reestablish eligibility. If the certification period has already ended or will end during the month the household is attempting to reestablish eligibility, a new application is needed.	Updating Food Assistance to SNAP	

		office will prorate food assistance benefits from the date the household took all required action(s) to reestablish eligibility. If the certification period has already ended or will end during the month the household is attempting to reestablish eligibility, a new application is needed.			
4.700	Program name update; non-standardized use of acronyms	**4.700 FOOD ASSISTANCE BENEFIT ISSUANCE** The Colorado Electronic Benefits Transfer System (CO/EBTS) will allow electronic debiting of benefits onto an Electronic Benefit Transfer (EBT) card for certified eligible households. Every household must be informed of the issuance accommodations that are available. Local offices must provide an adequate number of issuance locations and hours of operation to allow all eligible households to receive their Electronic Benefit Transfer (EBT) cards. As the Food Assistance Program is a national program, food benefits issued to eligible households may be used for the purchase of eligible food in every state.	**4.700 SNAP BENEFIT ISSUANCE** CO/EBTS will allow electronic debiting of benefits onto an EBT card for certified eligible households. Every household must be informed of the issuance accommodations that are available. Local offices must provide an adequate number of issuance locations and hours of operation to allow all eligible households to receive their EBT) cards. As SNAP is a national program, benefits issued to eligible households may be used for the purchase of eligible food in every state.	Updating Food Assistance to SNAP; standardizing acronyms	
4.701	Non-standardized language; and misspelling	**4.701 PROVIDING BENEFITS TO PARTICIPANTS** *** B. Those households comprised of persons who are elderly or persons with a disability who have difficulty reaching issuance offices and households which do not reside in a permanent dwelling or have a fixed mailing address, and those in	**4.701 PROVIDING BENEFITS TO PARTICIPANTS** [PUBLISHER NOTE NOT FOR PUBLICATION: We are excluding section A here, including B and C.] *** B. Those households composed of persons who are aged 60 and older or persons with a disability who have difficulty reaching issuance offices and households which do not reside in a permanent	Standardizing language; and correcting misspelling	

		remote, rural areas shall be given assistance in obtaining their EBT card. Food assistance offices shall assist these households by arranging for the mail issuance of EBT cards to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means. C. The eligibility worker shall be sufficiently familiar with issuance operations to answer any questions the household may have about when, where, and how to access one's benefits from the EBT card.	dwelling or have a fixed mailing address, and those in remote, rural areas shall be given assistance in obtaining their EBT card. The local office shall assist these households by arranging for the mail issuance of EBT cards to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means. C. The eligibility technician shall be sufficiently familiar with issuance operations to answer any questions the household may have about when, where, and how to access one's benefits from the EBT card.		
4.701.2(D)	Non-standardized language	**4.701.2 EBT Cards** *** D. Food assistance offices shall limit issuance of EBT cards to the time of initial certification, with replacements made only in instances when the EBT card is lost, mutilated, destroyed, or if there are changes in the person authorized to obtain benefits, or when the office determines that a new EBT card is needed. Whenever possible, the office shall collect the EBT card that it is replacing. The issuance unit must be notified of a replacement EBT card to assure that only the most recently issued EBT card is used for benefit issuance. ***	**4.701.2 EBT Cards** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, E, and F here, including section D.] *** D. The local office shall limit issuance of EBT cards to the time of initial certification, with replacements made only in instances when the EBT card is lost, mutilated, destroyed, or if there are changes in the person authorized to obtain benefits, or when the office determines that a new EBT card is needed. Whenever possible, the office shall collect the EBT card that it is replacing. The issuance unit must be notified of a replacement EBT card to assure that only the most recently issued EBT card is used for benefit issuance. ***	Standardizing language	

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4.702.1	Program name update; and non-standardized language	**4.702.1 Eligibility for Restoration of Lost Benefits** A. To be eligible for restored benefits, the household must have had its Food Assistance benefits wrongfully delayed, denied, or terminated. Delay shall mean that an eligibility determination was not accomplished within processing timeframe standards. B. A restoration of benefits is warranted when a household has received fewer benefits than it was eligible to receive due to: 1. An error by the local office; 2. A court decision overturning or reversing a disqualification for intentional program violation; or, 3. A determination by a court that the household should have received more benefits than it received during a given issuance period. ***	**4.702.1 Eligibility for Restoration of Lost Benefits** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections C, D, E, and F here, and including A and B.] A. To be eligible for restored benefits, the household must have had its SNAP benefits wrongfully delayed, denied, or terminated. Delay shall mean that an eligibility determination was not accomplished within processing timeframe standards. B. A restoration of benefits is warranted when a household has received fewer benefits than it was eligible to receive due to: 1. An error by the local office; 2. A court decision overturning or reversing a disqualification for IPV; or 3. A determination by a court that the household should have received more benefits than it received during a given issuance period. ***	Updating Food Assistance to SNAP; and standardizing language	
4.702.4	Program name update; and non-standardized acronyms	**4.702.4 Errors by the Social Security Administration (SSA) Office** The local office shall restore to the household any benefits lost as the result of an error by the local office or by the Social Security Administration through joint processing. Benefits shall be restored back to the	**4.702.4 Errors by the SSA Office** The local office shall restore to the household any benefits lost as the result of an error by the local office or by the SSA through joint processing. Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and SNAP, but the local office was not notified on a timely basis of the applicant's	Updating Food Assistance to SNAP; and standardizing acronyms	

		date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and Food Assistance, but the local office was not notified on a timely basis of the applicant's release.	release.		
4.705	Program name update; and non-standardized acronyms	**4.705 WHEN AN INCREASE TO FOOD ASSISTANCE BENEFITS SHOULD NOT BE ISSUED** A. Local offices shall ensure that there is no increase in Food Assistance benefits to households as the result of a penalty being imposed for an intentional Program violation (IPV) or for failure to comply with work requirements or for failure to comply with another program requirement for a federal, state, or local means-tested program that distributes publicly funded benefits. B. To determine the Food Assistance allotment when there is such a decrease, the local office shall calculate the Food Assistance allotment using the benefit amount which would be issued by that program if no penalty had been imposed to reduce the benefit amount. A situation where benefits of the other program are being frozen at the current level shall not constitute a penalty subject to these provisions. Changes in household circumstances that are not related to the penalty and result in an increase in Food Assistance benefits shall also not be affected by these provisions.	**4.705 WHEN AN INCREASE TO SNAP BENEFITS SHOULD NOT BE ISSUED** A. Local offices shall ensure that there is no increase in SNAP benefits to households as the result of a penalty being imposed for an IPV or for failure to comply with work requirements or for failure to comply with another program requirement for a federal, state, or local means-tested program that distributes publicly funded benefits. B. To determine the SNAP allotment when there is such a decrease, the local office shall calculate the allotment using the benefit amount which would be issued by that program if no penalty had been imposed to reduce the benefit amount. A situation where benefits of the other program are being frozen at the current level shall not constitute a penalty subject to these provisions. Changes in household circumstances that are not related to the penalty and result in an increase in SNAP benefits shall also not be affected by these provisions.	Updating Food Assistance to SNAP; and standardizing acronyms	

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4.706	Program name update	**4.706 REPLACEMENT ISSUANCES TO HOUSEHOLDS DUE TO MISFORTUNE** A. A household may request a replacement issuance if food purchased with program benefits was destroyed in a household misfortune, such as, but not limited to, fire or flood. Replacement issuances shall be provided in the amount of the loss to the household, not to exceed one month's allotment, unless the issuance includes restored benefits that shall be replaced up to their full value. To qualify for a replacement, the household shall report the destruction to the local office within ten (10) calendar days of the incident. The household shall sign and return a statement or an Affidavit for Food Destroyed in Misfortune to the local office within ten (10) calendar days of the date of the report, or benefits shall not be replaced. If the tenth (10th) day falls on a weekend or holiday, and the statement or Affidavit for Food Destroyed in Misfortune is received the day after the weekend or holiday, the local office shall consider the statement or affidavit timely received. The statement or affidavit shall: 1. Attest to the destruction of the food purchased with the household's Food Assistance	**4.706 REPLACEMENT ISSUANCES TO HOUSEHOLDS DUE TO MISFORTUNE** A. A household may request a replacement issuance if food purchased with program benefits was destroyed in a household misfortune, such as, but not limited to, fire or flood. Replacement issuances shall be provided in the amount of the loss to the household, not to exceed one month's allotment, unless the issuance includes restored benefits that shall be replaced up to their full value. To qualify for a replacement, the household shall report the destruction to the local office within ten (10) calendar days of the incident. The household shall sign and return a statement or an Affidavit for Food Destroyed in Misfortune to the local office within ten (10) calendar days of the date of the report, or benefits shall not be replaced. If the tenth (10th) day falls on a weekend or holiday, and the statement or Affidavit for Food Destroyed in Misfortune is received the day after the weekend or holiday, the local office shall consider the statement or affidavit timely received. The statement or affidavit shall: 1. Attest to the destruction of the food purchased with the household's SNAP benefits; 2. State that the household is aware of the penalties for intentional misrepresentation of the facts. B. Upon receiving a request for replacement of SNAP benefits for food reported as destroyed in an individual household misfortune, the local office shall: 1. Verify the disaster through either a collateral contact, documentation from a community agency including, but not limited to, the fire department or	Updating Food Assistance to SNAP	

		benefits; 2. State that the household is aware of the penalties for intentional misrepresentation of the facts. B. Upon receiving a request for replacement of Food Assistance benefits for food reported as destroyed in an individual household misfortune, the local office shall: 1. Verify the disaster through either a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit; 2. Issue replacement benefits within ten (10) calendar days of the report of loss, provided a signed statement of loss or an Affidavit for Food Destroyed in Misfortune is received. If the statement of loss is received on the ninth (9th) or tenth (10th) day after the report of loss, the issuance must be replaced within two (2) business days; and, 3. Document in the case record the date and reason that a replacement has been provided. This provision shall apply in	the Red Cross, or a home visit; 2. Issue replacement benefits within ten (10) calendar days of the report of loss, provided a signed statement of loss or an Affidavit for Food Destroyed in Misfortune is received. If the statement of loss is received on the ninth (9th) or tenth (10th) day after the report of loss, the issuance must be replaced within two (2) business days; and, 3. Document in the case record the date and reason that a replacement has been provided. This provision shall apply in cases of an individual household misfortune, such as a fire, as well as in natural disasters affecting more than one (1) household. No limit on the number of replacements shall be placed on food purchased with SNAP benefits that were subsequently destroyed in a household misfortune.		

		cases of an individual household misfortune, such as a fire, as well as in natural disasters affecting more than one (1) household. No limit on the number of replacements shall be placed on food purchased with Food Assistance benefits that were subsequently destroyed in a household misfortune.			
4.706.1	Program name update	**4.706.1 Disaster and Replacement Allotments** Where USDA/FNS has issued a disaster declaration of individual assistance, individuals in a household who are eligible for emergency Food Assistance benefits shall not receive both the disaster allotment and a replacement allotment.	**4.706.1 Disaster and Replacement Allotments** Where USDA/FNS has issued a disaster declaration of individual assistance, individuals in a household who are eligible for emergency SNAP benefits shall not receive both the disaster allotment and a replacement allotment.	Updating Food Assistance to SNAP	
4.706.2	Non-standardized acronyms	**4.706.2 Replacement of EBT Cards Lost in the Mail or Stolen Prior to Receipt by the Household** Food assistance offices shall comply with the following procedures in replacing EBT cards reported lost in the mail or stolen from the mail prior to receipt by the household. A. Determine if the EBT card was actually mailed, if sufficient time has elapsed for delivery or if the card was returned in the mail back to the local office. B. Issue a replacement EBT card and new PIN.	**4.706.2 Replacement of EBT Cards Lost in the Mail or Stolen Prior to Receipt by the Household** Local offices shall comply with the following procedures in replacing EBT cards reported lost in the mail or stolen from the mail prior to receipt by the household. A. Determine if the EBT card was mailed, if sufficient time has elapsed for delivery or if the card was returned in the mail back to the local office. B. Issue a replacement EBT card and new PIN. C. Take other action, such as correcting the address on the master issuance file by updating the households mailing and/or home address within the automated system.	Standardizing acronyms	

		C. Take other action, such as correcting the address on the master issuance file by updating the households mailing and/or home address within the automated system.			
4.706.3	Program name update	**4.706.3 Request for Replacement Issuances after Receipt of EBT Card** Households cannot receive a replacement allotment of Food Assistance benefits that have been reported as stolen and used from the EBT card by someone without the household's knowledge and consent. An EBT Card received by a household and subsequently mutilated or found to be improperly manufactured shall be replaced.	**4.706.3 Request for Replacement Issuances after Receipt of EBT Card** Households cannot receive a replacement allotment of SNAP benefits that have been reported as stolen and used from the EBT card by someone without the household's knowledge and consent. An EBT card received by a household and subsequently mutilated or found to be improperly manufactured shall be replaced.	Updating Food Assistance to SNAP	
4.706.4	Program name update	**4.706.4 Authorized Number of Replacement Issuances** No limit on the number of replacements shall be placed on the replacement of benefits if the food purchased with Food Assistance benefits was destroyed in a household misfortune. The local office shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent. When a local office intends to deny or delay a replacement of Food Assistance benefits for any reason, the local office	**4.706.4 Authorized Number of Replacement Issuances** No limit on the number of replacements shall be placed on the replacement of benefits if the food purchased with SNAP benefits was destroyed in a household misfortune. The local office shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent. When a local office intends to deny or delay a replacement of SNAP benefits for any reason, the local office shall notify the household of the delay or denial through use of a Notice of Action form. The household shall be informed of its right to a county dispute resolution conference or state-level fair hearing to contest the denial or delay of a replacement issuance. Replacement shall not be made	Updating Food Assistance to SNAP	

		shall notify the household of the delay or denial through use of a Notice of Action form. The household shall be informed of its right to a county dispute resolution conference or state-level fair hearing to contest the denial or delay of a replacement issuance. Replacement shall not be made while the denial or delay is being appealed. Replacement issuances shall be provided to households within ten (10) calendar days after report of loss (fifteen days if issuance was by certified or registered mail) or within two (2) working days of receiving the signed household statement, whichever date is later. When a request for replacement is made late in an issuance month, the replacement will be issued in a month subsequent to the month in which the original allotment was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement.	while the denial or delay is being appealed. Replacement issuances shall be provided to households within ten (10) calendar days after report of loss (fifteen days if issuance was by certified or registered mail) or within two (2) working days of receiving the signed household statement, whichever date is later. When a request for replacement is made late in an issuance month, the replacement will be issued in a month after the month in which the original allotment was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement.		
4.707	Program name update; non-standardized language	**4.707 FOOD ASSISTANCE ISSUANCE AND ACCOUNTABILITY** A. Food assistance offices shall establish issuance and accountability systems to comply with these rules and to ensure that only certified eligible households receive benefits, EBT cards are accepted, stored, and protected after delivery to receiving points, benefits are timely distributed in the correct amounts, and that benefit issuance and reconciliation are properly conducted and	**4.707 SNAP ISSUANCE AND ACCOUNTABILITY** A. Local offices shall establish issuance and accountability systems to comply with these rules and to ensure that only certified eligible households receive benefits, EBT cards are accepted, stored, and protected after delivery to receiving points, benefits are timely distributed in the correct amounts, and that benefit issuance and reconciliation are properly conducted and accurately reported. B. Electronic benefit issuance shall be handled through the state department, and at designated contractor sites through the Colorado Electronic	Updating Food Assistance to SNAP; and standardizing language	

		accurately reported. B. Electronic benefit issuance shall be handled through the Colorado Department of Human Services, Food Assistance Programs Division, and at designated contractor sites through the Colorado Electronic Benefit Transfer System (CO/EBTS). C. Food assistance offices shall assure a separation of certification functions from issuance functions and thereby provide for internal controls and prevention of fraud. Certification functions include determining eligibility for a household and ensuring that the eligibility is current and accurate. Eligibility shall be updated and maintained in the automated system. It shall be the responsibility of the certification unit to complete all necessary actions in the automated system to authorize the issuance of benefits. Data entry of case information may be completed by either the certification unit or a separate data entry unit, but not by the issuance unit. D. Issuance offices are responsible for the timely and accurate issuance of Food Assistance benefits to eligible participant households. An approved accountability and benefit issuance delivery system shall be established to ensure that eligibility information is data entered, that the automated system has an issuance available, and only certified	Benefit Transfer System (CO/EBTS). C. Local offices shall assure a separation of certification functions from issuance functions and thereby provide for internal controls and prevention of fraud. Certification functions include determining eligibility for a household and ensuring that the eligibility is current and accurate. Eligibility shall be updated and maintained in the automated system. It shall be the responsibility of the certification unit to complete all necessary actions in the automated system to authorize the issuance of benefits. Data entry of case information may be completed by either the certification unit or a separate data entry unit, but not by the issuance unit. D. Issuance offices are responsible for the timely and accurate issuance of SNAP benefits to eligible participant households. An approved accountability and benefit issuance delivery system shall be established to ensure that eligibility information is data entered, that the automated system has an issuance available, and only certified households receive benefits.		

		households receive benefits.			
4.707.1	Non-standardized language and acronyms	**4.707.1 Security Procedures** The electronic benefit issuance area shall be physically separated, such as, but not limited to, the cage, counter, and railing, from both participants and other employees of the office who are not responsible for benefit issuance and accountability. Persons not specifically responsible for benefit issuance accountability shall also be barred from the electronic benefit card storage area. Food assistance offices, including contract issuers, shall take all precautions necessary to avoid acceptance, transfer, negotiation, or use of counterfeit food benefits and to avoid any unauthorized use, transfer, acquisition, alteration or possession of benefits. Electronic Benefit Transfer (EBT) cards shall be safeguarded from theft, embezzlement, loss, damage or destruction. Issuance supervisors shall give each cashier a daily supply of blank Electronic Benefit Transfer cards from the bulk card inventory. On high volume issuance days, the cashier's supply may need to be replenished during issuance hours from an office vault. Such a vault containing bulk card inventory shall remain locked unless opened to withdraw cards. Keys and lock combinations shall be controlled and restricted to as few individuals as possible. Combinations and locks should be changed whenever an individual who has received them leaves the employ of	**4.707.1 Security Procedures** The electronic benefit issuance area shall be physically separated, such as, but not limited to, the cage, counter, and railing, from both participants and other employees of the office who are not responsible for benefit issuance and accountability. Persons not specifically responsible for benefit issuance accountability shall also be barred from the electronic benefit card storage area. Local offices, including contract issuers, shall take all precautions necessary to avoid acceptance, transfer, negotiation, or use of counterfeit food benefits and to avoid any unauthorized use, transfer, acquisition, alteration, or possession of benefits. EBT cards shall be safeguarded from theft, embezzlement, loss, damage, or destruction. Issuance supervisors shall give each cashier a daily supply of blank EBT cards from the bulk card inventory. On high volume issuance days, the cashier's supply may need to be replenished during issuance hours from an office vault. Such a vault containing bulk card inventory shall remain locked unless opened to withdraw cards. Keys and lock combinations shall be controlled and restricted to as few individuals as possible. Combinations and locks should be changed whenever an individual who has received them leaves the employ of the office. EBT cards must be removed from public view and reach. It is required that each cashier operate from a card drawer rather than from sources on top of the counter. The EBT cards must be locked in the drawer whenever the cashier leaves the issuance area for any reason. In small offices where it is not possible for each cashier to have a separate supply of EBT cards, the number of EBT cards shall be counted whenever one cashier assumes duties of another cashier at the issuance counter and transferred to that cashier's responsibility.	Standardizing language and acronyms	

		the office. EBT cards must be removed from public view and reach. It is required that each cashier operate from a card drawer rather than from sources on top of the counter. The EBT cards must be locked in the drawer whenever the cashier leaves the issuance area for any reason. In small offices where it is not possible for each cashier to have a separate supply of EBT cards, the number of EBT cards shall be counted whenever one cashier assumes duties of another cashier at the issuance counter, and transferred to that cashier's responsibility. The office shall never be left unattended during hours of issuance, such as during breaks or lunch, unless the building is secured as it would be after business hours.	The office shall never be left unattended during hours of issuance, such as during breaks or lunch, unless the building is secured as it would be after business hours.		
4.707.2	Non-standardized language	**4.707.2 Security Program and Types of Prevention of Theft** The goal of a security program is to safeguard issuance personnel, EBT cards, and other valuables. In the event of a robbery, a planned security program will prevent panic that could endanger the lives of the people in the office. A major element in an effective security program is the designation of a security officer who would continually review office facilities and procedures to improve office security and deter loss. She/he shall acquaint fellow employees with the	**4.707.2 Security Program and Types of Prevention of Theft** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, and C here.] The goal of a security program is to safeguard issuance personnel, EBT cards, and other valuables. In the event of a robbery, a planned security program will prevent panic that could endanger the lives of the people in the office. A major element in an effective security program is the designation of a security officer who would continually review office facilities and procedures to improve office security and deter loss. She/he shall acquaint fellow employees with the security measures including	Standardizing language	

		security measures including precautions during issuance, night security and safety of persons and EBT cards while they are in transit between the issuance office and bulk storage area. In addition to a security officer, each office shall distribute written instructions to all employees concerning appropriate behavior in the event of a robbery attempt and procedures for reporting the theft to law authorities and the Food Assistance Programs Division.	precautions during issuance, night security and safety of persons and EBT cards while they are in transit between the issuance office and bulk storage area. In addition to a security officer, each office shall distribute written instructions to all employees concerning appropriate behavior in the event of a robbery attempt and procedures for reporting the theft to law authorities and the state department.		
4.707.21	Non-standardized language	**4.707.21 Reporting a Robbery or Burglary** The local law enforcement agency shall be notified immediately by one of the persons who have been designated to carry out the reporting of a robbery or burglary. The Food Assistance Programs Division shall also be notified immediately and will be responsible for informing USDA/FNS. The office shall be protected to ensure that evidence is not destroyed. Any articles touched by the robbers (papers, furniture, counter tops) should not be touched by employees or other persons until law enforcement officers arrive. The names of persons other than employees in the office at the time of the robbery shall be obtained if they insist on leaving prior to the arrival of law enforcement officers. Each employee shall write down all	**4.707.21 Reporting a Robbery or Burglary** The local law enforcement agency shall be notified immediately by one of the persons who have been designated to carry out the reporting of a robbery or burglary. The state department shall also be notified immediately and will be responsible for informing USDA/FNS. The office shall be protected to ensure that evidence is not destroyed. Any articles touched by the robbers (papers, furniture, counter tops) should not be touched by employees or other persons until law enforcement officers arrive. The names of persons other than employees in the office at the time of the robbery shall be obtained if they insist on leaving prior to the arrival of law enforcement officers. Each employee shall write down all pertinent information about the robbery. They should be told it is important to record their own impressions and observations prior to any discussion of them with other employees. After law enforcement officers have made their examinations and with their approval, an immediate	Standardizing language	

		pertinent information about the robbery. They should be told it is important to record their own impressions and observations prior to any discussion of them with other employees. After law enforcement officers have made their examinations and with their approval, an immediate reconciliation of EBT cards shall be made to determine the amount of any loss. Stolen EBT cards will be identified by serial numbers.	reconciliation of EBT cards shall be made to determine the amount of any loss. Stolen EBT cards will be identified by serial numbers.		
4.407.3	Non-standardized language	**4.707.3 EBT Requisition** Issuance units shall maintain EBT card inventory at proper levels as determined by volume of issuance, availability of adequate storage facilities and insurance coverage. EBT card inventory levels shall not exceed a six-month supply, including EBT cards on hand and those on order. The security of issuance offices shall be continually monitored to ensure that adequate safeguards and insurance coverage are provided for the EBT card inventory on hand. Arrangements have been made for local issuance offices with sufficient issuance volume to receive shipments of EBT cards directly from USDA/FNS. Offices with low issuance volume will receive EBT card shipments from the Food Assistance Programs Division storage vault by fully insured registered mail. It is advised that offices that receive direct shipments should check EBT cards after	**4.707.3 EBT Requisition** Issuance units shall maintain EBT card inventory at proper levels as determined by volume of issuance, availability of adequate storage facilities and insurance coverage. EBT card inventory levels shall not exceed a six-month supply, including EBT cards on hand and those on order. The security of issuance offices shall be continually monitored to ensure that adequate safeguards and insurance coverage are provided for the EBT card inventory on hand. Arrangements have been made for local issuance offices with sufficient issuance volume to receive shipments of EBT cards directly from USDA/FNS. Offices with low issuance volume will receive EBT card shipments from the state department storage vault by fully insured registered mail. It is advised that offices that receive direct shipments should check EBT cards after monthly reconciliation and order EBT cards according to USDA/FNS instructions. USDA/FNS will assess the reasonableness of EBT card requisitions based on prior inventory change. The requisitioning office will be notified prior to any adjustment made to requisitions.	Standardizing language	

		monthly reconciliation and order EBT cards according to USDA/FNS instructions. USDA/FNS will assess the reasonableness of EBT card requisitions based on prior inventory change. The requisitioning office will be notified prior to any adjustment made to requisitions. Those offices which receive their EBT card supply from the Food Assistance Programs Division storage vault shall requisition EBT cards in accordance with the instructions submitted from the Food Assistance Programs Division. The instructions will advise of procedures for ordering from the contractual provider.	Those offices which receive their EBT card supply from the state department storage vault shall requisition EBT cards in accordance with the instructions submitted from the state department. The instructions will advise of procedures for ordering from the contractual provider.		
4.707.4	Non-standardized language	**4.707.4 Designated Personnel and Receiving Locations** A. Food assistance offices ordering EBT cards shall designate at least two persons who are authorized to receive EBT cards. The Food Assistance Programs Division shall be notified by letter of the following: 1. Names of authorized personnel; 2. Complete address of EBT card receiving location; 3. Hours in which EBT card delivery will be accepted. B. Verification of Shipments Issuance offices and bulk storage points shall promptly verify and	**4.707.4 Designated Personnel and Receiving Locations** A. Local offices ordering EBT cards shall designate at least two persons who are authorized to receive EBT cards. The state department shall be notified by letter of the following: 1. Names of authorized personnel; 2. Complete address of EBT card receiving location; 3. Hours in which EBT card delivery will be accepted. B. Verification of Shipments Issuance offices and bulk storage points shall promptly verify and acknowledge, in writing the contents of EBT card shipments received and shall be responsive for the control and storage of EBT cards. Cartons of blank EBT cards are usually numbered consecutively, and serial numbers should be verified on receipt of	Standardizing language	

		acknowledge, in writing the contents of EBT card shipments received and shall be responsive for the control and storage of EBT cards. Cartons of blank EBT cards are usually numbered consecutively, and serial numbers should be verified on receipt of shipment. The receiving agent shall assure that the indicated number of cartons is received before signing the receipt form. C. Receipt of EBT Cards from USDA, Food and Nutrition Service When a shipment of EBT cards is received from USDA/FNS, an original and three copies of Form FNS 261 (Advice of Shipment) are mailed to the consignee. If the shipment is in order, the receiving agent shall complete Form FNS 261. If the shipment is not in order, immediately notify the Food Assistance Programs Division. The receiving agent will then be instructed to annotate Form FNS 261, describing the EBT card discrepancy or damaged condition of the EBT cards Form FNS 261 must be signed, dated and submitted in the normal manner. D. Receipt of EBT Cards from the State Office When a shipment is received from the Food Assistance Programs Division, Form FNS 300 (Advice of Transfer) is mailed to the consignee in the original and three copies. If the	shipment. The receiving agent shall assure that the indicated number of cartons is received before signing the receipt form. C. Receipt of EBT Cards from USDA, FNS When a shipment of EBT cards is received from USDA/FNS, an original and three copies of Form FNS 261 (Advice of Shipment) are mailed to the consignee. If the shipment is in order, the receiving agent shall complete Form FNS 261. If the shipment is not in order, immediately notify the state department. The receiving agent will then be instructed to annotate Form FNS 261, describing the EBT card discrepancy or damaged condition of the EBT cards Form FNS 261 must be signed, dated, and submitted in the normal manner. D. Receipt of EBT Cards from the State Department When a shipment is received from the state department, Form FNS 300 (Advice of Transfer) is mailed to the consignee in the original and three copies. If the shipment is in order, the original and all copies of Form FNS-300 are signed and dated by the receiving agent. If the shipment is not in order, immediately notify the state department.		

		shipment is in order, the original and all copies of Form FNS-300 are signed and dated by the receiving agent. If the shipment is not in order, immediately notify the Food Assistance Programs Division			
4.707.5	Non-standardized language	**4.707.5 Inventory Records** *** B. Improperly Manufactured or Mutilated EBT Cards in Shipment If EBT cards are improperly manufactured or mutilated, Form FNS-471 shall be completed. The EBT cards are cancelled immediately and destroyed at the end of the month in accordance with Section 4.708.5. If one or more boxes of EBT cards were improperly manufactured, local offices shall contact the Food Assistance Programs Division. The Division will contact USDA/FNS on the instructions for disposition of the destructible EBT cards. EBT cards must be destroyed within thirty (30) calendar days from the close of the month in which the EBT cards were received. For disposition of mutilated EBT cards returned by participants, refer to Section 4.708.5. ***	**4.707.5 Inventory Records** [PUBLISHER NOTE NOT FOR PUBLICATION: We are excluding A and C here, including B.] *** B. Improperly Manufactured or Mutilated EBT Cards in Shipment If EBT cards are improperly manufactured or mutilated, Form FNS-471 shall be completed. The EBT cards are cancelled immediately and destroyed at the end of the month in accordance with Section 4.708.5. If one or more boxes of EBT cards were improperly manufactured, local offices shall contact the state department, who will contact USDA/FNS on the instructions for disposition of the destructible EBT cards. EBT cards must be destroyed within thirty (30) calendar days from the close of the month in which the EBT cards were received. For disposition of mutilated EBT cards returned by participants, refer to Section 4.708.5. ***	Standardizing language	
4.707.6	Program name update; and non-standardized language	**4.707.6 Benefit Issuance Locations and Storage Facilities**	**4.707.6 Benefit Issuance Locations and Storage Facilities**	Updating Food Assistance to SNAP and standardizing language	

		A. Issuance locations shall be established by every local office to accomplish the issuance of EBT cards to certified Food Assistance households. B. The Food Assistance Program in the Food and Energy Assistance Division shall be notified of all issuance locations and EBT card shipment receiving points created, changed, or terminated at least thirty (30) calendar days prior to effective date of action. C. Whenever an issuance office or bulk storage point is terminated, the Food Assistance Programs Division will complete a closeout accountability audit within thirty (30) calendar days of the termination. The findings of the audit shall be forwarded to USDA/FNS immediately. The Food Assistance Programs Division shall perform an actual count of EBT cards on hand and transfer the inventory to another issuance office or bulk storage point preferably within the same project area. The actual inventory and transfer shall be properly documented and reported on Form FNS-250. D. At least thirty (30) calendar days prior to closure of an issuance location, Food Assistance Program participants shall be notified of the impending closure. Notification shall include alternative issuance locations	A. Issuance locations shall be established by every local office to accomplish the issuance of EBT cards to certified SNAP households. B. The state department shall be notified of all issuance locations and EBT card shipment receiving points created, changed, or terminated at least thirty (30) calendar days prior to THE effective date of action. C. Whenever an issuance office or bulk storage point is terminated, the state department will complete a closeout accountability audit within thirty (30) calendar days of the termination. The findings of the audit shall be forwarded to USDA/FNS immediately. The state department shall perform an actual count of EBT cards on hand and transfer the inventory to another issuance office or bulk storage point preferably within the same project area. The actual inventory and transfer shall be properly documented and reported on Form FNS250. D. At least thirty (30) calendar days prior to closure of an issuance location, SNAP participants shall be notified of the impending closure. Notification shall include alternative issuance locations and information concerning available public transportation. A notice of closure shall also be prominently displayed in the issuance office. All necessary action shall be taken to maintain participant service without interruption. E. The transfer of EBT cards between project areas is allowed only in emergency situations and only when authorized by the state department. The transferring office initiates Form FNS-300, retains copy 4 and forwards all other parts to the receiving office with EBT card shipment. On verification of shipment, Form FNS-300 is dated and signed by the receiving office and copy 3 is returned to the transferring office. The counties involved in “transferring out” and “transferring in” must properly document the transaction on Form		

		and information concerning available public transportation. A notice of closure shall also be prominently displayed in the issuance office. All necessary action shall be taken to maintain participant service without interruption. E. The transfer of EBT cards between project areas is allowed only in emergency situations and only when authorized by the Food Assistance Programs Division. The transferring office initiates Form FNS-300, retains copy 4 and forwards all other parts to the receiving office with EBT card shipment. On verification of shipment, Form FNS-300 is dated and signed by the receiving office and copy 3 is returned to the transferring office. The counties involved in "transferring out" and "transferring in" must properly document the transaction on Form FNS-250 submitted at the end of the month.	FNS-250 submitted at the end of the month.		
4.707.7	Non-standardized language	**4.707.7 Monitoring of EBT Card Issuers** The Food Assistance Programs Division shall conduct an onsite review of each EBT card issuer and bulk storage point at least once every three (3) years. All offices or units of an EBT card issuer are subject to this review requirement. The Food Assistance Programs Division shall base each review on the specific activities performed by each EBT card issuer or bulk storage point. A physical inventory of EBT cards shall be taken at each	**4.707.7 Monitoring of EBT Card Issuers** The state department shall conduct an onsite review of each EBT card issuer and bulk storage point at least once every three (3) years. All offices or units of an EBT card issuer are subject to this review requirement. The state department shall base each review on the specific activities performed by each EBT card issuer or bulk storage point. A physical inventory of EBT cards shall be taken at each location, and count compared with perpetual inventory records and the monthly reports of the EBT card issuer or bulk storage point. This review may be conducted at branch sites as well as the main offices of each issuer and	Standardizing language	

		location, and count compared with perpetual inventory records and the monthly reports of the EBT card issuer or bulk storage point. This review may be conducted at branch sites as well as the main offices of each issuer and bulk storage point that operates in more than one office.	bulk storage point that operates in more than one office.		
4.707.8	Non-standardized language	**4.707.8 Division of Issuance Responsibilities** Over-the-counter and mail issuance responsibilities shall be divided between a cashier and another issuance employee. A. It is not always feasible for the duties of the cashier to be performed by separate employees because of a low issuance volume at an issuance location. Therefore, any county that can justify deviation from the requirement, and is willing to assume the additional risk, may obtain permission for one-person issuance through written request to the Food Assistance Programs Division (refer to Section 4.707).	**4.707.8 Division of Issuance Responsibilities** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B and C here, including A.] Over the counter and mail issuance responsibilities shall be divided between a cashier and another issuance employee. A. It is not always feasible for the duties of the cashier to be performed by separate employees because of a low issuance volume at an issuance location. Therefore, any county that can justify deviation from the requirement, and is willing to assume the additional risk, may obtain permission for one-person issuance through written request to the state department (refer to Section 4.707).	Standardizing language	
4.707.84	Non-standardized language	**4.707.84 Control of Issuance Documents** Food assistance offices shall control all issuance documents that establish household eligibility while the documents are transferred and processed within the local office. The office shall use numbers, batching, inventory control togs, or similar controls from the point of initial receipt through the issuance and reconciliation	**4.707.84 Control of Issuance Documents** Local offices shall control all issuance documents that establish household eligibility while the documents are transferred and processed within the local office. The local office shall use numbers, batching, inventory control togs, or similar controls from the point of initial receipt through the issuance and reconciliation process. All Notices of Action that initiate or terminate the Master Issuance file and blank EBT cards shall have access limited to authorized personnel.	Standardizing language	

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Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		process. All Notices of Action that initiate or terminate the Master Issuance file and blank EBT cards shall have access limited to authorized personnel.			
4.707.9	Grammar issue	**4.707.9 Issuance Methods** The issuance office may mail EBT cards to all eligible households or establish over-the-counter issuance with optional mail issuance at the request of the household. Certified households must be issue EBT cards by the end of the month, except when benefits are suspended, cancelled or reduced. If benefits have been suspended, and the local office receives a directive to resume issuance of benefits, the issuance of mailed or over-the-counter EBT cards will be staggered through the end of the month or over a five-day period following the resumption of issuance. This could result in benefits being issued after the end of the month in which the suspension occurred.	**4.707.9 Issuance Methods** The issuance office may mail EBT cards to all eligible households or establish over-the-counter issuance with optional mail issuance at the request of the household. Certified households must be issued EBT cards by the end of the month, except when benefits are suspended, cancelled, or reduced. If benefits have been suspended, and the local office receives a directive to resume issuance of benefits, the issuance of mailed or over the counter EBT cards will be staggered through the end of the month or over a five-day period following the resumption of issuance. This could result in benefits being issued after the end of the month in which the suspension occurred.	Correcting incorrect grammar	
4.407.91	Program name update; and non-standardized language	**4.707.91 Mail Issuance** A. Exclusive Mail Issuance Food assistance offices which rely exclusively on mail issuance shall ensure that participants receive allotments on a timely basis and eligible households, either destitute of income or with no income, receive expedited issuance in accordance with Sections 4.205 and 4.701. ***	**4.707.91 Mail Issuance** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B, C, and D here, including A and E.] A. Exclusive Mail Issuance Local offices which rely exclusively on mail issuance shall ensure that participants receive allotments on a timely basis and eligible households, either destitute of income or with no income, receive expedited issuance in accordance with Sections 4.205 and 4.701. ***	Updating Food Assistance to SNAP; standardizing language	

		E. Food Assistance Mail Issuance Report Form FNS-259 reports shall be submitted by local offices for each unit using a mail issuance system. Food assistance offices shall submit Form FNS-259 reports so that they are received by the fifteenth (15th) day following the end of each month.	E. SNAP Mail Issuance Report Form FNS-259 reports shall be submitted by local offices for each unit using a mail issuance system. Local offices shall submit Form FNS-259 reports so that they are received by the fifteenth (15th) day following the end of each month.		
4.708.1	Non-standardized language	**4.708.1 EBT Card Responsibility and Liability** County offices shall be liable to USDA/FNS for the face value of EBT card loss that occur as a result of thefts, embezzlements, cashier error, unless the investigation was reported directly to USDA/FNS prior to the loss and unexplained causes. The county offices shall not be liable for the value of EBT cards issued for those duplicate issuances in the correct amount that are the result of authorized replacement issuances.	**4.708.1 EBT Card Responsibility and Liability** Local offices shall be liable to USDA/FNS for the face value of EBT card loss that occurs because of thefts, embezzlements, and cashier error, unless the investigation was reported directly to USDA/FNS prior to the loss and unexplained causes. The local offices shall not be liable for the value of EBT cards issued for those duplicate issuances in the correct amount that are the result of authorized replacement issuances.	Standardizing language	
4.708.2	Non-standardized language	**4.708.2 Inventory Reporting to Food Assistance Programs Division** Form FNS-250 (EBT Card Accountability Report) shall be executed monthly by EBT card issuers and bulk storage points, and shall be signed by the EBT card issuer or appropriate official, certifying that the information is true and correct to the best of that person's knowledge and belief. FNS-250 is an automated report available	**4.708.2 Inventory Reporting to The State Department** Form FNS-250 (EBT Card Accountability Report) shall be executed monthly by EBT card issuers and bulk storage points. The FNS-250 shall be signed by the EBT card issuer, or appropriate official, certifying that the information is true and correct to the best of that person's knowledge and belief. FNS-250 is an automated report available through automated system and needs to be data entered by the 15th of the month. Supporting documentation to Form FNS-250 (EBT Card Accountability Report) shall be	Standardizing language	

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		through automated system and needs to be data entered by the 15th of the month. Supporting documentation to Form FNS-250 (EBT Card Accountability Report) shall be submitted to the Food Assistance Programs Division which will verify the monthly report. Documentation shall consist of documents supporting EBT card shipments (FNS-261), EBT card transfers (FNS-300), and destruction of EBT cards (FNS-135 and FNS-471).	submitted to the state department which will verify the monthly report. Documentation shall consist of documents supporting EBT card shipments (FNS-261), EBT card transfers (FNS-300), and destruction of EBT cards (FNS-135 and FNS-471).		
4.708.3	Non-standardized language	**4.708.3 State Monthly EBT Card Accountability** The Food Assistance Programs Division shall establish an accounting system to review Form FNS-250 completed by all county offices and determine the propriety and reasonableness of EBT card inventories, issuance activities and reconciliation records. All records of EBT card requisition, EBT card receipt, returned mail EBT card issuances, replacements of EBT cards lost in the mail or improperly manufactured or mutilated as well as the supporting remarks and documentation for monthly over-issuance and under-issuance shall be used by the Division to assure the accuracy of monthly reports.	**4.708.3 State Monthly EBT Card Accountability** The state department shall establish an accounting system to review Form FNS-250 completed by all local offices and determine the propriety and reasonableness of EBT card inventories, issuance activities and reconciliation records. All records of EBT card requisition, EBT card receipt, returned mail EBT card issuances, replacements of EBT cards lost in the mail or improperly manufactured or mutilated as well as the supporting remarks and documentation for monthly over-issuance and under-issuance shall be used to assure the accuracy of monthly reports.	Standardizing language	
4.708.4	Program name update; and non-standardized language	**4.708.4 Issuance Reconciliation Reporting** Form FNS-46 (Issuance Reconciliation Report) shall be submitted by each local office operating an issuance system. The report shall be prepared at the level where the actual reconciliation of the	**4.708.4 Issuance Reconciliation Reporting** Form FNS-46 (Issuance Reconciliation Report) shall be submitted by each local office operating an issuance system. The report shall be prepared at the level where the actual reconciliation of the record for issuance and master file occurs.	Standardizing language	

		record-for-issuance and master file occurs. Food assistance offices shall identify and report the number and value of all issuances that do not reconcile with the record-for-issuance and master issuance file. In addition to the above requirement, local offices will continue to reconcile inventory levels against issuances each month on Form FNS-250 (Food Assistance Accountability Report) and attach Form FNS-259 (Food Assistance Mail Issuance Report) for reconciliation.	Local offices shall identify and report the number and value of all issuances that do not reconcile with the record-for-issuance and master issuance file. In addition to the above requirement, local offices will continue to reconcile inventory levels against issuances each month on Form FNS-250 (SNAP Accountability Report) and attach Form FNS259 (SNAP Mail Issuance Report) for reconciliation.		
4.708.5	Non-standardized language	**4.708.5 Destruction of Unusable EBT Cards Returned by Households** Unusable EBT cards shall be destroyed by the county office provided that the destruction is accomplished by burning, shredding or tearing and two (2) persons witness the EBT card destruction. Form FNS-471 (EBT Card and Destruction Report) shall be completed and signed by the required witnesses and mailed to the Food Assistance Programs Division. Form FNS-135 (Affidavit for Return or Exchange of EBT Cards) completed for the return of unusable EBT cards by clients or for claims payments and Form FNS-471 completed on destruction of unusable EBT cards improperly manufactured or mutilated in shipments are supporting documents for necessary	**4.708.5 Destruction of Unusable EBT Cards Returned by Households** Unusable EBT cards shall be destroyed by the local office provided that the destruction is accomplished by burning, shredding, or tearing and two (2) persons witness the EBT card destruction. Form FNS-471 (EBT Card and Destruction Report) shall be completed and signed by the required witnesses and mailed to the state department. Form FNS-135 (Affidavit for Return or Exchange of EBT Cards) completed for the return of unusable EBT cards by clients or for claims payments and Form FNS-471 completed on destruction of unusable EBT cards improperly manufactured or mutilated in shipments are supporting documents for necessary EBT card destruction. Local offices must report the destruction of improperly manufactured or mutilated EBT cards on Form FNS-471 (EBT Card and Destruction Report) and submit it with Form FNS-250 for the appropriate month. For EBT cards	Standardizing language	

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		EBT card destruction. County offices must report the destruction of improperly manufactured or mutilated EBT cards on Form FNS-471 (EBT Card and Destruction Report) and submit it with Form FNS-250 for the appropriate month. For EBT cards received from recipients, the original copy of Form FNS-135 must be attached to a copy of Form FNS-471 and retained in the office for future review and audit purposes. The destruction of EBT cards received from claims collections that are the result of payment of household claims must be reported on Form FNS-471. Form FNS-135 will act as a receipt on exchange of unusable EBT cards returned by clients or returned for claim payments.	received from recipients, the original copy of Form FNS-135 must be attached to a copy of Form FNS-471 and retained in the office for future review and audit purposes. The destruction of EBT cards received from claims collections that are the result of payment of household claims must be reported on Form FNS-471. Form FNS-135 will act as a receipt on exchange of unusable EBT cards returned by clients or returned for claim payments.		
4.708.6	Non-standardized language	**4.708.6 Undeliverable or Returned EBT Cards** County offices shall exercise the following security and controls for EBT cards that are undeliverable or returned during the valid issuance period. Forms FNS-471 and FNS-135 shall be completed by the office as appropriate. EBT cards shall be returned to inventory and noted as such on the issuance log and Form FNS-250.	**4.708.6 Undeliverable or Returned EBT Cards** Local offices shall exercise the following security and controls for EBT cards that are undeliverable or returned during the valid issuance period. Forms FNS-471 and FNS-135 shall be completed by the office as appropriate. EBT cards shall be returned to inventory and noted as such on the issuance log and Form FNS-250.	Standardizing language	
4.708.8	Non-standardized language; and grammar issue	**4.708.8 State EBT Card Issuance and Participation Reporting** The Food Assistance Programs Division	**4.708.8 State EBT Card Issuance and Participation Reporting** The state department shall make estimations with data	Standardizing language; and correcting grammar issue	

		shall make estimations with data from the automated system Benefit Issuance and Participation Estimates.	from the automated system on Benefit Issuance and Participation Estimates.		
4.709	Program name update; and non-standardized acronyms	**4.709 COLORADO ELECTRONIC BENEFIT TRANSFER SYSTEM AND PROCESSING** All issuance systems shall maintain a composite of data for all certified households and provide complete information on participating households for review sampling purposes, statistical summary and reporting requirements. The automated system is a direct-access system that allows online issuance access to the Master Issuance File. The automated system provides for online issuance system. Colorado Electronic Benefit Transfer System (CO/EBTS) will provide access through the use of a plastic debit card to recipients of Food Assistance and public assistance programs. The overall rules for CO/EBTS are in the Special Projects rule manual, Section 12.100, et seq. (12 CCR 2512-2). Eligibility determinations in the automated system will be processed nightly to make Food Assistance benefits available the following day for initial certification. Ongoing cases will have benefits posted during a ten (10) calendar day cycle with the Social Security Number (SSN) as the basis. The ending number of the SSN will indicate the date for the posting of benefits. An SSN ending with one (1) will be posted on the first day of the month,	**4.709 COLORADO ELECTRONIC BENEFIT TRANSFER SYSTEM AND PROCESSING** All issuance systems shall maintain a composite of data for all certified households and provide complete information on participating households for review sampling purposes, statistical summary, and reporting requirements. The automated system is a direct-access system that allows online issuance access to the Master Issuance File. The automated system provides for online issuance system. Colorado Electronic Benefit Transfer System (CO/EBTS) will provide access using a plastic debit card to recipients of SNAP and PA programs. The overall rules for CO/EBTS are in the Special Projects rule manual, Section 12.100, et seq. (12 CCR 2512-2). Eligibility determinations in the automated system will be processed nightly to make SNAP benefits available the following day for initial certification. Ongoing cases will have benefits posted during a ten (10) calendar day cycle with the SSN as the basis. The ending number of the SSN will indicate the date for the posting of benefits. An SSN ending with one (1) will be posted on the first day of the month, two (2) on the second day of the month, etc. AN SSN ending with zero (0) will be posted on the tenth (10th) day of the month.	Updating Food Assistance to SNAP; and standardizing acronyms	

		two (2) on the second day of the month, etc. A SSN ending with zero (0) will be posted on the tenth (10th) day of the month.			
4.709.1	Non-standardized language	**4.709.1 Card/PIN Issuance Accountability** A. The county department of social/human services will establish procedures for issuance of CO/EBTS debit cards and Personal Identification Numbers (PINs). The household will be issued a debit card within seven (7) calendar days from the date of application for expedited cases and within thirty (30) calendar days for non-expedited cases. B. The county department of social/human services shall maintain debit cards on site at its primary location and satellite offices. The EBTS contractor will provide counties with an initial supply of sequentially numbered cards with pre-embossed primary account numbers. Local offices must reorder cards to ensure an adequate supply at all times. The cards will be secured and accounted for through appropriate inventory and distribution forms. C. The household PIN will be issued through encryption devices supplied by the Colorado Department of Human Services, Food Assistance Programs Division.	**4.709.1 Card/PIN Issuance Accountability** A. Local offices will establish procedures for issuance of CO/EBTS debit cards and Personal Identification Numbers (PINs). The household will be issued a debit card within seven (7) calendar days from the date of application for expedited cases and within thirty (30) calendar days for non-expedited cases. B. Local offices shall maintain debit cards on site at its primary location and satellite offices. The EBTS contractor will provide counties with an initial supply of sequentially numbered cards with pre-embossed primary account numbers. Local offices must reorder cards to always ensure an adequate supply. The cards will be secured and accounted for through appropriate inventory and distribution forms. B. Local offices shall maintain debit cards on site at its primary location and satellite offices. The EBTS contractor will provide counties with an initial supply of sequentially numbered cards with pre-embossed primary account numbers. Local offices must reorder cards to always ensure an adequate supply. The cards will be secured and accounted for through appropriate inventory and distribution forms. C. The household PIN will be issued through encryption devices supplied by the state department.	Standardizing language	
4.709.2	Non-standardized language	**4.709.2 EBT Card Replacement** A. CO/EBTS debit cards for eligible	**4.709.2 EBT Card Replacement** A. CO/EBTS debit cards for eligible recipients will be	Standardizing language	

		recipients will be replaced when reported lost, stolen, or non-functioning. Replacement of cards will occur within three (3) business days of notification by the recipient. B. County departments of social/human services may have replacement cards over the counter or through a transmission to the CO/EBTS contractor requesting mail issuance. County departments shall not charge a fee if the replacement is issued by mail or the original card is inoperable due to no fault of the cardholder. County departments shall not charge a fee if the client is being recertified, and if, during the period of non-participation, the client has destroyed, lost, or damaged the original card. C. County departments shall not collect replacement fees by debiting a recipient's Food Assistance account.	replaced when reported lost, stolen, or non-functioning. Replacement of cards will occur within three (3) business days of notification by the recipient. B. Local offices may have replacement cards over the counter or through a transmission to the CO/EBTS contractor requesting mail issuance. Local offices shall not charge a fee if the replacement is issued by mail or the original card is inoperable due to no fault of the cardholder. Local offices shall not charge a fee if the client is being recertified, and if, during the period of non-participation, the client has destroyed, lost, or damaged the original card. C. Local offices shall not collect replacement fees by debiting a recipient's SNAP account.		
4.800	Program name update; and non-standardized language	**4.800 CLAIMS, APPEAL PROCESS, AND FRAUD** Pursuant to Section 15(d) of the Food Stamp Act, benefits are an obligation of the United States within the meaning of 18 United States Code (USC) 8. The provisions of Title 18 of the United States Code, “Crimes and Criminal Procedure, Relative to Counterfeiting, Misuse and Alteration of Obligations of the United States” are applicable to Food Assistance benefits. Copies of the U.S. Code are	**4.800 CLAIMS, APPEAL PROCESS, AND FRAUD** Pursuant to Section 15(d) of the Food Stamp Act, benefits are an obligation of the United States within the meaning of 18 United States Code (USC) 8. The provisions of Title 18 of the United States Code, “Crimes and Criminal Procedure, Relative to Counterfeiting, Misuse and Alteration of Obligations of the United States” are applicable to SNAP benefits. Copies of the U.S. Code are available for inspection. No later editions or amendments are incorporated. Any unauthorized issuance, use, transfer, acquisition,	Updating Food Assistance to SNAP; and standardizing language	

		available for public inspection by contacting the Food Assistance Director during regular business hours at the Colorado Department of Human Services, Food Assistance Program, 1575 Sherman Street, Denver, Colorado 80203; or at a state publications depository library. No later editions or amendments are incorporated. Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of food assistance benefits may subject an individual, partnership, corporation, or other legal entity to prosecution.	alteration, possession, or presentation of SNAP benefits may subject an individual, partnership, corporation, or other legal entity to prosecution.		
4.801	Program name update	**4.801 CLAIMS AGAINST HOUSEHOLDS** A claim shall be established when a household is over- issued benefits. An over-issuance means the amount by which Food Assistance benefits issued to a household exceeds the amount the household was eligible to receive.	**4.801 CLAIMS AGAINST HOUSEHOLDS** A claim shall be established when a household is over-issued benefits. An over-issuance means the amount by which SNAP benefits issued to a household exceeds the amount the household was eligible to receive.	Updating Food Assistance to SNAP	
4.801.1	Program name update; and non-standardized language and acronyms	**4.801.1 Classification of Claims** Claims shall be classified as follows: A. “Agency Error Claims” - A claim shall be handled as an agency error claim if the over-issuance is caused by an error on the part of the local office. Instances that may result in an agency error claim include, but are not limited to, the following: 1. The local office failed to take prompt action on a change	**4.801.1 Classification of Claims** Claims shall be classified as follows: A. “Agency Error Claims” - A claim shall be handled as an agency error claim if the over-issuance is caused by an error on the part of the local office. Instances that may result in an agency error claim include, but are not limited to, the following: 1. The local office failed to take prompt action on a change reported by the household; 2. The local office incorrectly computed the	Updating Food Assistance to SNAP; and standardizing language and acronyms	

		reported by the household; 2. The local office incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment; 3. The local office continued to provide a household Food Assistance benefits after its certification period expired without a redetermination of eligibility. 4. The local office failed to provide a household a reduced level of Food Assistance benefits when its public assistance grant changed. B. "Inadvertent Household Error Claims" – A claim shall be handled as an inadvertent household error claim if the over-issuance was caused by a misunderstanding or unintentional error on the part of the household. Instances that may result in an inadvertent household error claim include, but are not limited to, the following: 1. The household unintentionally failed to provide the local office with correct or complete information. 2. The household unintentionally failed to report changes in its household circumstances.	household's income or deductions, or otherwise assigned an incorrect allotment; 3. The local office continued to provide a household SNAP benefits after its certification period expired without a recertification of eligibility. 4. The local office failed to provide a household a reduced level of SNAP benefits when its PA grant changed. B. "Inadvertent Household Error Claims" - A claim shall be handled as an inadvertent household error claim if the over-issuance was caused by a misunderstanding or unintentional error on the part of the household. Instances that may result in an inadvertent household error claim include, but are not limited to, the following: 1. The household unintentionally failed to provide the local office with correct or complete information. 2. The household unintentionally failed to report changes in its household circumstances. 3. The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits. 4. The household was receiving SNAP solely because of basic categorical eligibility and the household was subsequently determined ineligible for CW or SSI during the time that the benefits were being received. The claim must be based on a change in net income and/or household size. 5. The SSA failed to take action that resulted in		

		3. The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits. 4. The household was receiving Food Assistance solely because of basic categorical eligibility and the household was subsequently determined ineligible for Colorado Works or Supplemental Security Income (SSI) during the time that the benefits were being received. The claim must be based on a change in net income and/or household size. 5. The Social Security Administration failed to take action that resulted in the household's basic categorical eligibility and improper receipt of SSI. The claim must be based on change in net income and/or household size. C. "Intentional Program Violation/Fraud Claims" - A claim shall be handled as an intentional program violation/fraud claim only if: 1. An administrative disqualification hearing official or	the household's basic categorical eligibility and improper receipt of SSI. The claim must be based on change in net income and/or household size. C. "IPV /Fraud Claims" - A claim shall be handled as an IPV/fraud claim only if: 1.An administrative disqualification hearing official or a court of appropriate jurisdiction has found a household member has committed an IPV or fraud; or, 2. A signed waiver of IPV is received; or 3. A signed disqualification consent agreement has been obtained. Prior to a waiver or consent agreement being signed or the determination of IPV/fraud, the claim against the household shall be handled as an inadvertent household error claim.		

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		a court of appropriate jurisdiction has found a household member has committed intentional program violation or fraud; or, 2. A signed waiver of intentional program violation is received; or, 3. A signed disqualification consent agreement has been obtained. Prior to a waiver or consent agreement being signed or the determination of intentional program violation/fraud, the claim against the household shall be handled as an inadvertent household error claim.			
4.801.2	Updating program name; and non-standardized language and acronyms	**4.801.2 Establishing Claims Against Households** A. Establishing a Claim 1. The local office shall establish claims in accordance with the thresholds outlined below. a. For participating households, the county department shall not establish a claim for overpayment due to Administrative Error (AE) or Inadvertent Household Error (IHE), except in the following circumstances:	**4.801.2 Establishing Claims Against Households** A. Establishing a claim 1. The local office shall establish claims in accordance with the thresholds outlined below. a. For participating households, the local office shall not establish a claim for overpayment due to Administrative Error (AE) or Inadvertent Household Error (IHE), except in the following circumstances: 1. When the amount of the claim is greater than $200; or When the over-issuance is identified through a federal or state level quality control review; or,	Updating Food Assistance to SNAP; and standardizing language and acronyms	

		1. When the amount of the claim is greater than $200; or, 2. When the overpayment is identified through a federal or state level quality control review; or, 3. When the IHE claim is being pursued as an intentional program violation (IPV), except that if the IHE claim does not result in an IPV, collection shall not be pursued. b. For households not participating in the Food Assistance program, the county department shall not establish a claim for overpayment except in the following circumstances: 1. When the amount of the AE claim is greater than $400; or, 2. When the amount of the claim is due to an IHE and is greater than $200; or, 3. When the overpayment is	2. When the IHE claim is being pursued as an IPV, except that if the IHE claim does not result in an IPV, collection shall not be pursued. b. For households not participating in SNAP, the local office shall not establish a claim for over-issuance except in the following circumstances: 1. When the amount of the AE claim is greater than $400; or 2. When the amount of the claim is due to an IHE and is greater than $200; or 3. When the over-issuance is identified through a federal or state level quality control review. 4. When an IHE claim is being pursued as an IPV, except that if the IHE claim does not result in an IPV, collection shall not be pursued. 2. An AE or IHE claim shall not be established for a period of more than twelve (12) months from the date the local office was notified, in writing or orally, or discovered through the normal course of business that an error occurred which led to the household receiving more benefits than it was entitled to receive. A claim associated with an IPV must be calculated back to the month the act of IPV first occurred and cannot be established for a period more than six (6) years from the date the local office was notified, in writing or orally, or discovered through the normal course of business that an error occurred which led to the household receiving		

		identified through a federal or state level quality control review. 4. When an IHE claim is being pursued as an IPV, except that if the IHE claim does not result in an IPV, collection shall not be pursued. 2. An AE or IHE claim shall not be established for a period of more than twelve (12) months from the date the local office was notified, in writing or orally, or discovered through the normal course of business that an error occurred which led to the household receiving more benefits than it was entitled to receive. A claim associated with an IPV must be calculated back to the month the act of IPV first occurred and cannot be established for a period more than six (6) years from the date the local office was notified, in writing or orally, or discovered through the normal course of business that an error occurred which led to the household receiving more benefits than it was entitled to receive. 3. Claims shall be established for benefits that are trafficked.	more benefits than it was entitled to receive. 3. Claims shall be established for benefits that are trafficked. The trafficking of benefits means: a. The buying, selling, stealing, or otherwise affecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or, b. The exchange of SNAP benefits or EBT cards for firearms, ammunition, explosives, or controlled substances; or, C. A SNAP participant, including the participant's designated authorized representative, who knowingly transfers SNAP benefits to another who does not, or does not intend to, use the SNAP benefits for the SNAP household for whom the benefits were intended; or, d. The reselling of food that was purchased with SNAP benefits for cash; or, e. Obtaining a cash deposit when returning water or other containers that were purchased with SNAP benefits. Purchasing water containers is an eligible food item that can be paid for with SNAP benefits; however, when the container is returned, the deposit should be returned to the client's EBT card and not given to the client in cash; or, f. Attempting to buy, sell, steal or otherwise affect an exchange of SNAP benefits and		

		The trafficking of benefits means: a. The buying, selling, stealing, or otherwise affecting an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or, b. The exchange of Food Assistance benefits or EBT cards for firearms, ammunition, explosives, or controlled substances; or, c. A Food Assistance participant, including the participant's designated authorized representative, who knowingly transfers Food Assistance benefit to another who does not, or does not intend to, use the Food Assistance benefits for the Food Assistance household for whom the Food Assistance benefits were intended; or,	accessed via EBT cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. 4. Claims shall be established against the following individuals: a. All adult household members aged eighteen (18) years of age or older at the time the over-issuance occurred, even if one or more of the adult household members are participating in another SNAP household at the time the claim is established; b. A person connected to the household, such as an authorized representative, who traffics or otherwise causes an over-issuance to occur. B. Timeframe to Establish a Claim Local offices shall establish all claims before the last day of the quarter following the quarter in which the over-issuance or trafficking incident was discovered. 1. The discovery date for AE claims is the date that the local office was notified, in writing or orally, or discovered through the normal course of business that an agency error occurred that caused the household to receive more benefits than it was entitled to receive. 2. The discovery date for IHE and IPV non-trafficking claims shall be the date that verification used to calculate the over-issuance is obtained. 3. The discovery date for claims resulting from		

		d. The reselling of food that was purchased with Food Assistance benefits for cash; or, e. Obtaining a cash deposit when returning water or other containers that were purchased with Food Assistance benefits. Purchasing water containers is an eligible food item that can be paid for with Food Assistance benefits; however, when the container is returned, the deposit should be returned to the client's EBT card and not given to the client in cash; or, f. Attempting to buy, sell, steal or otherwise affect an exchange of Food Assistance benefits and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. 4. Claims shall be established against the following individuals: a. All adult household members	trafficking is the date of the court decision or the date the household signed a waiver of administrative disqualification hearing form or a disqualification consent agreement.		

		age eighteen (18) years of age or older at the time the over-issuance occurred, even if one or more of the adult household members are participating in another Food Assistance household at the time the claim is established; b. A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an over-issuance to occur. B. Time Frame to Establish a Claim Local offices shall establish all claims before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered. 1. The discovery date for AE claims is the date that the local office was notified, in writing or orally, or discovered through the normal course of business that an agency error occurred that caused the household to receive more benefits than it was entitled to receive. 2. The discovery date for IHE and IPV non-trafficking claims shall be the date that verification used to calculate the over-issuance is obtained. 3. The discovery date for claims resulting from trafficking is the			

		date of the court decision or the date the household signed a waiver of administrative disqualification hearing form or a disqualification consent agreement.			
4.801.3	Program name update; and non-standardized language and acronyms	**4.801.3 Calculating the Amount of a Claim** A. Compromising Claims If the full amount or remaining amount of an AE or IHE claim cannot be liquidated in three (3) years, the local office may compromise the claim by reducing it to an amount that will allow the household to pay the claim in three (3) years. Intentional program violation claims shall not be compromised, unless specified in a court decision. The local office may use the full amount of the claim, including any amount compromised, to offset lost benefits. Decisions regarding compromises shall be documented in the case record. A payment plan on a claim that has been compromised may be renegotiated if necessary. Claims that are already reduced by either an administrative or district court order are considered compromised claims, and thus are not eligible for additional compromise. Local offices shall review the household's circumstances and determine if a compromise would be	**4.801.3 Calculating the Amount of a Claim** A. Compromising Claims If the full amount or remaining amount of an AE or IHE claim cannot be liquidated in three (3) years, the local office may compromise the claim by reducing it to an amount that will allow the household to pay the claim in three (3) years. Intentional program violation claims shall not be compromised, unless specified in a court decision. The local office may use the full amount of the claim, including any amount compromised, to offset lost benefits. Decisions regarding compromises shall be documented in the case record. A payment plan on a claim that has been compromised may be renegotiated if necessary. Claims that are already reduced by either an administrative or district court order are considered compromised claims, and thus are not eligible for additional compromise. Local offices shall review the household's circumstances and determine if a compromise would be appropriate. Local offices do not have the option of refusing to consider compromising claims. Local offices cannot institute a policy of never compromising claims. Claims should be compromised if the household demonstrates need, such as the inability to repay the claim within three (3) years, or if the household proves that financial, physical, or mental hardship would exist	Updating Food Assistance to SNAP; and standardizing language and acronyms	

		appropriate. Local offices do not have the option of refusing to consider compromising claims. Local offices cannot institute a policy of never compromising claims. Claims should be compromised if the household demonstrates need, such as the inability to repay the claim within three (3) years, or if the household proves that financial, physical, or mental hardship would exist if forced to pay the full amount of the original claim. Some circumstances include, but are not limited to medical hardships, high shelter costs, loan payments, and other extraordinary expenses. A compromise based on hardship may be applied to a Food Assistance case whether or not the household is still receiving Food Assistance benefits. Consideration should be given to the future earning potential of the household over the next three (3) years to pay back the claim based on age, disability, and other household factors. B. Claims Resulting from Trafficking The value of claims resulting from trafficking related offenses is the value of the trafficked benefits as determined by the individual's admission, through adjudication, or the documentation that forms the basis for the trafficking determination. Documentation could include such	if forced to pay the full amount of the original claim. Some circumstances include, but are not limited to medical hardships, high shelter costs, loan payments, and other extraordinary expenses. A compromise based on hardship may be applied to a SNAP case if the household is or is not still receiving SNAP benefits. Consideration should be given to the future earning potential of the household over the next three (3) years to pay back the claim based on age, disability, and other household factors. B. Claims Resulting from Trafficking The value of claims resulting from trafficking related offenses is the value of the trafficked benefits as determined by the individual's admission, through adjudication, or the documentation that forms the basis for the trafficking determination. Documentation could include such items as notarized statements or printouts from the Electronic Benefit Transfer (EBT) systems. C. Agency Error and Inadvertent Household Error Claims 1. If the household received a larger allotment than it was entitled to receive, the local office shall establish a claim against the household that is equal to the difference between the allotment that the household received and the actual allotment it should have received. Benefits authorized under Colorado Electronic Benefits Transfer System (CO/EBTS) shall be used to calculate the claim. After calculating the amount of a claim and establishing claims, the local office must offset the amount of the claim against any amounts which have not yet been restored to the household. Expungements and any return of benefits that		

		items as notarized statements or printouts from the Electronic Benefit Transfer (EBT) systems. C. Agency Error and Inadvertent Household Error Claims 1. If the household received a larger allotment than it was entitled to receive, the local office shall establish a claim against the household that is equal to the difference between the allotment that the household received and the actual allotment it should have received. Benefits authorized under Colorado Electronic Benefits Transfer System (CO/EBTS) shall be used to calculate the claim. After calculating the amount of a claim and establishing claims, the local office must offset the amount of the claim against any amounts which have not yet been restored to the household. Expungements and any return of benefits that occur must be used to offset the amount of the claim. 2. The claim must also be offset against restored benefits owed to: a. Any household that contains a member who was an adult member of the original household;	occur must be used to offset the amount of the claim. 2. The claim must also be offset against restored benefits owed to: a. Any household that contains a member who was an adult member of the original household; b. Any household that contains an authorized representative that caused the over-issuance or trafficking. c. In no circumstance may the local office collect more than the amount of the claim. 3. For households eligible under BCE, a claim shall only be determined when it can be calculated because of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size. If a household receives both TANF and SNAP and mis-reports information to TANF in accordance with the TANF reporting requirements, and the misreport of information to TANF resulted in the household being over paid TANF or ineligible for TANF, any resulting SNAP claim should be based on the actual TANF issued. 4. The correct allotment shall be calculated using the same methods applied to an actual certification. The twenty percent (20%) earned income deduction shall not be applied to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim; therefore, any portion of the claim that is due to earned income being reported in an untimely manner will be calculated without		

		b. Any household that contains an authorized representative that caused the overpayment or trafficking. c. In no circumstance may the local office collect more than the amount of the claim. 3. For households eligible under basic categorical eligibility, a claim shall only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size. If a household receives both Temporary Assistance for Needy Families (TANF) and Food Assistance and mis-reports information to TANF in accordance with the TANF reporting requirements, and the mis-report of information to TANF resulted in the household being over paid TANF or ineligible for TANF, any resulting Food Assistance claim should be based on the actual TANF issued. 4. The correct allotment shall be calculated using the same methods applied to an actual	allowing the twenty percent (20%) earned income deduction. The actual circumstances of the household shall be used to calculate the claim. In instances when a claim is caused by the household's failure to report information as required, the amount of the claim is based on the allotment difference from what the household received compared to what the household would have received if the household would have reported the information as required. For example, if a simplified reporting household did not report income at initial application as required, the income used to calculate the over-issuance would be the income that the household received in the month of application, as this would have been used to determine the household's ongoing monthly amount. Actual income received each subsequent month is not required to calculate each month of the claim, as any fluctuation in monthly income that was received by the household after the initial month of application was not required to be reported by the household. If the household failed to report a change in household circumstances that would have resulted in an increase in benefits during the period of the claim, the local office shall act on the change in information as of the date the change was reported to the local office. 5. When a household certified below 130% FPL fails to report an increase in household income over 130% FPL. The local office shall establish the claim for each month in which an over-issuance of SNAP has occurred. a. In cases involving household failure to report an increase in income within the required timeframes, the first (1st) month affected by the household's failure to report shall be the first (1st) month in which the		

		certification. The twenty percent (20%) earned income deduction shall not be applied to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim; therefore, any portion of the claim that is due to earned income being reported in an untimely manner will be calculated without allowing the twenty percent (20%) earned income deduction. The actual circumstances of the household shall be used to calculate the claim. In instances when a claim is caused by the household's failure to report information as required, the amount of the claim is based on the allotment difference from what the household actually received compared to what the household would have received if the household would have reported the information as required. For example, if a simplified reporting household did not report income at initial application as required, the income used to calculate the overpayment would be the income that the household actually received in the month of application, as this would have been used to determine the household's ongoing monthly amount. Actual income received each subsequent month is not required to calculate each month	change would have been effective had it been timely reported. However, in no event shall the determination of the first (1st) month in which the change would have been effective be any later than two (2) months from the month in which the change occurred. For purposes of calculating the claim, the local office shall assume that the change would have been reported properly and timely acted upon by the local office. b. If the household timely reported an increase in income but the local office failed to act on the change within the required timeframes, the first (1st) month affected by the local office's failure to act shall be the first (1st) month the office would have made the change effective had it acted timely. If a Notice of Adverse Action were required, the local office shall assume, for the purpose of calculating the claim, that the Notice of Adverse Action period would have expired without the household requesting a fair hearing. D. IPV Claims 1. Prior to a waiver or consent agreement being signed or the determination of intentional program violation/fraud, the claim being pursued as an IPV claim shall be pursued as an IHE claim. 2. For each month that a household received an over-issuance due to an act of IPV/fraud, the local office shall determine the correct amount of SNAP benefits, if any, the household was entitled to receive. If the household member is determined to have intentionally failed to report a change in its household's circumstances, the claim shall be established for each month in which the failure to		

		of the claim, as any fluctuation in monthly income that was received by the household after the initial month of application was not required to be reported by the household. If the household failed to report a change in household circumstances that would have resulted in an increase in benefits during the time period of the claim, the local office shall act on the change in information as of the date the change was reported to the local office. 5. When a household certified below 130% FPL fails to report an increase in household income over 130% FPL. The local office shall establish the claim for each month in which an over-issuance of Food Assistance has occurred. a. In cases involving household failure to report an increase in income within the required timeframes, the first (1st) month affected by the household's failure to report shall be the first (1st) month in which the change would have been effective had it been timely reported. However, in no event shall the determination of the first (1st) month in which the change would have been effective be any later than	report would have affected the household's SNAP allotment. 3. Once the amount of the IPV claim is established, the local office shall offset the claim against any amount of lost benefits that have not yet been restored to the household. E. Court Actions In cases where a household member was found guilty of fraud by a court of appropriate jurisdiction, the local office should request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and individual.		

		two (2) months from the month in which the change occurred. For purposes of calculating the claim, the local office shall assume that the change would have been reported properly and timely acted upon by the local office. b. If the household timely reported an increase in income but the local office failed to act on the change within the required timeframes, the first (1st) month affected by the local office's failure to act shall be the first (1st) month the office would have made the change effective had it acted timely. If a Notice of Adverse Action was required, the local office shall assume, for the purpose of calculating the claim, that the Notice of Adverse Action period would have expired without the household requesting a fair hearing. D. IPV Claims 1. Prior to a waiver or consent agreement being signed or the determination of intentional program violation/fraud, the claim being pursued as an IPV claim shall be pursued as an IHE			

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

		claim. 2. For each month that a household received an over-issuance due to an act of intentional program violation/fraud, the local office shall determine the correct amount of Food Assistance benefits, if any, the household was entitled to receive. If the household member is determined to have intentionally failed to report a change in its household's circumstances, the claim shall be established for each month in which the failure to report would have affected the household's Food Assistance allotment. 3. Once the amount of the IPV claim is established, the local office shall offset the claim against any amount of lost benefits that have not yet been restored to the household. E. Court Actions In cases where a household member was found guilty of fraud by a court of appropriate jurisdiction, the local office should request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and individual.			
4.801.4	Program name update;	**4.801.4 Collecting Payments on Claims**	**4.801.4 Collecting Payments on Claims**	Updating Food Assistance to	

	and non-standardized language and acronyms	A. Claim Liability 1. Liable Individuals All adult household members age eighteen (18) years or older at the time the over- issuance occurred, sponsors, or other persons, such as an authorized representative who actually trafficked or otherwise caused an overpayment or trafficking to occur, that are connected with the household shall be jointly and severally liable for the value of any over-issuance of benefits to the household. 2. Initiating Collection Action a. Local offices shall initiate collection action against any and all of the adult members or persons connected to the household at the time an over-issuance occurred. Under no circumstances shall the office collect more than the amount of the claim. b. The local office may pursue collection action against any household that has a member that was connected to the household that received or created an over- issuance.	A. Claim Liability 1. Liable Individuals All adult household members aged eighteen (18) years or older at the time the over-issuance occurred, sponsors, or other persons, such as an authorized representative who trafficked or otherwise caused an overpayment or trafficking to occur, that are connected with the household shall be jointly and severally liable for the value of any over-issuance of benefits to the household. 2. Initiating Collection Action a. Local offices shall initiate collection action against all adult members or persons connected to the household at the time an over-issuance occurred. Under no circumstances shall the office collect more than the amount of the claim. b. The local office may pursue collection action against any household that has a member that was connected to the household that received or created an over-issuance. c. The local office shall initiate collection action for an unpaid or partially paid IPV claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. Collection action shall be initiated unless the household has already repaid the over-issuance because of an inadvertent household error demand letter or the local office has documentation that shows the household cannot be located.	SNAP; and standardizing language and acronyms	

		c. The local office shall initiate collection action for an unpaid or partially paid IPV claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. Collection action shall be initiated unless the household has already repaid the over-issuance as a result of an inadvertent household error demand letter or the local office has documentation that shows the household cannot be located. B. Postponing Collection Action Collection action on inadvertent household error claims may be postponed in cases where an over-issuance is being referred to an administrative disqualification hearing or a court of appropriate jurisdiction, and the local office determines that collection action will prejudice the case. For cases in which the household is appealing an agency error or inadvertent household error claim, collection action shall be suspended pending a final decision. A household's appeal may include, but not be limited to, the establishment of the claim, the amount of the claim,	B. Postponing Collection Action Collection action on inadvertent household error claims may be postponed in cases where an over-issuance is being referred to an administrative disqualification hearing or a court of appropriate jurisdiction, and the local office determines that collection action will prejudice the case. For cases in which the household is appealing an agency error or inadvertent household error claim, collection action shall be suspended pending a final decision. A household's appeal may include, but not be limited to, the establishment of the claim, the amount of the claim, and/or the household's liability to repay the claim. C. Notifying a Household of a Claim 1. Notice of Over-Issuance and Repayment Agreement Local offices shall initiate collection action on agency error and inadvertent household error claims by sending the household a State-prescribed written demand letter for the over-issuance. The letter shall inform the household of its rights and responsibilities concerning repayment of the claim as well as providing information on the availability of free legal services. All households that owe a claim shall be sent a demand letter. If the claim or the amount of the claim was not established at a fair hearing, the state agency must provide the household with a one-time notice of adverse action. If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The demand for payment may be combined with the notice of the		

		and/or the household's liability to repay the claim. C. Notifying a Household of a Claim 1. Notice of Over-Issuance and Repayment Agreement Local offices shall initiate collection action on agency error and inadvertent household error claims by sending the household a State-prescribed written demand letter for the over-issuance. The letter shall inform the household of its rights and responsibilities concerning repayment of the claim as well as providing information on the availability of free legal services. All households that owe a claim shall be sent a demand letter. If the claim or the amount of the claim was not established at a fair hearing, the state agency must provide the household with a one-time notice of adverse action. If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The demand for payment may be combined with the notice of the hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.	hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household. 2. Calculation of Claim The local office shall mail the household an explanation of how the claim was calculated, showing each individual month and the cause for the claim. The State-prescribed form shall be used to determine and calculate the amount of the claim and to notify the household of the calculation. The form shall be mailed on a schedule that coincides with the mailing of the automated demand letter. D. Negotiating Payment Plans Households participating in the program are subject to allotment reduction in accordance with Section 4.801.41.B, unless the claim is being collected at a higher amount, per agreement with the household. Allotment reduction must begin with the first allotment issued ten (10) calendar days after the demand letter is mailed. When a household is subject to allotment reduction, then a repayment agreement is not necessary unless the household wants to make voluntary payments in addition to the allotment reduction or elects to make monthly payments in amount greater than what would be repaid through allotment reduction. If a household is not participating in the program, then the local office shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. 1. Establishing a Payment Plan		

		2. Calculation of Claim The local office shall mail the household an explanation of how the claim was calculated, showing each individual month and the cause for the claim. The State-prescribed form shall be used to determine and calculate the amount of the claim and to notify the household of the calculation. The form shall be mailed on a schedule that coincides with the mailing of the automated demand letter. D. Negotiating Payment Plans Households participating in the program are subject to allotment reduction in accordance with Section 4.801.41.B, unless the claim is being collected at a higher amount, per agreement with the household. Allotment reduction must begin with the first allotment issued ten (10) calendar days after the demand letter is mailed. When a household is subject to allotment reduction, then a repayment agreement is not necessary unless the household wants to make voluntary payments in addition to the allotment reduction or elects to make monthly payments in amount greater than what would be repaid through allotment reduction. If a household is not participating in	The local office shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment or through allotment reduction. Payments shall be accepted in regular installments. The household may use SNAP benefits as full or partial payment of any installment. The local office shall ensure that the negotiated amount of any payment schedule to be repaid each month through installment payments is not less than the amount that could be recovered through an allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the local office and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changes enough to warrant such action. 2. Household's Failure to Respond to the Repayment Agreement If the household is not participating in the program when collection action for claim is initiated or if collection action has been initiated for repayment of a claim and no response is made to the first (1st) demand letter, additional demand letters shall be sent at reasonable Intervals, such as thirty (30) calendar days apart. The demand letters shall be sent until the household responds by paying or agreeing to pay the claim, until the criteria for suspending collection has been met or until the local office initiates ether collection actions. 3. Household's Failure to Pay in Accordance with		

		the program, then the local office shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. 1. Establishing a Payment Plan The local office shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment or through allotment reduction. Payments shall be accepted in regular installments. The household may use Food Assistance benefits as full or partial payment of any installment. The local office shall ensure that the negotiated amount of any payment schedule to be repaid each month through installment payments is not less than the amount that could be recovered through an allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the local office and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changes	Payment Plan a. If the household fails to make a payment in accordance with the established repayment schedule either by making a payment of a lesser amount or by making no payment, the local office shall send the household a notice that: 1) Explains that no payment or an insufficient payment was received; 2) Informs the household that it may contact the local office to discuss renegotiation of the payment schedule; 3) Informs the household that unless the overdue payments are made or the local office is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which a claim has been established shall be reduced. b. If the household responds to the notice, the local office shall take one of the following actions as appropriate: 1) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, the local office shall permit the household to do so, but shall also require the household to sign a new repayment agreement; 2) If the household requests renegotiation and the local office concurs with the request, the local office shall		

		enough to warrant such action. 2. Household's Failure to Respond to the Repayment Agreement If the household is not participating in the program when collection action for claim is initiated or if collection action has been initiated for repayment of a claim and no response is made to the first (1st) demand letter, additional demand letters shall be sent at reasonable Intervals, such as thirty (30) calendar days apart. The demand letters shall be sent until the household responds by paying or agreeing to pay the claim, until the criteria for suspending collection has been met or until the local office initiates ether collection actions. 3. Household's Failure to Pay in Accordance with Payment Plan a. If the household fails to make a payment in accordance with the established repayment schedule either by making a payment of a lesser amount or by making no payment, the local office shall send the household a notice that: 1) Explains that no payment or an	negotiate a new payment schedule. E. Determining Delinquency 1. Claims shall be considered delinquent under the following circumstances: a. If a claim has not been paid by the due date on the demand letter or a satisfactory payment arrangement has not been made. The claim shall remain delinquent until payment is received in full, an allotment reduction is invoked, or a new repayment schedule is negotiated. The date of delinquency for such claims is the due date on the initial demand letter. b. If a satisfactory payment arrangement has been made for a claim and payment has not been received by the due date specified in the established repayment schedule, the date of delinquency for such claims is the due date of the missed installment payment, unless the claim was delinquent prior to entering into a repayment agreement, in which case the due date will be the due date on the initial demand letter. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or once the local office resumes or re- negotiates the repayment schedule. c. For purposes of the Federal Treasury Offset Program (TOP), a delinquent claim is one which is past due more than one hundred twenty (120) calendar days. 2. Claims shall not be considered delinquent under the following circumstances:		

		insufficient payment was received; 2) Informs the household that it may contact the local office to discuss renegotiation of the payment schedule; 3) Informs the household that unless the overdue payments are made or the local office is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which a claim has been established shall be reduced. b. If the household responds to the notice, the local office shall take one of the following actions as appropriate: 1) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, the local office shall permit the household to do so, but shall also require the household to sign a	a. If another SNAP claim for the same household is currently being paid, either through an installment agreement or an allotment reduction, and the local office expects to begin collection on the claim once the prior claim(s) is settled; b. If collection is coordinated through the court system and the local office has limited control over collection action; c. If a household timely requests a fair hearing on the existence or amount of the claim and the local office suspends collection action pending a final agency decision. A claim awaiting a fair hearing decision shall not be considered delinquent. If the hearing officer determines that a claim does in fact exist against the household, the household shall be sent another demand letter. Delinquency shall be based on the due date of this subsequent demand letter and not on the initial pre-hearing demand letter sent to the household. If the hearing officer determines that a claim does not exist, the claim is deleted shall be terminated and all collection activity ceased. F. Joint Collections Received for a Combination SNAP and PA Claim An unspecified joint collection is when funds are received in response to correspondence or a referral that contained both the SNAP and other program claims, and the debtor does not specify to which program to apply the payment. The local office shall ensure that unspecified joint collections are pro-rated among the programs involved. When an unspecified joint collection is received for a combined public		

		new repayment agreement; 2) If the household requests renegotiation and the local office concurs with the request, the local office shall negotiate a new payment schedule. E. Determining Delinquency 1. Claims shall be considered delinquent under the following circumstances: a. If a claim has not been paid by the due date on the demand letter or a satisfactory payment arrangement has not been made. The claim shall remain delinquent until payment is received in full, an allotment reduction is invoked, or a new repayment schedule is negotiated. The date of delinquency for such claims is the due date on the initial demand letter. b. If a satisfactory payment arrangement has been made for a claim and payment has not been received by the due date specified in the established repayment schedule, the	assistance and SNAP claim, each program shall receive its pro-rated share of the amount collected.		

		date of delinquency for such claims is the due date of the missed installment payment, unless the claim was delinquent prior to entering into a repayment agreement, in which case the due date will be the due date on the initial demand letter. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or once the local office resumes or re- negotiates the repayment schedule. c. For purposes of the Federal Treasury Offset Program (TOP), a delinquent claim is one which is past due more than one hundred twenty (120) calendar days. 2. Claims shall not be considered delinquent under the following circumstances: a. If another Food Assistance claim for the same household is currently being paid, either through an installment agreement or an allotment reduction, and the local office expects to begin collection on the claim once the prior claim(s) is settled;			

		b. If collection is coordinated through the court system and the local office has limited control over collection action; c. If a household timely requests a fair hearing on the existence or amount of the claim and the local office suspends collection action pending a final agency decision. A claim awaiting a fair hearing decision shall not be considered delinquent. If the hearing officer determines that a claim does in fact exist against the household, the household shall be sent another demand letter. Delinquency shall be based on the due date of this subsequent demand letter and not on the initial pre-hearing demand letter sent to the household. If the hearing officer determines that a claim does not exist, the claim is deleted shall be terminated and all collection activity ceased. F. Joint Collections Received for a Combination Food Assistance and Public Assistance Claim An unspecified joint collection is			

		when funds are received in response to correspondence or a referral that contained both the Food Assistance and other program claims, and the debtor does not specify to which program to apply the payment. The local office shall ensure that unspecified joint collections are pro-rated among the programs involved. When an unspecified joint collection is received for a combined public assistance and Food Assistance claim, each program shall receive its pro-rated share of the amount collected.			
4.801.41	Program name update; and non-standardized language	**4.801.41 Methods of Collecting Payment on Claims** The local office shall collect claims through one of the following methods: A. Lump Sum The local office shall collect payments for total or partial payments of a claim in one lump sum if the household is financially able to pay the claim; however, the household shall not be required to liquidate all of its resources to make this repayment. If the household requests to make a lump sum cash and/or food benefit payment as full or partial payment of the claim, the local	**4.801.41 Methods of Collecting Payment on Claims** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section F here, including A, B, C, D and E.] The local office shall collect claims through one of the following methods: A. Lump Sum The local office shall collect payments for total or partial payments of a claim in one lump sum if the household is financially able to pay the claim; however, the household shall not be required to liquidate all of its resources to make this repayment. If the household requests to make a lump sum cash and/or food benefit payment as full or partial payment of the claim, the local office shall accept this method of	Updating Food Assistance to SNAP; and standardizing language	

		office shall accept this method of payment. B. Food Assistance Allotment Reduction 1. The local office shall collect payments for claims from households currently participating in the Program by reducing the household's Food Assistance allotment. For claims where there is a court-ordered judgment for repayment, allotment reduction shall not occur. Prior to reduction, the local office shall inform the household of: a. The appropriate formula for determining the amount of Food Assistance to be recovered each month; and, b. The amount of Food Assistance the local office expects will be recovered each month; and, c. The availability of other methods of repayment. 2. The household's allotment will be reduced based on the recoupment amounts for each type of claim, unless a payment schedule has been negotiated with the household.	payment. B. SNAP Allotment Reduction 1. The local office shall collect payments for claims from households currently participating in the Program by reducing the household's SNAP allotment. For claims where there is a court-ordered judgment for repayment, allotment reduction shall not occur. Prior to reduction, the local office shall inform the household of: a. The appropriate formula for determining the amount of SNAP to be recovered each month; and, b. The amount of SNAP the local office expects will be recovered each month; and, c. The availability of other methods of repayment. 2. The household's allotment will be reduced based on the recoupment amounts for each type of claim unless a payment schedule has been negotiated with the household. The local office may collect on a claim by invoking benefit allotment reduction on two (2) separate households for the same claim. However, the local office is not required to perform this simultaneous reduction. 3. The amount of SNAP to be recovered each month through allotment reduction shall be determined as follows: a. For AE claims and IHE claims, the amount		

		The local office may collect on a claim by invoking benefit allotment reduction on two (2) separate households for the same claim. However, the local office is not required to perform this simultaneous reduction. 3. The amount of Food Assistance to be recovered each month through allotment reduction shall be determined as follows: a. For AE claims and IHE claims, the amount of Food Assistance to be recovered each month from a household shall either be ten percent (10%) of the household's monthly allotment or ten dollars ($10) each month, whichever is greater. b. For IPV claims, the amount of Food Assistance benefit reduction shall either be twenty percent (20%) of the household's monthly allotment or twenty dollars ($20) per month, whichever is greater. 4. Benefits authorized for an initial month will not be reduced to offset a claim. Ongoing benefits will be recouped based on the above criteria.	of SNAP to be recovered each month from a household shall either be ten percent (10%) of the household's monthly allotment or ten dollars ($10) each month, whichever is greater. b. For IPV claims, the amount of SNAP benefit reduction shall either be twenty percent (20%) of the household's monthly allotment or twenty dollars ($20) per month, whichever is greater. 4. Benefits authorized for an initial month will not be reduced to offset a claim. Ongoing benefits will be recouped based on the above criteria. C. Benefits from an EBT Account 1. A household may pay all or a portion of the claim by using benefits from its EBT account. The office shall obtain written permission from the household to deduct benefits from the EBT account to pay a claim. The written agreement shall be obtained prior to removing benefits from the EBT account and shall include: a. A statement that this collection activity is strictly voluntary; b. The amount of the payment; c. The frequency of the payments (i.e., whether monthly or one (1) time); d. The length of the agreement; e. A statement that the household may revoke this agreement at any time.		

		C. Benefits From an EBT Account 1. A household may pay all or a portion of the claim by using benefits from its EBT account. The office shall obtain written permission from the household to deduct benefits from the EBT account to pay a claim. The written agreement shall be obtained prior to removing benefits from the EBT account and shall include: a. A statement that this collection activity is strictly voluntary; b. The amount of the payment; c. The frequency of the payments (i.e., whether monthly or one (1) time); d. The length of the agreement; e. A statement that the household may revoke this agreement at any time. 2. If the household provides oral permission, the local office can make a one- time deduction from an active EBT account for a one (1)-time reduction. The county shall provide the household with a written receipt within ten (10)	2. If the household provides oral permission, the local office can make a one-time deduction from an active EBT account for a one (1)-time reduction. The county shall provide the household with a written receipt within ten (10) business days. The receipt shall contain the information used for an active EBT account and indicate that this is a one-time reduction. 3. When a local office pursues payment on a claim by applying SNAP benefits from the household's stale EBT account, prior written notice shall be given to the household of the existing stale EBT account that may be applied to an outstanding claim. The county shall notify the household that the benefits will be applied to the claim unless the household objects to this offset. The household must be given ten (10) calendar days to object before the benefits can be applied as a payment to the claim. A stale EBT account means an account that has benefits but has not been accessed for at least three (3) consecutive calendar months. D. Offset Against Taxpayer's State Income Tax Refund 1. The state department and local office may recover over-issuances of PA benefits through the offset (intercept) of a taxpayer's state income tax refund. Rent rebates are subject to the offset procedure. This method may be used to recover over-issuances that have been: a. Determined by final agency action, or, b. Ordered by a court as restitution, or, c. Reduced to judgment.		

		business days. The receipt shall contain the information used for an active EBT account and indicate that this is a one-time reduction. 3. When a local office pursues payment on a claim by applying Food Assistance benefits from the household's stale EBT account, prior written notice shall be given to the household of the existing stale EBT account that may be applied to an outstanding claim. The county shall notify the household that the benefits will be applied to the claim unless the household objects to this offset. The household must be given ten (10) calendar days to object before the benefits can be applied as a payment to the claim. A stale EBT account means an account that has benefits but has not been accessed for at least three (3) consecutive calendar months. D. Offset Against Taxpayer's State Income Tax Refund 1. The state and county departments may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's state income tax refund. Rent rebates are subject to the offset procedure. This method may be	2. Pre-Offset Notice Prior to certifying the taxpayer's name and other information to the Department of Revenue, the state department shall notify the taxpayer in writing at his or her last known address that the state intends to use the tax refund offset to recover the over-issuance. The pre-offset notice shall include the name of the local office claiming the over-issuance, a reference to SNAP as the source of the over-issuance, and the current balance owed. 3. Household Objection to Pre-Offset Notice The taxpayer is entitled to object to the offset by filing a request for a local-level conference or state-level hearing within thirty (30) calendar days from the date that the state department mails its pre-offset notice to the taxpayer. At the hearing on the offset, the local office or ALJ shall not consider whether an over-issuance has occurred, but may consider, if raised by the taxpayer in his or her request for a hearing, whether: a. The taxpayer was properly notified of the over-issuance ; b. The taxpayer is the person who owes the over-issuance ; c. The amount of the over-issuance has been paid or is incorrect; d. The debt created by the over-issuance has been discharged through bankruptcy; e. Other special circumstances exist as described in Section 4.801.42.		

		used to recover overpayments that have been: a. Determined by final agency action, or, b. Ordered by a court as restitution, or, c. Reduced to judgment. 2. Pre-Offset Notice Prior to certifying the taxpayer's name and other information to the Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer in writing at his or her last known address that the state intends to use the tax refund offset to recover the overpayment. The pre-offset notice shall include the name of the local office claiming the overpayment, a reference to Food Assistance as the source of the overpayment, and the current balance owed. 3. Household Objection to Pre-Offset Notice The taxpayer is entitled to object to the offset by filing a request for a local-level conference or state-level hearing within thirty (30) calendar days from the date that the state department mails its pre-offset notice to the taxpayer. At the hearing on the	E. Federal Treasury Offset Program (TOP) The Treasury Offset Program, including the Federal Salary Offset Program (FSOP), is a mandatory government-wide delinquent debt matching and payment offset system in which Colorado SNAP participates. The Treasury Offset Program allows collection of delinquent debts by intercepting any allowable payment from the federal government. Federal payments eligible for offset include federal income tax refunds, federal employee salary, federal retirement payments (including military), contractor or vendor payments, and federal benefits such as Social Security and railroad retirement. 1. Claims Submitted for Offset a. A delinquent claim may be submitted to the USDA, Food and Nutrition Service (FNS) for the Treasury Offset Program (TOP). To submit a claim to the Federal TOP, the claim must be determined to be past due and legally enforceable. To determine that a claim is past due and legally enforceable, it must be determined that notification and collection attempts have taken place. b. For purposes of the TOP, a delinquent claim is one which is past due more than one hundred twenty (120) calendar days, as set forth in the United States Code regarding delinquent claims. c. A claim is not considered delinquent if a fair hearing is pending concerning the claim; or the claim has either been discharged by bankruptcy or is subject to the automatic stay of the bankruptcy; or the claim is not considered delinquent as described within		

		offset, the county department or Administrative Law Judge shall not consider whether an overpayment has occurred, but may consider, if raised by the taxpayer in his or her request for a hearing, whether: a. The taxpayer was properly notified of the overpayment; b. The taxpayer is the person who owes the overpayment; c. The amount of the overpayment has been paid or is incorrect; d. The debt created by the overpayment has been discharged through bankruptcy; e. Other special circumstances exist as described in Section 4.801.42. E. Federal Treasury Offset Program (TOP) The Treasury Offset Program, including the Federal Salary Offset Program (FSOP), is a mandatory government-wide delinquent debt matching and payment offset system in which the Colorado Food Assistance Program participates.	Section 4.801.4, E, 2. 2. Processing Fee TOP, including the Federal Salary Offset Program (FSOP), is authorized to apply a processing fee each time a successful offset for collection occurs. Federal payroll offices participating in the TOP process may add another separate processing fee. The delinquent SNAP debtor is responsible for the fee each time it is applied. A TOP offset taken in error and later refunded will have the processing fee refunded, except for partially refunded offsets. 3. Notifying a Household of the Treasury Offset Program At the time delinquent debts are sent to be certified to the FNS for the intercept by the Federal TOP, all delinquent debts for each individual are sent at one time. Prior to a claim being certified to the FNS as a debt owed the local office, the individual shall be mailed an offset notice. The notice shall provide the following information: a. The local office has documentation that the individual identified with his or her Social Security Number (SSN) is liable for the specified unpaid balance of the claim; and, b. The individual has been notified about the claim and prior collection efforts have been made. The claim is past due and legally enforceable. All adults are liable for the over-issuance of SNAP if they were household members when the SNAP benefits were over-issued. False statements concerning such liability may subject individuals to legal action		

		The Treasury Offset Program allows collection of delinquent debts by intercepting any allowable payment from the federal government. Federal payments eligible for offset include federal income tax refunds, federal employee salary, federal retirement payments (including military), contractor or vendor payments, and federal benefits such as Social Security and railroad retirement. 1. Claims Submitted for Offset a. A delinquent claim may be submitted to the USDA, Food and Nutrition Service (FNS) for the Treasury Offset Program (TOP). In order to submit a claim to the Federal Treasury Offset Program, the claim must be determined to be past due and legally enforceable. To determine that a claim is past due and legally enforceable, it must be determined that notification and collection attempts have taken place. b. For purposes of the Federal Treasury Offset Program (TOP), a delinquent claim is one which is past due more than one hundred twenty (120) calendar days, as set forth in the United States Code regarding delinquent claims.	(see Section 4.801.4, A); and, c. Debts over one hundred twenty (120) days delinquent to be referred to the Treasury for an administrative offset. The local office intends to refer the claim within sixty (60) days of the date of the notice unless the individual makes other repayment arrangements acceptable to the local office; and, d. Instructions on how to pay the claim, including the name, address, and telephone number of a person in the county who can discuss the claim and the intended offset with the individual; and, e. The individual is entitled to request a review of the debt's eligibility for referral to TOP. Individual review requests must be honored, regardless of whether they are received after the deadline requested. Claims that are currently under review will not be referred for the tax intercept. f. The notice shall include all claims for the household that are to be certified to TOP. 4. The individual may document any legitimate reason that the claim is not past due or legally enforceable. 5. The individual should contact the local office if he or she believes that a bankruptcy proceeding prevents collection of the claim or if the claim has been discharged in bankruptcy. 6. In some circumstances, the married individual may want to contact IRS before filing his/her income tax return. This is true if the individual is		

		c. A claim is not considered delinquent if a fair hearing is pending concerning the claim; or the claim has either been discharged by bankruptcy or is subject to the automatic stay of the bankruptcy; or the claim is not considered delinquent as described within Section 4.801.4, E, 2. 2. Processing Fee TOP, including the Federal Salary Offset Program (FSOP), is authorized to apply a processing fee each time a successful offset for collection occurs. Federal payroll offices participating in the TOP process may add another separate processing fee. The delinquent Food Assistance debtor is responsible for the fee each time it is applied. A TOP offset taken in error and later refunded will have the processing fee refunded, except for partially refunded offsets. 3. Notifying a Household of the Treasury Offset Program At the time delinquent debts are sent to be certified to the FNS for the intercept by the Federal Treasury Offset Program, all delinquent debts for each	filing a joint return and his or her spouse is not responsible for the SNAP claim and has income and withholding and/or estimated federal income tax payments. In such cases, the spouse may receive his or her portion of any joint return based on procedures prescribed by the IRS. 7. A federal employee may have his or her net disposable pay subject to garnishment under the offset. The Treasury may garnish up to fifteen percent (15%) of the net disposable pay. A federal employee may petition for a hearing only at the federal level to dispute the existence or the amount of the claim. The hearing occurs after the review period at the state-level and the subsequent submission to the Treasury as a valid offset. 8. The OOA within CDHS will review the proposed offset. The OOA shall find that the claim is past due and legally enforceable unless the household can provide documentation to show: a. The claim is not delinquent or was already paid, and the individual provides proof of payment. b. The individual is not the person that is liable for the claim. c. A bankruptcy action prohibits collection of the claim because the automatic stay under Section 362 of the Bankruptcy Code is in effect with respect to the individual or his or her spouse, or that the claim was discharged by a bankruptcy proceeding. d. There is some other reason that the claim is not delinquent or is not legally enforceable.		

		individual are sent at one time. Prior to a claim being certified to the Food and Nutrition Service as a debt owed the local office, the individual shall be mailed an offset notice. The notice shall provide the following information: a. The local office has documentation that the individual identified with his or her Social Security Number (SSN) is liable for the specified unpaid balance of the claim; and, b. The individual has been notified about the claim and prior collection efforts have been made. The claim is past due and legally enforceable. All adults are liable for the overpayment of Food Assistance if they were household members when the Food Assistance benefits were over-issued. False statements concerning such liability may subject individuals to legal action (see Section 4.801.4, A); and, c. Debts over one hundred twenty (120) days delinquent to be referred to the Treasury for an	9. The decision by the OOA will be issued by means of written findings regarding the review. The written findings shall include notice to the individual who requested the review regarding the following: a. If the OOA determines that the claim is past due and legally enforceable: 1) The individual shall be notified that the claim will continue to be referred for the offset; and, 2) The individual is entitled to have the Food and Nutrition Service (FNS) review the OOA's decision. FNS must receive a request to do so within thirty (30) calendar days after the date of the state agency's notice of review decision. A request for FNS review shall include the individual's SSN. The notice shall also provide the address of the regional office including the phrase "Tax Offset Review" in the address. b. If the OOA determines that the claim is not past due or legally enforceable, it shall notify the individual and the local office that the claim will not be referred for the offset. c. While the OOA or FNS is conducting a review of the debt, the debt is not eligible for the referral to TOP. ***		

		administrative offset. The local office intends to refer the claim within sixty (60) days of the date of the notice unless the individual makes other repayment arrangements acceptable to the local office; and, d. Instructions on how to pay the claim, including the name, address, and telephone number of a person in the county who can discuss the claim and the intended offset with the individual; and, e. The individual is entitled to request a review of the debt's eligibility for referral to TOP. Individual review requests must be honored, regardless of whether they are received after the deadline requested. Claims that are currently under review will not be referred for the tax intercept. f. The notice shall include all claims for the household that are to be certified to TOP. 4. The individual may document any legitimate reason that the claim is not past due or legally enforceable. 5. The individual should contact			

		the local office if he or she believes that a bankruptcy proceeding prevents collection of the claim or if the claim has been discharged in bankruptcy. 6. In some circumstances, the married individual may want to contact IRS before filing his/her income tax return. This is true if the individual is filing a joint return and his or her spouse is not responsible for the Food Assistance claim, and has income and withholding and/or estimated federal income tax payments. In such cases, the spouse may receive his or her portion of any joint return based on procedures prescribed by the IRS. 7. A federal employee may have his or her net disposable pay subject to garnishment under the offset. The Treasury may garnish up to fifteen percent (15%) of the net disposable pay. A federal employee may petition for a hearing only at the federal level to dispute the existence or the amount of the claim. The hearing occurs after the review period at the state-level and the subsequent submission to the Treasury as a valid offset. 8. The Office of Appeals within the Colorado Department of Human Services will review the			

		proposed offset. The Office of Appeals shall find that the claim is past due and legally enforceable unless the household can provide documentation to show: a. The claim is not delinquent or was already paid, and the individual provides proof of payment. b. The individual is not the person that is liable for the claim. c. A bankruptcy action prohibits collection of the claim because the automatic stay under Section 362 of the Bankruptcy Code is in effect with respect to the individual or his or her spouse, or that the claim was discharged by a bankruptcy proceeding. d. There is some other reason that the claim is not delinquent or is not legally enforceable. 9. The decision by the Office of Appeals will be issued by means of written findings regarding the review. The written findings shall include notice to the individual who requested the review regarding the following:		

		a. If the Office of Appeals determines that the claim is past due and legally enforceable: 1) The individual shall be notified that the claim will continue to be referred for the offset; and, 2) The individual is entitled to have the Food and Nutrition Service (FNS) review the Office of Appeal's decision. FNS must receive a request to do so within thirty (30) calendar days after the date of the state agency's notice of review decision. A request for FNS review shall include the individual's SSN. The notice shall also provide the address of the regional office including the phrase “Tax Offset Review” in the address. b. If the Office of Appeals determines that the claim is not past due or legally enforceable, it shall notify the individual and the local office that the claim will not be referred for the offset.			

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		c. While the Office of Appeals or FNS is conducting a review of the debt, the debt is not eligible for the referral to TOP. ***			
4.801.5(B)	Program name update	**4.801.5 Claims Discharged Through Bankruptcy** *** B. Local offices shall act on behalf of, and as an agent of, FNS in any bankruptcy proceedings against bankrupt households owing Food Assistance claims. Local offices shall possess any rights, priorities, liens, and privileges and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, local offices shall have the power and authority to file objections to discharge proof of claims, exceptions to discharge, petition for revocation of discharge, and any other documents, motions, or objections which FNS might have filed.	**4.801.5 Claims Discharged Through Bankruptcy** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section A here, and including section B.] *** B. Local offices shall act on behalf of, and as an agent of, FNS in any bankruptcy proceedings against bankrupt households owing SNAP claims. Local offices shall possess any rights, priorities, liens, and privileges and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, local offices shall have the power and authority to file objections to discharge proof of claims, exceptions to discharge, petition for revocation of discharge, and any other documents, motions, or objections which FNS might have filed.	Updating Food Assistance to SNAP	
4.801.6	Non-standardized language	**4.801.6 Interstate Claims Collection** In cases where a household moves out of the state, the local office that last handled the case involving a claim may initiate or continue collection action against the household for any over-issuance that occurred while the household was under that local office's jurisdiction. Counties may transfer a claim to another state or Colorado county department if the other state or Colorado county department	**4.801.6 Interstate Claims Collection** In cases where a household moves out of the state, the local office that last handled the case involving a claim may initiate or continue collection action against the household for any over-issuance that occurred while the household was under that local office's jurisdiction. Counties may transfer a claim to another state or Colorado county if the other state or Colorado county accepts the transfer. Counties are not obligated to accept the transfer of a claim from another state or Colorado county, but have the option	Standardizing language	

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		accepts the transfer. Counties are not obligated to accept the transfer of a claim from another state or Colorado county department, but have the option of accepting the claim and pursuing collection on that claim. Counties that accept the transfer of a claim shall pursue collection activities and retain appropriate incentives for the collection.	of accepting the claim and pursuing collection on that claim. Counties that accept the transfer of a claim shall pursue collection activities and retain appropriate incentives for the collection.		
4.801.8	Program name update	**4.801.8 Submission of Claim Payment Activity to USDA, FNS** The FS-209 Report (Status of Claims against Households) is an automated report and is run quarterly. The report is utilized to reflect all claims activities during a quarter and reflects all the payments made during the quarter. Food Assistance benefits received as a claim payment shall be recorded in the automated system and any corrections that need to be made to payments are made through the automated system. The report is available for review from the first of the month immediately following the end of the quarter and continues to be available through the last working day of the quarter. A consolidated final report is available to be printed by local offices following the last working day of the quarter. This FS-209 report is run quarterly even if the local office has not collected any payments or other claims activities. The local office shall not be required to submit	**4.801.8 Submission of Claim Payment Activity to USDA, FNS** The FS-209 Report (Status of Claims against Households) is an automated report and is run quarterly. The report is utilized to reflect all claims activities during a quarter and reflects all the payments made during the quarter. SNAP benefits received as a claim payment shall be recorded in the automated system and any corrections that need to be made to payments are made through the automated system. The report is available for review from the first of the month immediately following the end of the quarter and continues to be available through the last working day of the quarter. A consolidated final report is available to be printed by local offices following the last working day of the quarter. This FS-209 report is run quarterly even if the local office has not collected any payments or other claims activities. The local office shall not be required to submit Form FS-209 if the material on the automated system FS-209 is accurate and complete for that local office.	Updating Food Assistance to SNAP	

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		Form FS-209 if the material on the automated system FS-209 is accurate and complete for that local office.			
4.802.1(A)	Program name update	**4.802.1 Time Period for Requesting an Appeal** A. A household shall be allowed to request a local-level dispute resolution conference or state-level fair hearing on the following: 1. Any action by the local office that occurred in the previous ninety (90) calendar days. 2. A loss of benefits that occurred in the previous ninety (90) calendar days. Such Food Assistance action shall include a denial of a request for restoration of benefits lost more than ninety (90) calendar days but less than a year prior to the request. 3. At any time during a certification period a household may request a fair hearing to dispute its current level of benefits.	**4.802.1 Time Period for Requesting an Appeal** A. A household shall be allowed to request a local-level dispute resolution conference or state-level fair hearing on the following: 1. Any action by the local office that occurred in the previous ninety (90) calendar days. 2. A loss of benefits that occurred in the previous ninety (90) calendar days. Such SNAP action shall include a denial of a request for restoration of benefits lost more than ninety (90) calendar days but less than a year prior to the request. 3. At any time during a certification period a household may request a fair hearing to dispute its current level of benefits.	Updating Food Assistance to SNAP	
4.802.2(A)	Program name update	**4.802.2 Continuation of Benefits Pending Final Agency Decision** A. Eligibility for Continuation of Benefits 1. If a household requests a state-level fair hearing or local-level dispute resolution conference any time prior to the effective date of the Notice of	**4.802.2 Continuation of Benefits Pending Final Agency Decision** A. Eligibility for Continuation of Benefits 1. If a household requests a state-level fair hearing or local-level dispute resolution conference any time prior to the effective date of the Notice of Adverse Action and its certification period has not expired, the household's	Updating Food Assistance to SNAP	

		Adverse Action and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the Notice of Adverse Action unless the household specifically waives continuation of benefits. Households which were not given a ten (10) day advance notice period plus one (1) additional calendar day for mailing time, or five (5) additional calendar days for mailing for households participating in the address confidentiality program (ACP), prior to the effective date of the Notice of Adverse Action shall be given ten (10) calendar days after the date the notice is mailed to appeal and receive continued benefits unless the household specifically waives continuation of benefits. 2. If a request for an appeal is not made within the times specified above, benefits shall be reduced or terminated as provided in the Notice of Adverse Action. However, if the household established that its failure to make the request within the established timeframe was for good cause, the local office shall reinstate the household's benefits on the	participation in the program shall be continued on the basis authorized immediately prior to the Notice of Adverse Action unless the household specifically waives continuation of benefits. Households which were not given a ten (10) day advance notice period plus one (1) additional calendar day for mailing time, or five (5) additional calendar days for mailing for households participating in the address confidentiality program (ACP), prior to the effective date of the Notice of Adverse Action shall be given ten (10) calendar days after the date the notice is mailed to appeal and receive continued benefits unless the household specifically waives continuation of benefits. 2. If a request for an appeal is not made within the times specified above, benefits shall be reduced or terminated as provided in the Notice of Adverse Action. However, if the household established that its failure to make the request within the established timeframe was for good cause, the local office shall reinstate the household's benefits on the basis authorized immediately prior to the Notice of Adverse Action, unless the household indicates it has waived continuation of benefits. 3. When benefits are reduced or terminated as a result of a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that SNAP eligibility or benefits were improperly computed or that federal regulations or state rules were misapplied or misinterpreted by the local office. 4. Households appealing a decision based on information reported as part of the redetermination process are not eligible for continued benefits. The benefit allotment that a household is certified		

		basis authorized immediately prior to the Notice of Adverse Action, unless the household indicates it has waived continuation of benefits. 3. When benefits are reduced or terminated as a result of a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that Food Assistance eligibility or benefits were improperly computed or that federal regulations or state rules were misapplied or misinterpreted by the local office. 4. Households appealing a decision based on information reported as part of the redetermination process are not eligible for continued benefits. The benefit allotment that a household is certified to receive shall not be issued beyond the end of the household's assigned certification period without a new determination of eligibility. The household's benefit allotment beginning with the new certification period shall be based on the new review of eligibility.	to receive shall not be issued beyond the end of the household's assigned certification period without a new determination of eligibility. The household's benefit allotment beginning with the new certification period shall be based on the new review of eligibility.		
4.802.21(C)	Program name update	**4.802.21 Households Disputing Restoration of Lost Benefits** C. To be eligible for restored	**4.802.21 Households Disputing Restoration of Lost Benefits** C. To be eligible for restored benefits, the household	Updating Food Assistance to SNAP	

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		benefits, the household shall have had its Food Assistance benefits wrongfully delayed, denied, or terminated. The term denial shall include the situation where, through certification office error, the net income was larger than required under proper determination, and because of this improperly set net income, the household was unable to get the proper allotment. Delay shall mean that eligibility determination was not accomplished within the prescribed time limits set forth in Section 4.205.2.	shall have had its SNAP benefits wrongfully delayed, denied, or terminated. The term denial shall include the situation where, through certification office error, the net income was larger than required under proper determination, and because of this improperly set net income, the household was unable to get the proper allotment. Delay shall mean that eligibility determination was not accomplished within the prescribed time limits set forth in Section 4.205.2.		
4.802.3(A)	Non-standardized language	**4.802.3 Rights During an Appeal** A. A household is entitled to the following: 1. Be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or s/he may represent her/himself at the conference. 2. Adequate opportunity to examine the case file and all documents and records used by the local office in making its decision and all documents and records that are to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification	**4.802.3 Rights During an Appeal** A. A household is entitled to the following: 1. Be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or s/he may represent her/himself at the conference. 2. Adequate opportunity to examine the case file and all documents and records used by the local office in making its decision and all documents and records that are to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the local office to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge; or the nature or status of pending criminal prosecutions; or confidential informants; or privileged communications between	Standardizing language	

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		used by the local office to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge; or the nature or status of pending criminal prosecutions; or confidential informants; or privileged communications between the county department and its attorney is protected from disclosure. If requested by the household or its representative, the local office shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing nor affect the hearing officer's decision. 3. Present new information or documentation to support reversal or modification of the proposed adverse action.	the local office and its attorney is protected from disclosure. If requested by the household or its representative, the local office shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing nor affect the hearing officer's decision. 3. Present new information or documentation to support reversal or modification of the proposed adverse		
4.802.5	Program name update	**4.802.5 Local-Level Dispute Resolution Conferences**	**4.802.5 Local-Level Dispute Resolution Conferences** A. Before taking action to deny, terminate, reduce, or	Updating Food Assistance to SNAP	

		A. The local office, prior to taking action to deny, terminate, reduce, or recover Food Assistance benefits, shall, at a minimum, provide the household an opportunity for a dispute resolution conference. The individual may choose to bypass the dispute resolution process and appeal directly to the office of administrative courts for a state-level fair hearing. B. If the household requests a conference, the certification office shall arrange such a conference to attempt to resolve the disputed action. The participant household may be represented by legal counsel or have other persons present to aid the household in the conference. C. Failure of the applicant or participant to request a 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 abandonment of the right to a conference, unless the applicant/participant can show good cause for his/her failure to appear. "Good cause" includes, but is not limited to: 1. Death or incapacity of an applicant or participant, or a member of his or her immediate family, or the representative;	recover SNAP benefits, the local office shall provide the household an opportunity for a DRC. The individual may choose to bypass the dispute resolution process and appeal directly to the office of administrative courts for a state-level fair hearing. B. If the household requests a conference, the certification office shall arrange such a conference to attempt to resolve the disputed action. The participant household may be represented by legal counsel or have other persons present to aid the household in the conference. C. Failure of the applicant or participant to request a 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 abandonment of the right to a conference, unless the applicant/participant can show good cause for his/her failure to appear. "Good cause" includes, but is not limited to: 1. Death or incapacity of an applicant or participant, or a member of his or her immediate family, or the representative; 2. Any other health or medical condition of an emergency nature; 3. Other circumstances beyond the control of the applicant or participant, and which would prevent a reasonable person from making a timely request for a conference or postponement of a scheduled conference. D. The local office may consolidate the SNAP conference with disputes regarding other assistance payments programs, the Colorado Works Program, or disputes concerning Medicaid eligibility, if the facts are similar and consolidation will facilitate resolution of all disputes.		

		2. Any other health or medical condition of an emergency nature; 3. Other circumstances beyond the control of the applicant or participant, and which would prevent a reasonable person from making a timely request for a conference or postponement of a scheduled conference. D. The local office may consolidate the Food Assistance conference with disputes regarding other assistance payments programs, the Colorado Works Program, or disputes concerning Medicaid eligibility, if the facts are similar and consolidation will facilitate resolution of all disputes.			
4.802.51(F)	Non-standardized language	**4.802.51 Management of Local-Level Dispute Resolution Conference** *** C. Location The local dispute resolution conference shall be held in the county department or agency where the proposed decision is pending and before a person who was not directly involved in the initial determination of the action in question. The local-level conference may be conducted either in person or by telephone. If a telephonic conference is requested, it shall be agreed upon by the applicant or participant. In the event the household does not speak English or is visually or hearing impaired, an	**4.802.51 Management of Local-Level Dispute Resolution Conference** [PUBLISHER NOTE FOR PUBLICATION: We are omitting sections A, B, and D here, including C, E, and F.] *** C. Location The local dispute resolution conference shall be held in the local office where the proposed decision is pending and before a person who was not directly involved in the initial determination of the action in question. The local-level conference may be conducted either in person or by telephone. If a telephonic conference is requested, it shall be agreed upon by the applicant or participant. In the event the household does not speak English or is visually or hearing impaired, an interpreter or translator shall be provided by the local office.	Standardizing language	

		interpreter or translator shall be provided by the local office. *** E. Joint Dispute Resolution Processes Two (2) or more county departments may establish a joint dispute resolution process. If two or more counties establish a joint process, the location of the conference need not be held in the county or agency taking the action, but the conference location shall be convenient to the applicant or participant. F. Notice of Dispute Resolution Conference Decision 1. If the additional information presented in the conference proves that the adverse action is not warranted, the case record shall be documented and the Notice of Adverse Action cancelled. 2. At the conclusion of the conference, the person presiding shall reduce to writing the agreement entered into by the parties. Such agreement shall be signed by the parties and/or their representatives and shall be binding upon the parties. A copy of the written decision shall immediately be provided to the applicant or participant and/or	*** E. Joint Dispute Resolution Processes Two (2) or more local offices may establish a joint dispute resolution process. If two or more counties establish a joint process, the location of the conference need not be held in the county or agency taking the action, but the conference location shall be convenient to the applicant or participant. F. Notice of Dispute Resolution Conference Decision 1. If the additional information presented in the conference proves that the adverse action is not warranted, the case record shall be documented, and the Notice of Adverse Action cancelled. 2. At the conclusion of the conference, the person presiding shall reduce to writing the agreement entered into by the parties. Such agreement shall be signed by the parties and/or their representatives and shall be binding upon the parties. A copy of the written decision shall immediately be provided to the applicant or participant and/or his or her representative. The local office shall also forward a copy of the decision to the state department, within five (5) working days of the hearing, regardless of whether or not the client was in agreement with the outcome.		

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		his or her representative. The local office shall also forward a copy of the decision to the Colorado Department of Human Services, Food Assistance Program, within five (5) working days of the hearing, regardless of whether or not the client was in agreement with the outcome.			
4.802.63(G)	Program name update; and non-standardized language	**4.802.63 State-Level Hearing Decisions** *** G. Acting on Decisions 1. Initial decisions shall not be implemented pending review by the Office of Appeals and entry of a final agency decision. 2. The state or county department shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The department shall comply with the decision, even if reconsideration is requested, unless the effective date of the agency decision is postponed by order of the Office of Appeals or a reviewing court. 3. If the State Department rules that the household had its Food Assistance benefits wrongfully delayed, denied or terminated, the local office shall provide retroactive benefits. If the State Department decides that benefits were over-issued previous to and during the	**4.802.63 State-Level Hearing Decisions** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, D, E and F here, including G.] *** G. Acting on Decisions 1. Initial decisions shall not be implemented pending review by the Office of Appeals and entry of a final agency decision. 2. The state department or local office shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The acting department/office shall comply with the decision, even if reconsideration is requested, unless the effective date of the agency decision is postponed by order of the Office of Appeals or a reviewing court. 3. If it is ruled that the household had its SNAP benefits wrongfully delayed, denied or terminated, the local office shall provide retroactive benefits. If it is decided that benefits were over-issued before and during the pendency of the determination of final agency action, a claim for over-issued benefits will be prepared. 4. Final agency decisions which result in an increase in household benefits shall be reflected	Updating Food Assistance to SNAP; standardizing language	

		pendency of the determination of final agency action, a claim for over-issued benefits will be prepared. 4. Final agency decisions which result in an increase in household benefits shall be reflected in the benefit allotment within ten (10) days of the receipt of the decision, even if the local office is obligated to provide a supplementary allotment or otherwise provide the household with the opportunity to obtain the allotment outside of the normal cycle. However, the local office may take longer than ten (10) days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within sixty (60) days from the household's request for the hearing. 5. Final agency decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the decision, unless the decision is stayed by the Office of Appeals upon a showing of irreparable harm.	in the benefit allotment within ten (10) days of the receipt of the decision, even if the local office is obligated to provide a supplementary allotment or otherwise provide the household with the opportunity to obtain the allotment outside of the normal cycle. However, the local office may take longer than ten (10) days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within sixty (60) days from the household's request for the hearing. 5. Final agency decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the decision unless the decision is stayed by the Office of Appeals upon a showing of irreparable harm.		
4.803(E)	Program name update	**4.803 INTENTIONAL PROGRAM VIOLATIONS AND FRAUD [Rev. eff. 1/1/16]**	**4.803 INTENTIONAL PROGRAM VIOLATIONS AND FRAUD [Rev. eff. 1/1/16]** [PUBLISHER NOTE NOT FOR PUBLICATION: We are	Updating Food Assistance to SNAP	

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		*** E. The local office shall inform the household in writing of disqualification penalties for intentional program violation each time it applies for Program benefits. The penalty warning will appear in clear, boldface lettering on the Food Assistance application forms and shall serve as notification to the household.	omitting sections A, B, C, and D here, and including E.] *** E. The local office shall inform the household in writing of disqualification penalties for IPV each time it applies for Program benefits. The penalty warning will appear in clear, boldface lettering on the SNAP application forms and shall serve as notification to the household.		
4.803.2	Program name update; and non-standardized language and acronyms	**4.803.2 Determination of an Intentional Program Violation/Fraud [Rev. eff. 1/1/16]** *** B. For purposes of determining, through administrative disqualification hearings, whether or not a person has committed an intentional program violation, the determination shall be based upon whether the person intentionally: 1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or, 2. Committed any act that constitutes a violation of the Food and Nutrition Act of 2008, as amended, these Food Assistance Program rules, Federal Food Assistance Program regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing	**4.803.2 Determination of an Intentional Program Violation/Fraud [Rev. eff. 1/1/16]** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, C, D, and E here, and including F.] ** B. For purposes of determining, through administrative disqualification hearings, whether or not a person has committed an IPV, the determination shall be based upon whether the person intentionally: 1. Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or, 2.Committed any act that constitutes a violation of the Food and Nutrition Act of 2008, as amended, these SNAP rules, Federal SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits, authorization cards or reusable documents as part of an automated benefit delivery system access device. “Intentionally” means a false representation of a material fact with knowledge of that falsity, or	Updating Food Assistance to SNAP; and standardizing language and acronyms	

		or trafficking of Food Assistance benefits, authorization cards or reusable documents as part of an automated benefit delivery system access device. "Intentionally" means a false representation of a material fact with knowledge of that falsity, or omission of a material fact with knowledge of that omission. *** F. Disqualification periods shall be imposed based on the following: 1. Administrative Disqualification Hearing (ADH) If an IPV/fraud is determined through an ADH, the individual must be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. 2. Waiver of an Administrative Disqualification Hearing If an IPV/fraud is determined through the client signing a waiver of an administrative disqualification hearing form, then the period of disqualification shall begin with the first month	omission of a material fact with knowledge of that omission. *** F. Disqualification periods shall be imposed based on the following: 1. Administrative Disqualification Hearing (ADH) If an IPV/fraud is determined through an ADH, the individual must be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. 2. Waiver of an Administrative Disqualification Hearing If an IPV/fraud is determined through the client signing a waiver of an administrative disqualification hearing form, then the period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. 3. Court Decisions If an individual is determined through a court to be disqualified for an IPV/fraud, but the date for initiating the disqualification period is not specified, the local office shall initiate the disqualification period for currently eligible individuals within forty-five (45) calendar days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within forty-five (45) calendar days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.		

		which follows the date the household member receives written notification of the disqualification. 3. Court Decisions If an individual is determined through a court to be disqualified for an IPV/fraud, but the date for initiating the disqualification period is not specified, the county department shall initiate the disqualification period for currently eligible individuals within forty five (45) calendar days of the date the disqualification was ordered. Any other court imposed disqualification shall begin within forty five (45) calendar days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud. 4. Disqualification Consent Agreements Unless contrary to the court order, the period of disqualification shall begin within forty-five (45) calendar days from the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the	4. Disqualification Consent Agreements Unless contrary to the court order, the period of disqualification shall begin within forty-five (45) calendar days from the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the state agency shall disqualify the household member in accordance with the court order.		

		state agency shall disqualify the household member in accordance with the court order.			
4.803.3	Program name update; and non-standardized acronyms	**4.803.3 Time Period and Types of Disqualifications [Rev. eff. 1/1/16]** A. Intentional Program Violations Individuals who have waived a hearing for intentional program violation or who have been found to have committed an intentional program violation through a local-level or state administrative intentional program violation decision shall be ineligible to participate in the Food Assistance Program for twelve (12) months for the first (1st) intentional program violation; twenty-four (24) months for the second (2nd) intentional program violation; and permanently for the third (3rd) intentional program violation/fraud. B. Receiving Duplicate Benefits Individuals who misrepresent their identity or residency to receive duplicate benefits shall be ineligible to participate in the Food Assistance Program for a period of ten (10) years. Receiving duplicate benefits is considered an attempt to receive or the receipt of more than one original allotment of benefits during a calendar month. A permanent disqualification for a third (3rd) offense would override the disqualification period for duplicate	**4.803.3 Time Period and Types of Disqualifications [Rev. eff. 1/1/16]** A. IPV Individuals who have waived a hearing for IPV or who have been found to have committed an IPV through a local-level or state administrative IPV decision shall be ineligible to participate in SNAP for twelve (12) months for the first (1st) IPV; twenty-four (24) months for the second (2nd) IPV; and permanently for the third (3rd) IPV/fraud. B. Receiving Duplicate Benefits Individuals who misrepresent their identity or residency to receive duplicate benefits shall be ineligible to participate in SNAP for a period of ten (10) years. Receiving duplicate benefits is considered an attempt to receive or the receipt of more than one original allotment of benefits during a calendar month. A permanent disqualification for a third (3rd) offense would override the disqualification period for duplicate benefits. C. Trafficking Benefits 1. The penalties for trafficking SNAP benefits are outlined in Section 26-2-306(2), C.R.S. 2. An individual convicted through a court of law of trafficking in SNAP of five hundred dollars ($500) or more will be disqualified permanently. D. An individual found guilty of purchasing controlled	Updating Food Assistance to SNAP; and standardizing acronyms	

		benefits. C. Trafficking Benefits 1. The penalties for trafficking Food Assistance benefits are outlined in Section 26-2-306(2), C.R.S. 2. An individual convicted through a court of law of trafficking in Food Assistance of five hundred dollars ($500) or more will be disqualified permanently. D. An individual found guilty of purchasing controlled substances, as defined in Section 18-18-102 (5), C.R.S., with Food Assistance benefits will be disqualified for twenty-four (24) months on the first (1st) conviction by a court of law and permanently disqualified on a second (2nd) conviction by a court of law. The disqualification periods shall apply also to individuals with a felony conviction entered on or after July 1, 1997, for possession, use, or distribution of controlled substance only if the conviction is directly related to the misuse of Food Assistance benefits. An individual shall not be ineligible due to a drug conviction unless misuse of Food Assistance benefits is part of the court findings. E. An individual found guilty of trading or purchasing firearms,	substances, as defined in Section 18-18-102 (5), C.R.S., with SNAP benefits will be disqualified for twenty-four (24) months on the first (1st) conviction by a court of law and permanently disqualified on a second (2nd) conviction by a court of law. The disqualification periods shall apply also to individuals with a felony conviction entered on or after July 1, 1997, for possession, use, or distribution of controlled substance only if the conviction is directly related to the misuse of SNAP benefits. An individual shall not be ineligible due to a drug conviction unless misuse of SNAP benefits is part of the court findings. E. An individual found guilty of trading or purchasing firearms, ammunition, or explosives with SNAP benefits will be permanently disqualified on the first (1st) conviction by a court of law. An individual will be disqualified for controlled substances and firearms, if the court finds that the individual has engaged in the activity, even in the cases of deferred adjudication.		

		ammunition, or explosives with Food Assistance benefits will be permanently disqualified on the first (1st) conviction by a court of law. An individual will be disqualified for controlled substances and firearms, if the court finds that the individual has engaged in the activity, even in the cases of deferred adjudication.			
4.803.4(C)	Program name update; and non-standardized acronyms	**4.803.4 Pursuing Disqualifications for IPV/Fraud [Rev. eff. 1/1/16]** *** C. If the local office determines that there is evidence to substantiate that a person has committed intentional program violation, the local office shall, prior to initiating an administrative disqualification hearing, allow that person the opportunity to waive his or her right to an administrative disqualification hearing or, for cases referred to a court of appropriate jurisdiction, to sign a disqualification consent agreement for plea bargained cases or cases of deferred adjudication. However, prior to providing the request for waiver, there shall be a review of the evidence against the household member by a staff member who was not involved in the investigation of the household and who has a thorough enough understanding of Food Assistance policy to ensure that policy is being correctly applied and that the evidence meets the "clear and convincing" criteria (see Section	**4.803.4 Pursuing Disqualifications for IPV/Fraud [Rev. eff. 1/1/16]** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, D, E, F, and G here, including C.] *** C. If the local office determines that there is evidence to substantiate that a person has committed an IPV, the local office shall, prior to initiating an administrative disqualification hearing, allow that person the opportunity to waive his or her right to an administrative disqualification hearing or, for cases referred to a court of appropriate jurisdiction, to sign a disqualification consent agreement for plea bargained cases or cases of deferred adjudication. However, prior to providing the request for waiver, there shall be a review of the evidence against the household member by a staff member who was not involved in the investigation of the household and who has a thorough enough understanding of SNAP policy to ensure that policy is being correctly applied and that the evidence meets the "clear and convincing" criteria (see Section 4.803.2, C) necessary to warrant the pursuit of an IPV. ***	Updating Food Assistance to SNAP; and standardizing acronyms	

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		4.803.2, C) necessary to warrant the pursuit of an intentional program violation. ***			
4.803.43(B)	Program name update; and non-standardized language	**4.803.43 Notifying a Household of an IPV Administrative Disqualification Hearing [Rev. eff. 1/1/16]** *** B. The notice shall be mailed Certified Mail, Return Receipt Requested, or by first class mail or the notice may be served on the individual by any other reliable method, such as personal delivery by a Food Assistance worker or other employee, affidavit of service, Federal Express, etc. If no proof of receipt is obtained, a statement of non-receipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall contain at a minimum: 1. The date, time, and place of the hearing; 2. The charge(s) against the household member; 3. A summary of the evidence and how and where the evidence can be examined; 4. A warning that the decision will be based solely on information provided by the local	**4.803.43 Notifying a Household of an IPV Administrative Disqualification Hearing [Rev. eff. 1/1/16]** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, C, and D here, including B.] *** B. The notice shall be mailed Certified Mail, Return Receipt Requested, or by first class mail or the notice may be served on the individual by any other reliable method, such as personal delivery by a SNAP worker or other employee, affidavit of service, Federal Express, etc. If no proof of receipt is obtained, a statement of non-receipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall contain at a minimum: 1. The date, time, and place of the hearing; 2. The charge(s) against the household member; 3. A summary of the evidence and how and where the evidence can be examined; 4. A warning that the decision will be based solely on information provided by the local office if the household member fails to appear at the hearing; 5. A statement that the household member or representative will have ten (10) calendar days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;	Updating Food Assistance to SNAP; and standardizing language	

		office if the household member fails to appear at the hearing; 5. A statement that the household member or representative will have ten (10) calendar days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing; 6. A warning that the disqualification penalties for fraud under the Food Assistance Program that could be imposed and a statement of which penalty the hearing officer believes is applicable to the case scheduled for hearing. The disqualification penalties for fraud are as follows: a. Twelve month disqualification for the first (1st) violation, twenty-four month disqualification for the second (2nd) violation, and permanently for the third (3rd) violation, except as provided for in paragraphs b, c, d, and e, of this section; b. Individuals found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive	6. A warning that the disqualification penalties for fraud under SNAP that could be imposed and a statement of which penalty the hearing officer believes is applicable to the case scheduled for hearing. The disqualification penalties for fraud are as follows: a. Twelve-month disqualification for the first (1st) violation, twenty-four month disqualification for the second (2nd) violation, and permanently for the third (3rd) violation, except as provided for in paragraphs b, c, d, and e, of this section; b. Individuals found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of ten (10) years, except if the client has received his/her 3rd violation. In such cases, the individual shall be disqualified permanently. c. Individuals found by a federal, state, or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the program: 1) For a period of twenty-four months upon the first occasion of such violation; and, 2) Permanently upon the second occasion of such violation. Copies of		

		multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of ten (10) years, except if the client has received his/her 3rd violation. In such cases, the individual shall be disqualified permanently. c. Individuals found by a federal, state or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the program: 1) For a period of twenty four months upon the first occasion of such violation; and, 2) Permanently upon the second occasion of such violation. Copies of the Section 102 of the Controlled Substances Act (21 U.S.C. 802), as amended, is available for inspection during normal business hours or by contacting: Director, Food Assistance Programs	Section 102 of the Controlled Substances Act (21 U.S.C. 802), as amended, are available for inspection. No further amendments or editions are incorporated. d. Individuals found by a federal, state, or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of such violation. e. An individual convicted by a federal, state, or local court of having trafficked benefits for an aggregate amount of five hundred dollars ($500) or more shall be permanently ineligible to participate in the program upon the first occasion of such violation. f. The penalties in paragraphs c and d of this section shall also apply in cases of deferred adjudication as described in Section 4.804, where the court makes a finding that the individual engaged in the conduct described in paragraph c and d, of this section. g. If a court fails to impose a disqualification or a disqualification period for any intentional program violation, the state agency shall impose the appropriate disqualification penalty specified within this section, unless it is contrary to the court order. 7. A statement of which penalty the hearing officer believes is applicable to the case scheduled for the hearing. 8. A statement that the hearing does not preclude		

		Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository library. No further amendments or editions are incorporated. d. Individuals found by a federal, state or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of such violation. e. An individual convicted by a federal, state or local court of having trafficked benefits for an aggregate amount of five hundred dollars ($500) or more shall be permanently ineligible to participate in the program upon the first occasion of such violation. f. The penalties in paragraphs c and d of this section shall also apply in cases of deferred adjudication as described in	the state or federal government from prosecuting the household member for fraud in a civil or criminal court action or from collecting the over-issuance. 9. The name and telephone number of the agency that the individual can call to obtain free legal advice. 10. For local offices conducting local-level ADH, the notice shall inform the client that he/she may request to have a state-level ADH rather than a local-level ADH. ***		

		Section 4.804, where the court makes a finding that the individual engaged in the conduct described in paragraph c and d, of this section. g. If a court fails to impose a disqualification or a disqualification period for any intentional program violation, the state agency shall impose the appropriate disqualification penalty specified within this section, unless it is contrary to the court order. 7. A statement of which penalty the hearing officer believes is applicable to the case scheduled for the hearing. 8. A statement that the hearing does not preclude the state or federal government from prosecuting the household member for fraud in a civil or criminal court action or from collecting the over-issuance. 9. The name and telephone number of the agency that the individual can call to obtain free legal advice. 10. For county departments conducting local-level ADH, the notice shall inform the client that he/she may request to have a			

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		state-level ADH rather than a local-level ADH. ***			
4.803.45(D)	Non-standardized language	**4.803.45 Administrative Disqualification Hearing Procedures** *** D. A local-level hearing officer shall meet the ninety (90) calendar day timeframe, issue the decision to the client, and forward a copy to the Colorado Department of Human Services, Food Assistance Division. ***	**4.803.45 Administrative Disqualification Hearing Procedures** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, C, E, F and G here, including D.] *** D. A local-level hearing officer shall meet the ninety (90) calendar day timeframe, issue the decision to the client, and forward a copy to the state department. ***	Standardizing language	
4.803.5	Non-standardized language and acronyms	**4.803.5 Local-Level IPV Hearings [Rev. eff. 1/1/16]** A. Local-Level Hearing Official 1. The individual who acts as a local-level hearing officer for the local office shall meet the following requirements: a. He/she shall be an impartial individual who does not have a personal stake or involvement in the case; b. He/she cannot have been directly involved in the initial determination of the action which is being contested and was not the immediate	**4.803.5 Local-Level IPV Hearings [Rev. eff. 1/1/16]** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section C here, including A and B.] A. Local-Level Hearing Official 1. The individual who acts as a local-level hearing officer for the local office shall meet the following requirements: a. He/she shall be an impartial individual who does not have a personal stake or involvement in the case; b. He/she cannot have been directly involved in the initial determination of the action which is being contested and was not the immediate supervisor of the eligibility technician who initiated the IPV action; c. The individual shall be:	Standardizing language and acronyms	

		supervisor of the eligibility worker who initiated the intentional program violation action; c. The individual shall be: 1. An employee of the county; or 2. An individual under contract with the county; or, 3. An employee of another public agency, statutory board or other legal entity designated by the county to conduct hearings. 2. The individual who acts as a local-level hearing officer is required to carefully consider the evidence and determine, based on clear and convincing evidence, if the individual intended to commit an intentional program violation. B. Notice of Local-Level Hearing Decision 1. If the local-level administrative disqualification hearing finds the household member did not commit an intentional program violation, the local-level hearing officer shall provide a written notice that informs the	1. An employee of the county; or 2. An individual under contract with the county; or, 3. An employee of another public agency, statutory board or other legal entity designated by the county to conduct hearings. 2. The individual who acts as a local-level hearing officer is required to carefully consider the evidence and determine, based on clear and convincing evidence, if the individual intended to commit an intentional program violation. B. Notice of Local-Level Hearing Decision 1. If the local-level administrative disqualification hearing finds the household member did not commit an IPV, the local-level hearing officer shall provide a written notice that informs the household, the local office, and the State department of the decision. 2. The decision shall contain the reasons for the hearing officer's decision and a response to client presented arguments and identify the evidence presented by both client and the local office. 3. If a local-level hearing officer determines that an intentional program violation occurred, the household shall be notified in accordance with Section 4.803.7 and accompanying the decision shall be an Appeal Request for the household to appeal the decision to a state-level administrative disqualification hearing. 4. If mailed, the notice shall be sent by either first		

		household, the local office, and the State Food Assistance Programs Division of the decision. 2. The decision shall contain the reasons for the hearing officer's decision and a response to client presented arguments and identify the evidence presented by both client and the local office. 3. If a local-level hearing officer determines that an intentional program violation occurred, the household shall be notified in accordance with Section 4.803.7, and accompanying the decision shall be an Appeal Request for the household to appeal the decision to a state-level administrative disqualification hearing. 4. If mailed, the notice shall be sent by either first class mail or certified mail (return receipt requested), or the notice may be served on the individual(s) by any other reliable method. If no proof of receipt is obtained, a statement of non-receipt by the household member shall be considered good cause for not appearing at the hearing. 5. A copy of the local-level hearing decision shall be forwarded to the State Food	class mail or certified mail (return receipt requested), or the notice may be served on the individual(s) by any other reliable method. If no proof of receipt is obtained, a statement of non-receipt by the household member shall be considered good cause for not appearing at the hearing. 5. A copy of the local-level hearing decision shall be forwarded to the state department for review at the same time the decision is mailed to the client. ***		

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		Assistance Programs Division for review at the same time the decision is mailed to the client. ***			
4.803.6	Non-standardized language	**4.803.6 State-Level Administrative Disqualification Hearing** *** B. Final Decisions 1. The Office of Appeals shall review the initial decision of the Administrative Law Judge and shall enter a final agency decision affirming, modifying, reversing, or remanding the initial decision, pursuant to Section 4.802.63, E. 2. For purposes of requesting judicial review, the effective date of the final agency decision shall be the third (3rd) day after the date the decision is mailed to the parties, even if the third (3rd) day falls on Saturday, Sunday, or a legal holiday. The parties shall be advised of this in the agency decision. 3. The state or county department shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The department shall comply with the decision even if reconsideration is requested, unless the effective date of the agency decision is	**4.803.6 State-Level Administrative Disqualification Hearing** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting section A here and including B.] *** B. Final Decisions 1. The Office of Appeals shall review the initial decision of the Administrative Law Judge and shall enter a final agency decision affirming, modifying, reversing, or remanding the initial decision, pursuant to Section 4.802.63, E. 2. For purposes of requesting judicial review, the effective date of the final agency decision shall be the third (3rd) day after the date the decision is mailed to the parties, even if the third (3rd) day falls on Saturday, Sunday, or a legal holiday. The parties shall be advised of this in the agency decision. 3. The state department or local office shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The department shall comply with the decision even if reconsideration is requested unless the effective date of the agency decision is postponed by order of the Office of Appeals or a reviewing court.	Standardizing language	

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		postponed by order of the Office of Appeals or a reviewing court.			
4.803.7	Program name update	**4.803.7 Notification of Final Administrative Disqualification Hearing Decision [Rev. eff. 1/1/16]** Once the local-level hearing decision or a final state-level decision has been made, written notice, prior to disqualification, will be provided to the household member, to the local office, and to the state Food Assistance office containing: A. The decision. B. The reason for the decision including pertinent regulations and a response to client presented arguments. C. The disqualification period, including the date the disqualification will take effect. For local-level hearing decisions, the decision shall notify the individual that the disqualification period will take effect, unless a state-level hearing is requested. If the individual is no longer participating, the notice shall inform him/her that the period of disqualification shall take effect in accordance with Section 4.803.2, F. D. For local-level administrative hearings, if the household member is not satisfied with the decision given in a local-level administrative disqualification hearing (see Section 4.803.5, C), he/she may request a	**4.803.7 Notification of Final Administrative Disqualification Hearing Decision [Rev. eff. 1/1/16]** Once the local-level hearing decision or a final state-level decision has been made, written notice, prior to disqualification, will be provided to the household member, to the local office, and to the state department containing: A. The decision. B. The reason for the decision including pertinent regulations and a response to client presented arguments. C. The disqualification period, including the date the disqualification will take effect. For local-level hearing decisions, the decision shall notify the individual that the disqualification period will take effect, unless a state-level hearing is requested. If the individual is no longer participating, the notice shall inform him/her that the period of disqualification shall take effect in accordance with Section 4.803.2, F. D. For local-level administrative hearings, if the household member is not satisfied with the decision given in a local-level administrative disqualification hearing (see Section 4.803.5, C), he/she may request a hearing through the Office of Administrative Courts. E. For state-level administrative hearings, if the household member is not satisfied with the final state agency decision of a state-level administrative hearing, he/she may seek judicial review pursuant to Section 24-4-106, C.R.S.	Updating Food Assistance to SNAP	

		hearing through the Office of Administrative Courts. E. For state-level administrative hearings, if the household member is not satisfied with the final state agency decision of a state-level administrative hearing, he/she may seek judicial review pursuant to Section 24-4-106, C.R.S.			
4.804	Non-standardized language	**4.804 COURT ACTION** *** C.A summary or copy of a referral for prosecution shall, together with the date of the referral, be forwarded to the State Food Assistance Division.	**4.804 COURT ACTION** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A, B, D, E, F and G here, including C.] *** C. A summary or copy of a referral for prosecution shall, together with the date of the referral, be forwarded to the state department.	Standardizing language	
4.804.1(A)	Program name update	**4.804.1 Disqualification Consent Agreement [Rev. eff. 1/1/16]** A. Criteria for Consent Agreement If county prosecutors pursue a consent agreement, the agreement shall provide the household advance notification of the consequences of consenting to the disqualification. The consent agreement shall contain the following: 1. A statement for the accused individual to sign that he or she understands the consequences of consenting to disqualification. 2. A signature block for the accused individual.	**4.804.1 Disqualification Consent Agreement [Rev. eff. 1/1/16]** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting B and C here, including A.] A. Criteria for Consent Agreement If county prosecutors pursue a consent agreement, the agreement shall provide the household advance notification of the consequences of consenting to the disqualification. The consent agreement shall contain the following: 1. A statement for the accused individual to sign that he or she understands the consequences of consenting to disqualification. 2. A signature block for the accused individual.	Updating Food Assistance to SNAP	

		3. A statement that the head of household must also sign the consent agreement if the accused individual is not the head of household. 4. A signature block for the head of household. 5. A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud. 6. A warning that the disqualification penalties for fraud under the Food Assistance Program that could be imposed and a statement of which penalty the hearing office believes is applicable to the case scheduled for the hearing. ***	3. A statement that the head of household must also sign the consent agreement if the accused individual is not the head of household. 4. A signature block for the head of household. 5. A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud. 6. A warning that the disqualification penalties for fraud under SNAP that could be imposed and a statement of which penalty the hearing office believes is applicable to the case scheduled for the hearing. ***		
4.901	Program name update; non-standardized language and acronyms	**4.901 ADMINISTRATION OF THE FOOD ASSISTANCE PROGRAM** A. The Food Assistance Program shall be administered in every county of the State in accordance with the Colorado Human Services Code and these rules. B. The program shall be administered by the county	**4.901 ADMINISTRATION OF SNAP** A. SNAP shall be administered in every county of the State in accordance with the Colorado Human Services Code and these rules. B. The program shall be administered by the local offices of social/human services unless the State Department enters into a written agreement with a particular county to have a State-administered program in that county. As a condition for receiving	Updating Food Assistance to SNAP; standardizing language; and standardizing acronyms	

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		departments of social/human services unless the State Department enters into a written agreement with a particular county to have a State-administered program in that county. As a condition for receiving grant-in-aid from the State for public assistance and welfare activities, each county must bear the proportion of the total administrative and program costs for all assistance payments and social services activities as required by Section 26-1-122, C.R.S. C. County departments of social/human services shall comply with all requirements concerning security and case processing for the automated system. D. Counties shall receive approval from the Colorado Department of Human Services, Food Assistance Programs Division, prior to using any county-developed forms in the administration of the Program.	grant-in-aid from the State for PA and welfare activities, each county must bear the proportion of the total administrative and program costs for all assistance payments and social services activities as required by Section 26-1-122, C.R.S. C. Local offices of social/human services shall comply with all requirements concerning security and case processing for the automated system. D. Counties shall receive approval from the state department, prior to using any county-developed forms in the administration of the Program.		
4.901.1	Program name update; and non-standardized acronyms	**4.901.1 Compliance with State Department** If a county does not comply with the rules of the State Department that govern the administration of the program, which require the establishment of a Food Assistance Program in each county and the payment of the county's share of the cost of the program, the State Department may do one or more of the following:	**4.901.1 Compliance with State Department** If a county does not comply with the rules of the State Department that govern the administration of the program, which require the establishment of a SNAP Program in each county and the payment of the county's share of the cost of the program, the State Department may do one or more of the following: A. Utilize the remedies described in Section 26-1-109(4) (a-e), C.R.S. B. Recover all or part of the county share of the cost of	Updating Food Assistance to SNAP; and standardizing acronyms	

		A. Utilize the remedies described in Section 26-1-109(4) (a-e), C.R.S. B. Recover all or part of the county share of the cost of the Food Assistance Program by reducing any other grant-in-aid to the county for public assistance or welfare purposes by a corresponding amount. C. If the county does not comply, judicial enforcement of the order may be pursued under Section 24-4-106(3) C.R.S. D. Take any other appropriate action to enforce compliance with the rules governing the Food Assistance Program.	SNAP by reducing any other grant-in-aid to the county for PA or welfare purposes by a corresponding amount. C. If the county does not comply, judicial enforcement of the order may be pursued under Section 24-4-106(3) C.R.S. D. Take any other appropriate action to enforce compliance with the rules governing SNAP.		
4.902.1	Program name update; non-standardized language; non-standardized acronyms	**4.902.1 County Food Assistance Office** Local offices shall ensure that adequate locations and hours of operation exist to meet the needs of Food Assistance applicants and participants in their areas. Each location shall have ample availability for parking and shall be accessible to persons with disabilities. Hours of operation shall be sufficient to ensure the timely processing of applications and issuance of Electronic Benefits Transfer (EBT) cards according to existing guidelines. Counties must establish procedures for the operation of the local office that best serve households within that county. The county shall establish procedures to assist households with special needs including, but not limited to, households containing persons	**4.902.1 County SNAP Office** Local offices shall ensure that adequate locations and hours of operation exist to meet the needs of SNAP applicants and participants in their areas. Each location shall have ample availability for parking and shall be accessible to persons with disabilities. Hours of operation shall be sufficient to ensure the timely processing of applications and issuance of EBT cards according to existing guidelines. Counties must establish procedures for the operation of the local office that best serve households within that county. The county shall establish procedures to assist households with special needs including, but not limited to, households containing persons who are aged 60 and older or persons with disabilities, households in rural areas with low-income members, homeless households, households containing adult members who are not proficient in English, and households containing working persons.	Updating Food Assistance to SNAP; standardizing language; standardizing acronyms	

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		who are elderly or persons with disabilities, households in rural areas with low-income members, homeless households, households containing adult members who are not proficient in English, and households containing working persons. A household must apply for the Food Assistance Program in its county of residence. A county that receives an application that belongs to another county may secure the application date, process the application to completion, issue the household an EBT card, and then transfer the case to the correct county once the final eligibility decision is made. If a household is determined eligible for participation, it may request and be designated to receive food benefits from an issuance office that is more accessible. It is possible for an issuance unit in one county office to determine eligibility, authorize food benefits and issue EBT cards to an eligible household that resides in another county in Colorado. Counties may also transfer certification and/or EBT card issuance duties for those households only receiving Food Assistance that live closer to the local office in a neighboring county than the county of residence.	A household must apply for SNAP in its county of residence. A county that receives an application that belongs to another county may secure the application date, process the application to completion, issue the household an EBT card, and then transfer the case to the correct county once the final eligibility decision is made. If a household is determined eligible for participation, it may request and be designated to receive food benefits from an issuance office that is more accessible. It is possible for an issuance unit in one local office to determine eligibility, authorize food benefits and issue EBT cards to an eligible household that resides in another county in Colorado. Counties may also transfer certification and/or EBT card issuance duties for those households only receiving SNAP that live closer to the local office in a neighboring county than the county of residence.		
4.902.2	Program name update; and non-standardized language	**4.902.2 Phone Directory Listings** A. Each local office telephone number available to the public shall be listed under each of the following	**4.902.2 Phone Directory Listings** A. Each local office telephone number available to the public shall be listed under each of the following two alphabetical listings:	Updating Food Assistance to SNAP; and standardizing language	

		two alphabetical listings: 1. Food assistance certification and issuance office, street address, phone number. If there are separate certification and issuance offices in the county, they may be listed in this manner: County office (certification only) or (issuance only), street address, phone number. 2. (Name of the county) Department of Human/Social Services, county office (certification only) or (issuance only), street address, phone number. B. Each local office shall provide a toll free number or a number where collect calls will be accepted for households outside the local calling area. C. The listings above are not to restrict any other listings that may be provided within the telephone directory, but only to standardize the availability of the Food Assistance Program to the public.	1. SNAP certification and issuance office, street address, phone number. If there are separate certification and issuance offices in the county, they may be listed in this manner: local office (certification only) or (issuance only), street address, phone number. 2. (Name of the county) Department of Human/Social Services, local office (certification only) or (issuance only), street address, phone number. B. Each local office shall provide a toll-free number or a number where collect calls will be accepted for households outside the local calling area. C. The listings above are not to restrict any other listings that may be provided within the telephone directory, but only to standardize the availability of SNAP to the public.		
4.902.3	Program name update; and non-standardized language	**4.902.3 Certification Personnel and Facilities Requirements** A. County employees assigned to certify households for participation in the Food Assistance Program shall be employed in accordance with the current standards for a merit system	**4.902.3 Certification Personnel and Facilities Requirements** A. County employees assigned to certify households for participation in SNAP shall be employed in accordance with the current standards for a merit system personnel administration that is guided by a set of six broad merit principles outlined in the	Updating Food Assistance to SNAP; and standardizing language	

		personnel administration that is guided by a set of six broad merit principles outlined in the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728), as amended. The principles cover recruiting, compensation, training, retention, equal employment opportunity and guidance on political activity. Only such qualified employees shall conduct the interview of applicant households and determine household eligibility or ineligibility and the level of benefits. Copies of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728), as amended, is available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository library. No further amendments or editions are incorporated. B. Every county department must utilize an appropriate amount of the staff allocated to that county department and utilize effective and efficient practices in administering its Food Assistance Program. Facilities must, within available state legislative appropriations and federal and required county matching funds, be of adequate size and layout to assure the privacy necessary to allow workers to conduct confidential interviews and perform other office	Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728), as amended. The principles cover recruiting, compensation, training, retention, equal employment opportunity and guidance on political activity. Only such qualified employees shall conduct the interview of applicant households and determine household eligibility or ineligibility and the level of benefits. Copies of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728), as amended, are available for inspection. No further amendments or editions are incorporated. B. Every local office must utilize an appropriate amount of the staff allocated to it and utilize effective and efficient practices in administering SNAP. Facilities must, within available state legislative appropriations and federal and required county matching funds, be of adequate size and layout to assure the privacy necessary to allow workers to conduct confidential interviews and perform other office duties efficiently and effectively.		

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		duties efficiently and effectively.			
4.902.31(A)	Non-standardized language	**4.902.31 Bilingual Staff, Interpreter, and Translator Requirements** A. County departments determined by the State Department to have a significant population of non-English speaking households or households with adult members not fluent in English, shall provide sufficient bilingual staff and/or translators for the timely processing of applications. County staff shall be trained and familiar with these procedures.	**4.902.31 Bilingual Staff, Interpreter, and Translator Requirements** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting B and C here, including A] A. Local offices determined by the State Department to have a significant population of non-English speaking households or households with adult members not fluent in English, shall provide sufficient bilingual staff and/or translators for the timely processing of applications. County staff shall be trained and familiar with these procedures.	Standardizing language	
4.902.32	Non-standardized language	**4.902.32 Restrictions on Staff** *** C. Any persons or organizations who are parties to a strike or lockout shall not be permitted to interview or certify households or to secure verification required of such households. However, such individuals may be used as a source of verification for information provided by applicant households if, under normal circumstances, they could be expected to be the best verification source. An eligibility worker who is the spouse of a striker is not considered party to a strike, but shall not certify his or her own household. The facilities of persons or organizations who are parties to a strike or lockout may not be used in the certification process or as a site for certification interviews.	**4.902.32 Restrictions on Staff** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections A and B here, including C] *** C. Any persons or organizations who are parties to a strike or lockout shall not be permitted to interview or certify households or to secure verification required of such households. However, such individuals may be used as a source of verification for information provided by applicant households if, under normal circumstances, they could be expected to be the best verification source. An eligibility technician who is the spouse of a striker is not considered party to a strike but shall not certify his or her own household. The facilities of persons or organizations who are parties to a strike or lockout may not be used in the certification process or as a site for certification interviews.	Standardizing language	

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4.902.4	Program name update; and non-standardized language	**4.902.4 Supervisory Responsibilities** Supervisory personnel shall review a random sample of current Food Assistance determinations (certifications, denials, and terminations) to determine the correctness of eligibility determinations accomplished. A record of the cases reviewed must be kept for management evaluation/audit purposes. The county must be able to demonstrate to the satisfaction of the State Food Assistance Program that the frequency and scope of the reviews are adequate enough to ensure the integrity of both the program and recipients. Additionally, the county must demonstrate a consistent process for tracking error trends, correcting case records timely, and providing eligibility technicians an opportunity to improve their program knowledge.	**4.902.4 Supervisory Responsibilities** Supervisory personnel shall review a random sample of current SNAP determinations (certifications, denials, and terminations) to determine the correctness of eligibility determinations accomplished. A record of the cases reviewed must be kept for management evaluation/audit purposes. The county must be able to demonstrate to the satisfaction of the State department that the frequency and scope of the reviews are adequate to ensure the integrity of both the program and recipients. Additionally, the county must demonstrate a consistent process for tracking error trends, correcting case records timely, and providing eligibility technicians an opportunity to improve their program knowledge.	Updating Food Assistance to SNAP; and standardizing language	
4.903.1	Program name update; and non-standardized language	**4.903.1 Information Available to the Public** A. Federal regulations, federal procedures embodied in Food and Nutrition Service (FNS) notices and policy memos, the Food Assistance rules, and State Plans of Operation (including specific planning documents such as corrective action plans) shall be available upon request for examination by members of the public during office hours at the State office. Copies of materials are available to recipient organizations, action centers, and	**4.903.1 Information Available to the Public** A. Federal regulations, federal procedures embodied in Food and Nutrition Service (FNS) notices and policy memos, the SNAP rules, and State Plans of Operation (including specific planning documents such as corrective action plans) shall be available upon request for examination by members of the public during office hours at the State department. Copies of materials are available to recipient organizations, action centers, and other individuals for a minimal printing charge. B. The SNAP rules shall be available for examination upon request at each local office within each county. They are also available online through the Secretary of State's official publication of State Agency rules in the	Updating Food Assistance to SNAP; and standardizing language	

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		other individuals for a minimal printing charge. B. The Food Assistance rules shall be available for examination upon request at each local office within each county. They are also available online through the Secretary of State's official publication of State Agency rules in the Code of Colorado Regulations, accessible at: https://www.sos.state.co.us/CCR/Welcome.do.	Code of Colorado Regulations, accessible at: https://www.sos.state.co.us/CCR/Welcome.do.		
4.903.2	Program name update; and non-standardized language	**4.903.2 Reporting Lawsuits** FNS regulations require prompt notification from the State Department of any lawsuits involving the administration of the Food Assistance Program. As all county Food Assistance Programs are administered under the supervision of the State Department, it is mandatory that all legal proceedings involving the Food Assistance Program be brought to the attention of the State Office immediately for notification to the United States Department of Agriculture, Food and Nutrition Service (USDA, FNS).	**4.903.2 Reporting Lawsuits** FNS regulations require prompt notification from the State Department of any lawsuits involving the administration of SNAP. As all county SNAP is administered under the supervision of the State Department, it is mandatory that all legal proceedings involving SNAP be brought to the attention of the State department immediately for notification to the United States Department of Agriculture, Food and Nutrition Service (USDA, FNS).	Updating Food Assistance to SNAP; standardizing language	
4.903.3	Program name update; non-standardized language	**4.903.3 Management Evaluations** The Colorado Department of Human Services is responsible for the supervising of the administration of the Food Assistance Program. To ensure compliance with program requirements, the State Office is responsible for conducting Management Evaluation (ME) reviews to measure compliance with the	**4.903.3 Management Evaluations** The state department is responsible for the supervising of the administration of SNAP. To ensure compliance with program requirements, the State department is responsible for conducting Management Evaluation (ME) reviews to measure compliance with the provisions of these rules. The objectives of the ME review system are to: A. Provide a systematic method of monitoring and	Updating Food Assistance to SNAP; and standardizing language	

		provisions of these rules. The objectives of the ME review system are to: A. Provide a systematic method of monitoring and assessing program operations in the counties; B. Provide a basis for counties to improve and strengthen program operations by identifying and correcting deficiencies; C. Provide a continuing flow of information between the counties, the State Department, and FNS to develop solutions to problems in Program policy and procedures; and, D. Provide a review of target program areas as identified by USDA, FNS.	assessing program operations in the counties; B. Provide a basis for counties to improve and strengthen program operations by identifying and correcting deficiencies; C. Provide a continuing flow of information between the counties, the State Department, and FNS to develop solutions to problems in Program policy and procedures; and, D. Provide a review of target program areas as identified by USDA, FNS.		
4.903.31	Program name update; and non-standardized language	**4.903.31 Frequency of Reviews** The State Office shall conduct an ME review of all Food Assistance Program operations: A. At least once annually on each large project area containing more than twenty-five thousand and one (25,001) participating households; B. At least once every two (2) years on each medium project area containing five thousand (5,000) to twenty-five thousand (25,000) participating households; and, C. At least once every three (3) years on each small project area containing	**4.903.31 Frequency of Reviews** The State department shall conduct an ME review of all SNAP operations: A. At least once annually on each large project area containing more than twenty-five thousand and one (25,001) participating households; B. At least once every two (2) years on each medium project area containing five thousand (5,000) to twenty-five thousand (25,000) participating households; and, C. At least once every three (3) years on each small project area containing four thousand nine hundred and ninety-nine (4,999) or fewer participating households.	Updating Food Assistance to SNAP; and standardizing language	

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		four thousand nine hundred and ninety-nine (4,999) or fewer participating households. The State Office may conduct Management Evaluation reviews on an alternative schedule with the written approval of the USDA, FNS. The State Office may also perform reviews of specific county offices or program elements. The USDA, FNS or the State Office, may identify the need of a special review, or the county department may request a special review. Reviews will generally include all aspects of program administration in the large counties. The reviews may be more limited in scope in the medium and small counties. The USDA, FNS, generally identifies target program areas that it requires for review each fiscal year. The State Office will complete the Management Evaluation report for all counties that are reviewed. The Colorado Department of Human Services, Food Assistance Program, will be responsible for monitoring the county responses to any finding. The county shall be responsible for submitting any factual corrections to the management evaluation review within twenty (20) state working days, and shall submit a final plan to correct all other cited deficiencies within twenty (20) state working days of receiving the review. The response shall include specific actions, persons responsible for implementation,	The State department may conduct Management Evaluation reviews on an alternative schedule with the written approval of the USDA, FNS. The State department may also perform reviews of specific local offices or program elements. The USDA, FNS or the State department, may identify the need of a special review, or the local office may request a special review. Reviews will generally include all aspects of program administration in the large counties. The reviews may be more limited in scope in the medium and small counties. The USDA, FNS, generally identifies target program areas that it requires for review each fiscal year. The State department will complete the Management Evaluation report for all counties that are reviewed and will be responsible for monitoring the county responses to any finding. The county shall be responsible for submitting any factual corrections to the management evaluation review within twenty (20) state working days and shall submit a final plan to correct all other cited deficiencies within twenty (20) state working days of receiving the review. The response shall include specific actions, persons responsible for implementation, and date for completion. When the review identifies ongoing problems in critical areas, the county response shall also include a method for monitoring implementation of the plan and reporting progress to the State department on at least a quarterly basis.		

		and date for completion. When the review identifies ongoing problems in critical areas, the county response shall also include a method for monitoring implementation of the plan and reporting progress to the State Office on at least a quarterly basis.			
4.903.32	Non-standardized language	**4.903.32 Compliance Action for Management Evaluation Reviews** The State Office is the designated entity responsible for ensuring that corrective action is taken at the state and/or county level on the deficiencies found by the Management Evaluation (ME) Reviews. The State may impose fiscal sanctions on counties that do not make good-faith efforts to address ongoing problems in critical areas. Fiscal sanctions may be imposed in accordance with Section 4.901.1, which requires local offices to operate the program in accordance with state rules.	**4.903.32 Compliance Action for Management Evaluation Reviews** The State department is the designated entity responsible for ensuring that corrective action is taken at the state and/or county level on the deficiencies found by the Management Evaluation (ME) Reviews. The State may impose fiscal sanctions on counties that do not make good-faith efforts to address ongoing problems in critical areas. Fiscal sanctions may be imposed in accordance with Section 4.901.1, which requires local offices to operate the program in accordance with state rules.	Standardizing language	
4.903.4	Program name update	**4.903.4 Quality Assurance Reviews** Quality assurance reviews are conducted during the annual federal quality assurance review period, which is the twelve (12) month period from October 1 of each calendar year through September 30 of the following calendar year. A statistically random sample of households is selected from two (2) different categories: households that were participating in the Food Assistance Program (active cases) and households for which participation was suspended, denied, or terminated (negative cases).	**4.903.4 Quality Assurance Reviews** Quality assurance reviews are conducted during the annual federal quality assurance review period, which is the twelve (12) month period from October 1 of each calendar year through September 30 of the following calendar year. A statistically random sample of households is selected from two (2) different categories: households that were participating in SNAP (active cases) and households for which participation was suspended, denied, or terminated (negative cases). A. Quality Assurance reviews are federally mandated to provide:	Updating Food Assistance to SNAP	

		A. Quality Assurance reviews are federally mandated to provide: 1. A systematic method of measuring the validity of the Food Assistance Program caseload; 2. A basis for determining error rates; 3. A timely and continuous flow of information on which to base corrective action at all levels of administration; and, 4. A basis for establishing liability for errors that exceed the federal error rate target and the State's eligibility for an increased share of federal administrative funding and/or federal high performance bonuses. B. Reviews are conducted on: 1. Active cases to determine if the household is eligible and, if eligible, whether the household is receiving the correct Food Assistance benefits. 2. Negative cases to determine if households that were suspended, denied, or terminated were, in fact, not eligible to participate in the Food Assistance Program and that the household received an accurate,	1.A systematic method of measuring the validity of the SNAP caseload; 2. A basis for determining error rates; 3. A timely and continuous flow of information on which to base corrective action at all levels of administration; and, 4. A basis for establishing liability for errors that exceed the federal error rate target and the State's eligibility for an increased share of federal administrative funding and/or federal high-performance bonuses. B. Reviews are conducted on: 1. Active cases to determine if the household is eligible and, if eligible, whether the household is receiving the correct SNAP benefits. 2. Negative cases to determine if households that were suspended, denied, or terminated were, in fact, not eligible to participate in SNAP and that the household received an accurate, timely notice. For initial applications, the notice shall be considered timely if the household is notified of the negative action within the application processing timeframes outlined in Section 4.205.2. For recertification applications, the notice shall be considered timely if the household is notified of the negative action in accordance with the processing timeframes outlined in Section 4.209.1. When notifying a household of a change in its benefits, the notice shall be considered timely if the household is notified of the negative action in accordance with the timeframes outlined in Section 4.608. C. Definitions		

		timely notice. For initial applications, the notice shall be considered timely if the household is notified of the negative action within the application processing timeframes outlined in Section 4.205.2. For recertification applications, the notice shall be considered timely if the household is notified of the negative action in accordance with the processing timeframes outlined in Section 4.209.1. When notifying a household of a change in its benefits, the notice shall be considered timely if the household is notified of the negative action in accordance with the timeframes outlined in Section 4.608. C. Definitions 1. An “active case” means a household that was certified prior to or during the sample month and issued Food Assistance Program benefits for the sample month. The review of an active case includes: a household case record review, a field investigation, an error analysis, and the reporting of review findings. 2. A “negative case” means a household which was denied certification to receive Food Assistance Program benefits in the sample month or which had	1. An “active case” means a household that was certified prior to or during the sample month and issued SNAP benefits for the sample month. The review of an active case includes: a household case record review, a field investigation, an error analysis, and the reporting of review findings. 2. A “negative case” means a household which was denied certification to receive SNAP benefits in the sample month or which had its participation in SNAP suspended, denied, or terminated effective for the sample month. The review of a negative case includes: a. A household case record review; b. An error analysis; c. Client notification; and, d. The reporting of review findings.		

		its participation in the Food Assistance Program suspended, denied, or terminated effective for the sample month. The review of a negative case includes: a. A household case record review; b. An error analysis; c. Client notification; and, d. The reporting of review findings.			
4.903.42	Program name update	**4.903.42 Refusal to Cooperate with Quality Assurance Review** Households selected for review are required to cooperate with federal and state Quality Assurance review processes. Households that refuse to cooperate in a Quality Assurance review shall be declared ineligible for Food Assistance Program benefits. The State Quality Assurance reviewer shall notify the local office of the household's refusal to cooperate in the review process, including each individual who refused, on the State-prescribed Quality Assurance reporting form(s), and the local office shall document the refusal to cooperate in the statewide automated system. A. Within ten (10) calendar days from the date of receipt of Quality	**4.903.42 Refusal to Cooperate with Quality Assurance Review** [PUBLISHER NOTE NOT FOR PUBLICATION: We are omitting sections B and C here, including A] Households selected for review are required to cooperate with federal and state Quality Assurance review processes. Households that refuse to cooperate in a Quality Assurance review shall be declared ineligible for SNAP benefits. The State Quality Assurance reviewer shall notify the local office of the household's refusal to cooperate in the review process, including everyone who refused, on the State-prescribed Quality Assurance reporting form(s), and the local office shall document the refusal to cooperate in the statewide automated system. A. Within ten (10) calendar days from the date of receipt of Quality Assurance's notification of the household's refusal to cooperate, the local office shall take action to disqualify or terminate the entire household from participation in SNAP and each household member who refused to cooperate shall be	Updating Food Assistance to SNAP	

		Assurance's notification of the household's refusal to cooperate, the local office shall take action to disqualify or terminate the entire household from participation in the Food Assistance Program and each household member who refused to cooperate shall be entered into the automated system to initiate a period of ineligibility. The period of ineligibility is as follows: 1. For refusal to cooperate with a State Quality Assurance review, the period of ineligibility shall exist for the remainder of the current federal fiscal year plus one hundred twenty five (125) days, and shall expire on February 2 of that federal fiscal year. 2. For refusal to cooperate with a Federal Quality Assurance review, the period of ineligibility shall exist for the remainder of the current federal fiscal year plus nine (9) months, and shall expire on June 30 of that federal fiscal year. ***	entered into the automated system to initiate a period of ineligibility. The period of ineligibility is as follows: 1. For refusal to cooperate with a State Quality Assurance review, the period of ineligibility shall exist for the remainder of the current federal fiscal year plus one hundred twenty-five (125) days, and shall expire on February 2 of that federal fiscal year. 2. For refusal to cooperate with a Federal Quality Assurance review, the period of ineligibility shall exist for the remainder of the current federal fiscal year plus nine (9) months and shall expire on June 30 of that federal fiscal year. ***		
4.903.43	Non-standardized language	**4.903.43 Quality Assurance Findings and Required Responses** Quality Assurance shall notify local offices on State-prescribed forms of the review findings for each sampled active and negative case. Brief descriptions of the review findings shall be given with	**4.903.43 Quality Assurance Findings and Required Responses** Quality Assurance shall notify local offices on State-prescribed forms of the review findings for each sampled active and negative case. Brief descriptions of the review findings shall be given with references to applicable rule sections.	Standardizing language	

		references to applicable rule sections. A. When the review findings document no error and/or only other observations have been noted, a response is not required by the local office; however, any observation that affects the payment accuracy must be corrected and a claim or restoration established in accordance with Sections 4.801.2 and 4.702. The report of review findings shall be retained in the case record. B. When the review findings document that an error resulted in ineligibility over-issuance, under-issuance, or an incorrect negative action, the local office shall respond to the review findings by completing the State-prescribed form documenting the corrective action taken or rebutting the amount or finding of error. The response shall be forwarded to the State Food Assistance Program Division within ten (10) calendar days from receipt of the Quality Assurance review finding notification. C. Upon receiving the local office's response to the Quality Assurance review findings, the State Office shall review the action taken by the local office and either concur with the Quality Assurance findings; concur with the local office rebuttal; or concur/disagree with the corrective action taken by the local office.	A. When the review findings document no error and/or only other observations have been noted, a response is not required by the local office; however, any observation that affects the payment accuracy must be corrected and a claim or restoration established in accordance with Sections 4.801.2 and 4.702. The report of review findings shall be retained in the case record. B. When the review findings document that an error resulted in ineligibility over-issuance, under-issuance, or an incorrect negative action, the local office shall respond to the review findings by completing the State-prescribed form documenting the corrective action taken or rebutting the amount or finding of error. The response shall be forwarded to the state department within ten (10) calendar days from receipt of the quality assurance review finding notification. C. Upon receiving the local office's response to the Quality Assurance review findings, the State department shall review the action taken by the local office and either concur with the Quality Assurance findings; concur with the local office rebuttal; or concur/disagree with the corrective action taken by the local office.		

Title of Proposed Rule:	SNAP Technical Cleanup 2021	
CDHS Tracking #:	20-08-10-01	
Office, Division, & Program: Office of Economic Security, Food and Energy Assistance Division, SNAP	Rule Author: Andrea Poole, SNAP Program Initiatives Supervisor	Phone: 303-829-7245 E-Mail: andrea.poole@state.co.us

4.904	Section of rule irrelevant to administration of program in Colorado	**4.904 FEDERAL ADMINISTRATION AND RESPONSIBILITIES** **4.904.1 Federal Sanctions** If FNS determines that there has been negligence or fraud involved in the certification of applicant households on the part of the state or local office, the State agency shall, on demand, following exhaustion of its appellate rights, pay to FNS, a sum equal to the amount of benefits issued as a result of such negligence or fraud. FNS claims against state agencies may be a result of financial losses involved in the acceptance, storage, and issuance of benefits, charges of negligence, and disallowance of federal funds for state agency failure of operation. The provisions for determining and establishing a claim against state agencies or the disallowance of federal funds are outlined within Section 3 of Title 7, Part 276, Chapter II, Sub-chapter C, Code of Federal Regulations, as of February 5, 2014; no later amendments or editions of this section are incorporated. Copies of these federal laws are available from the Colorado Department of Human Services, Food Assistance Program, 1575 Sherman Street, Denver, Colorado 80203. If county administration has resulted in the FNS finding of negligence or fraud, a claim for the amount of loss will subsequently be made against the responsible Food Assistance agency. **4.904.2 Civil Rights Reviews Retailer**		Removal of irrelevant section of rule	

		Authorization The FNS field office located in the Denver area conducts statewide civil rights reviews of local offices. Both state and local offices shall ensure that all staff responsible for the administration, issuance, review, and eligibility determination of the Food Assistance Program are knowledgeable about civil rights procedures and able to assist program recipients with the filing of civil rights complaints. These procedures must be reviewed with staff annually. **4.904.3 Retailer Authorization** The Food and Nutrition Service (FNS) field office is responsible for authorizing retailers to accept Food Assistance benefits and enforcing retailer compliance of Program rules. Retailers must be authorized by USDA, FNS to be eligible to accept Food Assistance benefits for eligible food purchases. All FNS-authorized retailers must comply with USDA, FNS regulations regarding acceptance and deposit of Food Assistance benefits. **4.904.4 Program Reduction, Suspension, or Cancellation** The Food and Nutrition Act of 2008 directs the Secretary of Agriculture to reduce, suspend, or cancel Food Assistance benefits if it is necessary to			

		keep Program spending within the limits set by Congress. Upon notification from FNS, the State office shall instruct local offices to reduce, suspend, or cancel Food Assistance benefits for one or more months. Local offices shall take immediate action in accordance with the following procedures: A. Reduction of Benefits If the State office instructs the local offices to reduce monthly Food Assistance allotments, the State shall notify the local offices of the date the reduction is to take effect. If an allotment reduction is necessary, allotments shall be reduced for each household size by the same percentage. If a benefit reduction is necessary, all households shall be guaranteed a minimum allotment allowed for one- and two-person households, unless the reduction is ninety percent (90%) or more. Revised issuance tables reflecting the percentage of reduction shall be provided to all local offices. B. Suspension and Cancellation If the State Office instructs the county local offices to suspend or cancel Food Assistance Program benefits, the county local offices shall be informed of			

		the date that the suspension or cancellation shall take effect. Upon receipt of this date, the counties shall take immediate action to affect the suspension or cancellation. This action shall include notification of certification and issuance personnel, as well as eligible households. In the event that cancellation or suspension of benefits is necessary, the provision for the minimum benefit level shall be disregarded and all households shall have their benefits suspended or cancelled. If allotments are cancelled or suspended, local offices shall record the monthly allotment the household was entitled to receive prior to cancellation or suspension. **4.904.41 Affected Allotments** Whenever suspension or cancellation of allotments is ordered for a particular month, it shall affect all households. If a reduction is ordered, reduced benefits shall be calculated for all households for the designated month. However, all one- or two-person households shall be guaranteed a minimum allotment, as outlined in Section 4.207.3, unless the reduction is ninety percent (90%) or more. Allotments or portions of allotments representing restored or retroactive			

		benefits for a prior unaffected month would not be reduced, suspended, or cancelled, even though they are issued during a month in which cancellation, suspension, or reduction is in effect. **4.904.42 Notification to Households** Reduction, cancellation, or suspension shall be considered a mass change and shall not require advance notice of adverse action; however, the household shall be notified by announcements through the news media or a general notice may be handed out or mailed to affected participant households. **4.904.43 Restoration of Cancelled or Reduced Benefits** Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not entitled to the restoration of the lost benefits at a later date unless surplus funds are remaining after the reduction or cancellation. These surplus funds may be restored to affected households if a directive is issued by the Secretary of Agriculture. In the event of the issuance of a directive to issue restored benefits, the local office must work promptly to issue them. In any event, the local office shall have issuance services to serve households receiving restored or retroactive benefits for a prior, unaffected month.			

		4.904.44 Effects of Reduction, Suspension, and Cancellation on the Certification of Eligible Households In the event that cancellation, suspension, or reduction is ordered by the State, the following shall apply: A. Determinations of eligibility of applicant households shall not be affected. B. Local offices shall continue to accept and process applications in accordance with standard certification procedures. C. If a reduction of program benefits is in effect, and an applicant is found to be eligible, the amount of benefits will be determined by using the revised issuance tables, and shall be recorded in accordance with provisions in Section 4.904.4. If reduction or suspension of program benefits is in effect, and a household is found to be eligible for expedited service application processing, the application will be processed in accordance with procedures in Section 4.205.1. If a cancellation of program benefits is in effect, households shall receive expedited service; however, the deadlines for completing the processing shall be the end of the month of application or five (5) calendar days, whichever date is later. E. If an applicant household is found to be eligible for benefits while a suspension or cancellation is in effect, no benefits shall be issued to the applicant household. However allotment levels shall be			

		calculated and recorded accordance with Section 4.904.4. F. Reduction, suspension or cancellation of allotments shall have no effect on certification periods assigned to households prior to the reduction, suspension, or cancellation of the program. G. Participating households whose certification periods expire during a month in which allotments have been reduced, suspended, or cancelled shall be recertified in accordance with normal procedures. H. Households found eligible to participate during a month in which allotments have been reduced, suspended, or cancelled shall have certification periods assigned in accordance with Section 4.208.1. **4.904.45 Fair Hearings When Program Reductions, Suspensions, or Cancellations Occur** Any household that had its allotment reduced, suspended, or cancelled as a result of implementation of the procedures for reduction, suspension, or cancellation may request a fair hearing if it disagrees with the action; however, the household does not have a right to continuation of benefits. A household may receive retroactive benefits if it is determined that its benefits were reduced by more than the amount the local offices were directed to reduce benefits.			

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		The Colorado Department of Human Services, Office of Appeals, may deny fair hearings to those households that are disputing the fact that a statewide reduction, cancellation, or suspension was ordered. The Office of Appeals is not required to hold a fair hearing unless the request is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied.			
4.905	Program name update; and incorrect numbering	**4.905 OUTREACH** Outreach activities performed by state and local personnel shall be ineligible for federal matching funds. Although activities to recruit participation in the Food Assistance Program are prohibited, all local offices shall perform program informational activities. Program informational activities are those activities that convey information about the Food Assistance Program, including household rights and responsibilities to applicant and participant households through means such as publications, telephone hotlines and face-to-face contacts. All program informational material shall be available in languages other than English and shall include a statement that the program is available to all without regard to race, color, sex, age, mental or physical disability, religious creed, national origin, or political belief.	**4.904 OUTREACH** Outreach activities performed by state and local personnel shall be ineligible for federal matching funds. Although activities to recruit participation in SNAP are prohibited, all local offices shall perform program informational activities. Program informational activities are those activities that convey information about SNAP, including household rights and responsibilities to applicant and participant households through means such as publications, telephone hotlines and face-to-face contacts. All program informational material shall be available in languages other than English and shall include a statement that the program is available to all without regard to race, color, sex, age, mental or physical disability, religious creed, national origin, or political belief.	Updating Food Assistance to SNAP; and updating numbering due to deletion of previous section	
4.906	Program name update; incorrect numbering; and	**4.906 D-SNAP**	**4.906 D-SNAP**	Updating Food Assistance to SNAP; standardizing	

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	non-standardized language	D-SNAP, or the Disaster Supplemental Nutritional Assistance Program, may be implemented as a result of a “major disaster” or “temporary emergency” to provide temporary assistance to households affected by these misfortunes. A Presidential disaster declaration for individual assistance must be declared for the affected areas to be eligible for D-SNAP. A “major disaster” is any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe that is determined to be a major disaster by the President pursuant to the Disaster Relief Act of 1974, Section 302(a). A similar definition is provided under State law in 24-33.5-703, C.R.S. A “temporary emergency” means an emergency caused by any disaster, resulting from either natural or human causes, other than a major disaster as declared by the President under the Disaster Relief Act of 1974, Section 302(a), which is determined by FNS to have disrupted commercial channels of food distribution. In such Presidentially-declared disasters, emergency Food Assistance allotments can be authorized by the USDA, FNS. In Colorado, the Governor can accept such federal assistance on behalf of the state if he/she determines and declares a major disaster. When authorized by the Governor and FNS, the Colorado Department of Human Services may	D-SNAP, or the Disaster Supplemental Nutritional Assistance Program, may be implemented as a result of a “major disaster” or “temporary emergency” to provide temporary assistance to households affected by these misfortunes. A Presidential disaster declaration for individual assistance must be declared for the affected areas to be eligible for D-SNAP. A “major disaster” is any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe that is determined to be a major disaster by the President pursuant to the Disaster Relief Act of 1974, Section 302(a). A similar definition is provided under State law in 24-33.5-703, C.R.S. A “temporary emergency” means an emergency caused by any disaster, resulting from either natural or human causes, other than a major disaster as declared by the President under the Disaster Relief Act of 1974, Section 302(a), which is determined by FNS to have disrupted commercial channels of food distribution. In such Presidentially declared disasters, emergency SNAP allotments can be authorized by the USDA, FNS. In Colorado, the Governor can accept such federal assistance on behalf of the state if he/she determines and declares a major disaster. When authorized by the Governor and FNS, the state department may authorize those counties, within which all or part of the disaster area lies, to distribute emergency SNAP allotments in those areas. The state shall provide special certification material and forms designed for certification of disaster victims. Certification shall be done for households that are victims of a disaster that disrupts commercial channels of food distribution; if such households need temporary SNAP and if commercial channels of food distribution have again become available to meet the temporary food needs of those households.	language; and renumbering due to deletion of previous section	

		authorize those counties, within which all or part of the disaster area lies, to distribute emergency Food Assistance allotments in those areas. The state shall provide special certification material and forms designed for certification of disaster victims. Certification shall be done for households that are victims of a disaster that disrupts commercial channels of food distribution; if such households are in need of temporary Food Assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of those households.			

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STAKEHOLDER COMMENT SUMMARY

Development

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

SNAP Regulation Workgroup including stakeholders from local offices and advocacy partners including Hunger Free Colorado and Colorado Center on Law and Policy.

This Rule-Making Package

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

Other State Agencies

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

☐ Yes ☐ No

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

Sub-PAC

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

☐ Yes ☐ No

Name of Sub-PAC			
Date presented			
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

☐ Yes ☐ No

Date presented			
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

☐ Yes ☐ No

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

DEPARTMENT OF HUMAN SERVICES

SUPPLEMENTAL NUTRITION ~~Food~~ Assistance Program (SNAP)

RULE MANUAL VOLUME 4,~~B, FOOD ASSISTANCE~~ SNAP

10 CCR 2506-1

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

~~HISTORICAL RECORD OF STATEMENT OF BASIS AND PURPOSE, FISCAL IMPACT/REGULATORY ANALYSIS AND SPECIFIC STATUTORY AUTHORITY OF REVISIONS MADE TO STAFF MANUAL VOLUME 4B FOOD STAMPS~~

~~Revisions to sections B-4223.1, B-4223.4, B-4223.5, B-4230 and B-4515.1 were adopted on an emergency and final basis at the 11/1/85 State Board meeting, with an effective date of 11/1/85 (Document 9). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4216.4, B-4216.41, B-4220.6, B-4223.5, B-4240, and B-4242.12 were finally adopted at the 11/1/85 State Board meeting, with an effective date of 1/1/86 (Document 8). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4225.4 and B-4225.5 were adopted on an emergency basis at the 12/6/85 meeting, with an effective date of 12/6/85 (Document 6). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4213, B-4213.2, and B-4213.32 were adopted at the 12/6/85 meeting, with an effective date of 2/1/86 (Document 5). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4217, B-4217.1, B-4217.2, B-4221.11, B-4221.21, B-4221.24, B-4221.25, B-4222.6, B-4222.7, and B-4310 were finally adopted at the 1/3/86 meeting, with an effective date of 3/1/86 (Document 6). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4225.4 and B-4225.5 were extended as permanent rules at the 1/3/86 meeting, with an effective date of 3/6/86 (Document 5). Statement of basis and purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to Sections B-4014, B-4014.66, B-4220.4, were finally adopted following publication at the 2/7/86 meeting, with an effective date of 4/1/86 (Document 1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to Sections B-4311.5 - Cont., B-4311.51 - Concl. B-4317, B-4317.1, B-4317.6 - Concl., were emergency adopted at the 4/11/86 meeting, with an effective date of 4/11/86 (Document 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4014 - B-4014.3, B-4014.66 - B-4015.5, B-4220.4 - B-4220.6, were finally adopted following publication at the 5/2/86 meeting, with an effective date of 7/1/86 (Document 8). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4216.4 - Cont. - B-4216.4 - Cont., were emergency adopted at the 5/2/86 meeting, with an effective date of 7/1/86 (Document 12). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4222.7 - B-4223.2, B-4223.31 - B-4223.5, B-4224 - B-4224.3, B-4225.9 - B-4230.1, B-4242 - B-4242.2, B-4311.51 - Concl., were emergency adopted at the 5/2/86 meeting, with an effective date of 7/1/86 (Document 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4713.1 - B-4714-Concl., B-4742.11 - B-4742.15-Concl., were finally adopted following publication at the 5/2/86 meeting, with an effective date of 7/1/86 (Document 6). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4225.4, B-4242, B-4242.1, B-4242.12, B-4242.13, B-4242.2, B-4242.21, B-4242.3, B-4242.31, B-4242.32, B-4430.1, B-4430.2, B-4515.1, were finally adopted following publication at the 6/6/86 meeting, with an effective date of 8/1/86 (Documents 4, 6, 10, 11). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4110; B-4220.11 - B-4220.12; were emergency adopted at the 7/11/86 meeting, with an effective date of 7/11/86 (Document 2). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4011.1, B-4011.6, B-4012, B-4015.2, B-4110.1, B-4221, B-4225, B-4243.3, B-4311.5, B-4317, and B-4321, were finally adopted following publication at the 9/5/86 meeting, with an effective date of 11/1/86 (Document 11). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4110, B-4211, B-4217, B-4220, B-4223.51, B-4223.52, B-4240.1, and B-4311.5, were finally emergency adopted at the 9/5/86 meeting, with an effective date of 9/5/86 (Document 15). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4011.1, B-4011.2, B-4011.3, B-4209, B-4211.1, B-4213, B-4220, B-4223, B-4224, B-4230, and B-4242.2 were emergency adopted at the 10/3/86 meeting, with an effective date of 10/3/86 (Documents 12 and 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4011.1, B-4011.22, B-4011.3, B-4209, B-4211.1, B-4213, B-4220, B-4220.1, B-4223.31, B-4223.1, B-4223.4, B-4223.5, B-4224, B-4230, and B-4242.2, were finally adopted emergency at the 11/7/86 meeting, with an effective date of 10/3/86 (Documents 9, 10). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions, additions, and deletions to sections B-4217, B-4221.24, B-4222.6, B-4242.2, B-4242.3, B-4430.1, B-4430.22, B-4430.25, B-4714, and B-4742.11, were finally adopted at the 12/5/86 State Board meeting, with an effective date of 2/1/87 (Document 4). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4213 and B-4223.4 were emergency adopted at the 1/21/87 State Board meeting, with an effective date of 1/21/87 (Document 2). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4014.2, B-4014.3, B-4220.6, B-4220.7, B-4222.6, B-4242.2, B-4311.4, B-4317.3, and B-4515.1 were finally adopted following publication at the 2/6/87 State Board meeting, with an effective date of 4/1/87 (Documents 10, 11). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4213 and B-4223.4 were finally adopted emergency at the 2/6/87 State Board meeting, with an effective date of 1/21/87 (Document 12). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4212, B-4216.2 and B-4222.6 were adopted emergency at the 3/6/87 State Board meeting, with an effective date of 3/6/87 (Documents 6 and 16). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4212, B-4216.2 and B-4222.6 were finally adopted emergency at the 4/3/87 State Board meeting, with an effective date of 3/6/87 (Document 14). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4500, B-4511 and applicable forms were finally adopted following publication at the 4/3/87 State Board meeting, with an effective date of 6/1/87 (Document 12). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to section B-4316 were emergency adopted at the 4/3/87 State Board meeting, with an effective date of 4/3/87 (Document 15). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4216 and B-4316 were finally adopted emergency at the 5/1/87 State Board meeting, with an effective date of 3/6/87 (Document 15) and 4/3/87 (Document 14). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4215 through B-4216 were finally adopted following publication at the 6/5/87 State Board meeting, with an effective date of 8/1/87 (Document 1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4110, B-4220, and B-4223.5 were emergency adopted at the 6/5/87 State Board meeting, with an effective date of 6/5/87 (Documents 5 and 7). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4110, B-4220, and B-4223.5 were finally adopted emergency at the 7/10/87 State Board meeting, with an effective date of 6/5/87 (Documents 14 and 16). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4010, B-4011, B-4013, B-4014, B-4214, B-4215 through B-4216, B-4220 through B-4221, B-4430, and B-4821 through B-4832 were finally adopted following publication at the 7/10/87 State Board meeting, with an effective date of 9/1/87 (Documents 12 and 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to section B-4212 were adopted emergency at the 7/10/87 State Board meeting, with an effective date of 7/10/87 (Document 17). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to section B-4212 were finally adopted emergency at the 8/7/87 State Board meeting, with an effective date of 7/10/87 (Document 17). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to section B-4010, B-4011, B-4213, B-4220, B-4221, B-4222, and B-4225 were finally adopted following publication at the 9/11/87 State Board meeting, with an effective date of 11/1/87 (Document 8 and 17). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to section B-4212, B-4222, B-4223, and B-4225 were emergency adopted at the 9/11/87 State Board meeting, with an effective date of 9/11/87 (Documents 12 and 27). Statement of Basis and~~

~~Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4223 and B-4230 were finally adopted emergency at the 10/2/87 State Board meeting, with an effective date of 10/1/87 (Document 3). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4111 through B-4121, B-4216 through B-4217, B-4224, B-4400 through B-4410, B-4514 through B-4515, and B-4723 through B-4740 were finally adopted following publication at the 10/2/87 State Board meeting, with an effective date of 12/1/87 (Documents 1 and 2). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110.2 were adopted emergency at the 10/2/87 State Board meeting, with an effective date of 10/1/87 (Document 4). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110.2 were finally adopted emergency at the 11/6/87 State Board meeting, with an effective date of 10/1/87 (Document 13). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4212 were emergency and final adopted at the 11/6/87 State Board meeting, with an effective date of 11/6/87 (Document 15). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4013, B-4111 through B-4121, B-4224, B-4318 through B-4319, B-4321 through B-4322, B-4410 through B-4425, B-4430, and B-4524 were finally adopted following publication at the 11/6/87 State Board meeting, with an effective date of 1/1/88 (Document 10). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4011 and B-4220 were emergency adopted at the 11/6/87 State Board meeting, with an effective date of 11/6/87 (Documents 16 and 23). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4011 and B-4220 were finally adopted emergency at the 12/4/87 State Board meeting, with an effective date of 11/6/87 (Documents 8 and 9). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.~~

~~Revisions to sections B-4212, B-4221, B-4222 and B-4223 were finally adopted following publication at the 12/4/87 State Board meeting, with an effective date of 2/1/88 (Document 6). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference~~

into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections B-4011, B-4014, B-4200, B-4220 - B-4221, B-4223, B-4242, B-4425, B-4427 - B-4428, B-4430, and B-4540 were finally adopted following publication at the 1/8/88 State Board meeting, with an effective date of 3/1/88 (Documents 6 and 7). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections B-4222.7 through B-4223.2 were adopted emergency at the 2/5/88 State Board meeting (CSPR# 87-12-21-1), with an effective date of 2/5/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections B-4222.7 through B-4223.2 were finally adopted emergency at the 3/4/88 State Board meeting (CSPR# 87-12-21-1), with an effective date of 2/5/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to section B-4222.7 through B-4223 were adopted emergency at the 3/4/88 State Board meeting (CSPR# 88-1-20-1), with an effective date of 3/4/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections B-4222.7 through B-4223 were final adoption of emergency at the 4/1/88 State Board meeting, with an effective date of 3/4/88 (CSPR# 88-1-20-1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections B-4014, B-4015, B-4215, B-4216, B-4220, B-4221, B-4222, B-4225 and B-4319 were finally adopted following publication at the 5/6/88 State Board meeting, with an effective date of 7/1/88 (CSPR# 88-2-12-1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Revisions to sections B-4713 - B-4714 and B-4742 were finally adopted following publication at the 6/3/88 State Board meeting, with an effective date of 8/1/88 (CSPR# 88-3-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Revisions to section B-4316 were adopted emergency at the 6/3/88 State Board meeting, with an effective date of 6/3/88 (CSPR# 88-4-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Revisions to section B-4316 were final adoption of emergency at the 7/8/88 State Board meeting, with an effective date of 6/3/88 (CSPR# 88-4-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

~~Revisions to section B-4011 were finally adopted following publication at the 7/8/88 State Board meeting, with an effective date of 9/1/88 (CSPR# 88-4-20-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4212, B-4215, and B-4222 were final adoption following publication at the 8/5/88 State Board meeting, with an effective date of 10/1/88 (CSPR#'s 88-1-15-2, 88-3-8-1 and 88-5-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services~~

~~Revisions to sections B-4100 - B-4110, B-4220, B-4222, B-4223, and B-4225 - B-4230 were emergency adopted at the 9/9/88 State Board meeting, with an effective date of 9/1/88 (CSPR# 88-8-12-2) and effective date of 10/1/88 (CSPR# 88-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 - B-4110, B-4220, B-4222, B-4223, and B-4225 - B-4230 were final adoption of emergency at the 10/7/88 State Board meeting, with an effective date of 9/1/88 (CSPR# 88-8-12-2) and effective date of 10/1/88 (CSPR# 88-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections Table of Contents, B-4215, B-4216 and Form. FS-4J were final adoption following publication at the 11/4/88 State Board meeting, with an effective date of 1/1/89 (CSPR#'s 88-6-28-2 and 88-8-24-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4013, B-4215, and B-4216 were emergency adopted at the 12/2/88 State Board meeting, with an effective date of 12/2/88 (CSPR# 88-9-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4013, B-4215, and B-4216 were final adoption of emergency at the 1/6/89 State Board meeting, with an effective date of 12/2/88 (CSPR# 88-9-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4014 and B-4220 - B-4221 were adopted emergency at the 1/6/89 State Board meeting, with an effective date of 1/6/89 (CSPR# 88-11-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4014 and B-4220 - B-4221 were final adoption of emergency at the 2/3/89 State Board meeting, with an effective date of 1/6/89 (CSPR# 88-11-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4110 - B-4121 and B-4221 were adopted emergency at the 2/3/89 State Board meeting, with an effective date of 2/1/89 (CSPR# 88-12-9-1). Statement of Basis and Purpose and~~

~~specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4110 - B-4121 and B-4221 were final adoption of emergency at the 3/3/89 State Board meeting, with an effective date of 2/1/89 (CSPR# 88-12-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010, B-4011, B-4111 - B-4121, B-4212, B-4222, B-4223, B-4318 - B-4319, and forms following section B-4515 were adopted emergency at the 3/3/89 State Board meeting, with an effective date of 3/3/89 (CSPR#'s 88-12-5-1 and 89-1-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010, B-4011, B-4111 - B-4121, B-4212, B-4222, B-4223, B-4318 - B-4319, and forms following section B-4515 were final adoption of emergency at the 4/7/89 State Board meeting, with an effective date of 3/3/89 (CSPR#'s 88-12-5-1 and 89-1-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011, B-4230, and B-4410 were adopted emergency at the 4/7/89 State Board meeting, with an effective date of 5/1/89 (CSPR# 89-3-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011, B-4230, and B-4410 were final adoption of emergency at the 5/5/89 State Board meeting, with an effective date of 5/1/89 (CSPR# 89-3-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4642 through B-4644, B-4713 through B-4716, and B-4812 through B-4820 were adopted emergency at the 6/2/89 State Board meeting, with an effective date of 6/2/89 (CSPR# 89-5-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4642 through B-4644, B-4713 through B-4716, and B-4812 through B-4820 were final adoption of emergency at the 7/7/89 State Board meeting, with an effective date of 6/2/89 (CSPR# 89-5-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4400 through B-4428 and B-4430 were adopted emergency at the 7/7/89 State Board meeting, with an effective date of 7/1/89 (CSPR# 89-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4400 through B-4428 and B-4430 were adopted emergency and final at the 8/4/89 State Board meeting, with an effective date of 7/1/89 (CSPR# 89-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule.~~

~~These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010, B-4011, B-4100 - B-4110, B-4222 - B-4223, B-4225, B-4242 and B-4518 - B-4519 were adopted emergency at the 8/4/89 State Board meeting, with an effective date of 8/4/89 (CSPR#'s 89-7-14-1 and 89-7-19-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010, B-4011, B-4100 - B-4110, B-4222 - B-4223, B-4225, B-4242 and B-4518 - B-4519 were final adoption of emergency at the 9/8/89 State Board meeting, with an effective date of 8/4/89 (CSPR#'s 89-7-14-1 and 89-7-19-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 - B-4110, B-4220, B-4222 - B-4223, and B-4225 - B-4230 were adopted emergency at the 9/8/89 State Board meeting, with an effective date of 10/1/89 (CSPR# 89-8-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 - B-4110, B-4220, B-4222 - B-4223, and B-4225 - B-4230 were final adoption of emergency at the 10/6/89 State Board meeting, with an effective date of 10/1/89 (CSPR# 89-8-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4740 - B-4742 were adopted emergency at the 10/6/89 State Board meeting, with an effective date of 10/6/89 (CSPR# 89-8-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4330 - B-4331 and B-4740 - B-4742 were adopted emergency and final at the 11/3/89 State Board meeting, with effective dates of 10/6/89 and 11/3/89 (CSPR# 89-8-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011, B-4012, B-4014, B-4015, B-4218 - B-4220 - B-4221, B-4222 - B-4223, B-4230 - B-4242, B-4243 - B-4311, B-4330, B-4331, B-4410, B-4430, and B-4600 - B-4834 were final adoption following publication at the 12/1/89 State Board meeting, with effective dates of 2/1/90 (CSPR#'s 89-7-20-1, 89-9-8-1, and 89-9-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4110 through B-4111, B-4213, and B-4311 were adopted emergency at the 1/5/90 State Board meeting, with effective dates of 1/5/90 (CSPR#'s 89-11-7-1 and 89-12-5-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4110 through B-4111, B-4213, and B-4311 were final adoption of emergency at the 2/2/90 State Board meeting, with effective dates of 1/5/90 (CSPR#'s 89-11-7-1 and 89-12-5-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by~~

~~reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010 - B-4011, B-4221 - B-4223, B-4225, B-4230 - B-4240, B-4242 - B-4311, B-4317, B-4430, and B-4625 - B-4651 were final adoption following publication at the 7/6/90 State Board meeting, with an effective date of 9/1/90 (CSPR# 90-4-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4222 and B-4225 were final adoption following publication at the 8/3/90 State Board meeting, with an effective date of 10/1/90 (CSPR# 90-5-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 - B-4110, B-4220, B-4222 - B-4223, and B-4225 - B-4230 were adopted emergency at the 10/5/90 State Board meeting, with an effective date of 10/5/90 (CSPR# 90-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110, B-4220, B-4222 through B-4223, and B-4225 through B-4230 were final adoption of emergency at the 11/2/90 State Board meeting, with an effective date of 10/5/90 (CSPR# 90-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4013, B-4111 through B-4121, B-4215, and B-4318 through B-4319 were adopted emergency at the 12/7/90 State Board meeting, with an effective date of 12/7/90 (CSPR# 90-10-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4013, B-4111 through B-4121, B-4215, and B-4318 through B-4319 were final adoption of emergency at the 1/4/91 State Board meeting, with an effective date of 12/7/90 (CSPR# 90-10-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4430 were adopted emergency at the 1/4/91 State Board meeting, with an effective date of 1/4/91 (CSPR# 90-12-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4430 were final adoption of emergency at the 2/1/91 State Board meeting, with an effective date of 1/4/91 (CSPR# 90-12-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4213, B-4222, B-4223, B-4225, B-4242, B-4425, and B-4712 through B-4760 were final adoption following publication at the 2/1/91 State Board meeting, with an effective date of 4/1/91 (CSPR# 90-11-6-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the~~

~~public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4223.61 were adopted emergency at the 2/1/91 State Board meeting, with an effective date of 3/1/91 (CSPR# 90-12-28-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4223.61 were final adoption of emergency at the 3/8/91 State Board meeting, with an effective date of 3/1/91 (CSPR# 90-12-28-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4222, B-4225, and B-4430 were adopted emergency at the 5/3/91 State Board meeting, with an effective date of 5/3/91 (CSPR# 91-3-26-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4222, B-4225, and B-4430 were final adoption of emergency at the 6/7/91 State Board meeting, with an effective date of 5/3/91 (CSPR# 91-3-26-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4430 were final adoption following publication at the 7/12/91 State Board meeting, with an effective date of 9/1/91 (CSPR# 91-4-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4222 were adopted emergency at the 7/12/91 State Board meeting, with an effective date of 7/12/91 (CSPR# 91-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4222 were final adoption of emergency at the 8/2/91 State Board meeting, with an effective date of 7/12/91 (CSPR# 91-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4430 were final adoption following publication at the 8/2/91 State Board meeting, with an effective date of 10/1/91 (CSPR# 91-6-5-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011, B-4221, B-4223, and B-4318 through B-4319 were adopted emergency at the 8/2/91 State Board meeting, with an effective date of 8/2/91 (CSPR# 91-6-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011, B-4221, B-4223, and B-4318 through B-4319 were final adoption of emergency at the 9/6/91 State Board meeting, with an effective date of 8/2/91 (CSPR# 91-6-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110, B-4220, B-4222, B-4223, and B-4225 through B-4230 were adopted emergency at the 9/6/91 State Board meeting, with an effective date of 10/1/91 (CSPR# 91-8-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110, B-4220, B-4222, B-4223, and B-4225 through B-4230 were final adoption of emergency at the 10/4/91 State Board meeting, with an effective date of 10/1/91 (CSPR# 91-8-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4215 were final adoption following publication at the 10/4/91 State Board meeting, with an effective date of 12/1/91 (CSPR# 91-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4240 were adopted emergency at the 11/1/91 State Board meeting, with an effective date of 11/1/91 (CSPR# 91-8-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4240 were final adoption of emergency at the 12/6/91 State Board meeting, with an effective date of 11/1/91 (CSPR# 91-8-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4420 were final adoption following publication at the 2/7/92 State Board meeting, with an effective date of 4/1/92 (CSPR# 91-11-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011, B-4212, B-4213 - B-4214, B-4221, B-4222, B-4223, B-4225 - B-4230 and B-4318 were adopted emergency at the 2/7/92 State Board meeting, with an effective date of 2/1/92 (CSPR# 91-12-17-1); to sections B-4215 and B-4222, with an effective date of 2/7/92 (CSPR# 91-12-10-1); and, to section B-4223, with an effective date of 3/1/92 (CSPR# 91-12-30-3). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4215 and B-4222 were final adoption of emergency at the 3/6/92 State Board meeting, with an effective date of 2/7/92 (CSPR# 91-12-10-1); and, to section B-4223, with an effective date of 3/1/92 (CSPR# 91-12-30-3). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4430 were final adoption following publication at the 3/6/92 State Board meeting, with an effective date of 5/1/92 (CSPR# 91-12-16-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4111 through B-4121, B-4216 through B-4217, B-4222, B-4225, and B-4430 were adopted emergency at the 3/6/92 State Board meeting, with an effective date of 3/6/92 (CSPR# 92-1-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011, B-4212, B-4214, B-4221, B-4222, B-4223, B-4230 and B-4318 were adopted emergency and final at the 4/3/92 State Board meeting, with an effective date of 2/1/92 and 4/3/92 (CSPR# 91-12-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4111 through B-4121, B-4216 through B-4217, B-4222, B-4225, and B-4430 were final adoption of emergency at the 4/3/92 State Board meeting, with an effective date of 3/6/92 (CSPR# 92-1-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4013, B-4222 through B-4223, and B-4225 were adopted emergency at the 6/5/92 State Board meeting, with an effective date of 6/5/92 (CSPR#'s 92-4-9-1 and 92-4-29-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4013, were final adoption of emergency at the 7/10/92 State Board meeting, with an effective date of 6/5/92 (CSPR# 92-4-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4430 were final adoption following publication at the 8/7/92 State Board meeting, with an effective date of 10/1/92 (CSPR# 92-5-6-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4215 and B-4222 were final adoption following publication at the 9/4/92 State Board meeting, with an effective date of 11/1/92 (CSPR# 92-6-18-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110, B-4220, and B-4222 through B-4223 were adopted emergency at the 10/2/92 State Board meeting, with an effective date of 10/1/92 (CSPR# 92-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110, B-4220, and B-4222 through B-4223 were final adoption of emergency at the 11/6/92 State Board meeting, with an effective date of 10/1/92 (CSPR# 92-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by~~

~~reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010, B-4213, B-4215, B-4222, and B-4223 were final adoption following publication at the 3/5/93 State Board meeting, with an effective date of 5/1/93 (CSPR# 92-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4240.1 were adopted emergency at the 4/2/93 State Board meeting, with an effective date of 4/2/93 (CSPR# 93-2-23-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4240.1 were final adoption of emergency at the 5/7/93 State Board meeting, with an effective date of 4/2/93 (CSPR# 93-2-23-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4215 through B-4216 were final adoption following publication at the 5/7/93 State Board meeting, with an effective date of 7/1/93 (CSPR# 93-2-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011 and B-4220 were adopted emergency at the 6/4/93 State Board meeting, with an effective date of 6/4/93 (CSPR# 93-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011 and B-4220 were final adoption of emergency at the 7/9/93 State Board meeting, with an effective date of 6/4/93 (CSPR# 93-4-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4011 were final adoption following publication at the 7/9/93 State Board meeting, with an effective date of 9/1/93 (CSPR# 93-3-25-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4222 were adopted emergency at the 7/9/93 State Board meeting, with an effective date of 7/1/93 (CSPR# 93-6-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4222 were final adoption of emergency at the 8/6/93 State Board meeting, with an effective date of 7/1/93 (CSPR# 93-6-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010, B-4013, B-4213, B-4215, B-4216, B-4221, B-4223, B-4230 - B-4240, B-4242, B-4318 - B-4319, B-4410, B-4430, B-4612 - B-4651, B-4660 - B-4662, and B-4712 - B-4760 were final adoption following publication at the 8/6/93 State Board meeting, with an effective date of 10/1/93 (CSPR# 93-5-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011 and B-4632 were adopted emergency at the 9/10/93 State Board meeting, with an effective date of 9/10/93 (CSPR# 93-7-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4011 and B-4632 were final adoption of emergency at the 10/1/93 State Board meeting, with an effective date of 9/10/93 (CSPR# 93-7-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4218 through B-4220 were final adoption following publication at the 10/1/93 State Board meeting, with an effective date of 12/1/93 (CSPR# 93-8-18-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4400 through B-4410 and B-4425 were adopted emergency and final at the 10/1/93 State Board meeting, with an effective date of 10/1/93 (CSPR# 93-6-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110, B-4220, B-4222 through B-4223, and B-4225 through B-4230 were adopted emergency at the 10/1/93 State Board meeting, with an effective date of 10/1/93 (CSPR# 93-8-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4100 through B-4110, B-4220, B-4222 through B-4223, and B-4225 through B-4230 were adopted emergency and final at the 11/5/93 State Board meeting, with effectives date of 10/1/93 and 11/5/93 (CSPR# 93-8-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to section B-4430 were final adoption following publication at the 2/4/94 State Board meeting, with an effective date of 4/1/94 (CSPR# 93-11-16-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4222, B-4224, B-4672 through B-4676, B-4694, and B-4704 through B-4760 were adopted emergency at the 2/4/94 State Board meeting, with an effective date of 4/1/94 (CSPR# 93-10-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4222, B-4224, B-4672 through B-4676, B-4694, and B-4704 through B-4760 were adopted emergency and final at the 3/4/94 State Board meeting, with an effective date of 4/1/94 (CSPR#~~

~~93-10-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4000 - B-4010, B-4011, B-4013, B-4216 - B-4218, B-4220, B-4221, B-4222, B-4230 - B-4240, and B-4242 were final adoption following publication at the 3/4/94 State Board meeting, with an effective date of 5/1/94 (CSPR# 93-10-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4010 and B-4223 were final adoption following publication at the 5/6/94 State Board meeting, with an effective date of 7/1/94 (CSPR#'s 94-1-20-1 and 94-3-3-3). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Revisions to sections B-4215, B-4222 - B-4223, B-4225, and B-4430 were final adoption following publication at the 6/3/94 State Board meeting, with an effective date of 8/1/94 (CSPR# 94-2-23-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.~~

~~Deletion of forms, including sections B-4500 and B-4900, were final adoption following publication at the 7/8/94 State Board meeting, with an effective date of 9/1/94 (CSPR# 94-3-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4011, B-4012, B-4100 - B-4110, B-4213 - B-4214, B-4215, B-4222, B-4223, B-4225, B-4317, and B-4427 were adopted emergency at the 8/5/94 State Board meeting, with an effective date of 9/1/94 (CSPR# 94-6-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4011, B-4012, B-4100 - B-4110, B-4213 - B-4214, B-4215, B-4222, B-4223, B-4225, B-4317, and B-4427 were adopted emergency and final at the 9/9/94 State Board meeting, with an effective date of 9/1/94 (CSPR# 94-6-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4110, B-4220, B-4222, and B-4225 through B-4230 were adopted emergency at the 9/9/94 State Board meeting, with an effective date of 10/1/94 (CSPR# 94-7-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4110, B-4220, B-4222, and B-4225 through B-4230 were final adoption of emergency at the 10/7/94 State Board meeting, with an effective date of 10/1/94 (CSPR# 94-7-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4010, B-4011, B-4222, B-4225, B-4318 - B-4319, B-4425, B-4430, and B-4695 - B-4711 were final adoption following publication at the 11/4/94 State Board meeting, with an effective date of 1/1/95 (CSPR#'s 94-7-21-1, and 94-8-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are~~

~~available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4010 - B-4214, B-4216 - B-4220, B-4222, B-4223 - B-4225, B-4230 - B-4240, B-4242, B-4314 - B-4316, B-4318 - B-4410, B-4425 - B-4428, and B-4430 - B-4770 were final adoption following publication at the 3/3/95 State Board meeting, with an effective date of 5/1/95 (CSPR# 94-12-1-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to section B-4223 were final adoption following publication at the 5/5/95 State Board meeting, with an effective date of 7/1/95 (CSPR# 95-2-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to section B-4100 - B-4110, B-4220, and B-4223 - B-4230 were adopted emergency at the 10/6/95 State Board meeting, with an effective date of 10/1/95 (CSPR# 95-8-31-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4100 - B-4110, B-4220, and B-4223 - B-4230 were adopted emergency and final at the 11/3/95 State Board meeting, with effective dates of 10/1/95 and 12/1/95 (CSPR# 95-8-31-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4215 through B-4220, B-4240 through B-4242, B-4321 through B-4322, B-4410, B-4425, B-4633 through B-4640, B-4660 through B-4662, and B-4695 through B-4698 were final adoption following publication at the 1/5/96 State Board meeting, with an effective date of 3/1/96 (CSPR# 95-10-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4425 through B-4427 were final adoption following publication at the 2/2/96 State Board meeting, with an effective date of 4/1/96 (CSPR# 95-11-29-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4222 and B-4225 were final adoption following publication at the 7/12/96 State Board meeting, with an effective date of 9/1/96 (CSPR# 96-4-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4011, B-4100 through B-4110, B-4214, B-4220, B-4222 through B-4230, and B-4317 through B-4318 were adopted emergency at the 10/4/96 State Board meeting, with an effective date of 10/1/96 (CSPR# 96-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4011, B-4100 through B-4110, B-4214, B-4220, B-4222 through B-4230, and B-4317 through B-4318 were final adoption of emergency at the 11/8/96 State Board meeting, with an effective date of 10/1/96 (CSPR# 96-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available~~

~~for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions/additions to sections B-4010, B-4430, B-4600 through B-4612, B-4625 through B-4651, and B-4800 were final adoption following publication at the 12/6/96 State Board meeting, with an effective date of 2/1/97 (CSPR# 96-9-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to section B-4215 were adopted emergency at the 12/6/96 State Board meeting, with an effective date of 12/6/96 (CSPR# 96-10-21-1) and sections B-4010, B-4012, B-4111 through B-4121, B-4212, B-4222 through B-4223, B-4321 through B-4322, B-4425, and B-4430 were adopted emergency at the 12/6/96 State Board meeting, with an effective date of 1/1/97 (CSPR#'s 96-10-7-1 and 96-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to section B-4215 were adopted emergency and final at the 1/3/97 State Board meeting, with an effective date of 12/6/96 (CSPR# 96-10-21-1) and sections B-4010, B-4012, B-4111 through B-4121, B-4212, B-4222 through B-4223, B-4321 through B-4322, B-4425, and B-4430 were adopted emergency and final at the 1/3/97 State Board meeting, with an effective date of 1/1/97 (CSPR#'s 96-10-7-1 and 96-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4010, B-4430, B-4600 to B-4612, B-4625 through B-4651, and B-4800 were re-promulgated as final adoption following publication at the 3/7/97 State Board meeting, with an effective date of 5/1/97 (CSPR# 96-9-11-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4011, B-4013, B-4215, B-4216, B-4223 through B-4225, and B-4430 were final adoption following publication at the 6/6/97 State Board meeting, with an effective date of 8/1/97 (CSPR# 97-4-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4400 through B-4410 were adopted emergency at the 6/20/97 State Board meeting, with an effective date of 7/1/97 (CSPR# 97-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4400 through B-4410 were adopted emergency and final at the 8/1/97 State Board meeting, with effective dates of 7/1/97 and 8/1/97 (CSPR# 97-5-16-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4010, B-4215, B-4222, B-4225, and B-4427 through B-4430 were final adoption following publication at the 10/3/97 State Board meeting, with an effective date of 12/1/97 (CSPR# 97-7-2-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4100 through B-4111, B-4220, and B-4225 through B-4230 were adopted emergency at the 10/3/97 State Board meeting, with an effective date of 10/1/97 (CSPR# 97-9-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by~~

~~reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4100 through B-4111, B-4220, and B-4225 through B-4230 were final adoption of emergency at the 11/7/97 State Board meeting, with an effective date of 10/1/97 (CSPR# 97-9-4-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4212 and B-4321 were adopted emergency at the 11/7/97 State Board meeting, with an effective date of 11/7/97 (CSPR# 97-9-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4212 and B-4321 were final adoption of emergency at the 12/5/97 State Board meeting, with an effective date of 11/7/97 (CSPR# 97-9-15-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4111 - B-4121, B-4212 - B-4213, B-4215, B-4222, B-4225, B-4321 through B-4322, and B-4430 were final adoption following publication at the 2/6/98 State Board meeting, with an effective date of 4/1/98 (CSPR# 97-11-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to section B-4430 were final adoption following publication at the 5/1/98 State Board meeting, with an effective date of 7/1/98 (CSPR# 98-1-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4100, B-4220, B-4223 and B-4230 were adopted emergency at the 10/2/98 State Board meeting, with an effective date of 10/1/98 (CSPR# 98-8-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to section B-4212 were adopted emergency at the 10/2/98 State Board meeting, with an effective date of 11/1/98 (CSPR# 98-8-24-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4100, B-4220, B-4223 and B-4230 were final adoption of emergency at the 11/6/98 State Board meeting, with an effective date of 10/1/98 (CSPR# 98-8-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to section B-4212 were final adoption of emergency at the 11/6/98 State Board meeting, with an effective date of 11/1/98 (CSPR# 98-8-24-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4011, B-4111, B-4212, B-4215 through B-4217, B-4220, B-4222 - B-4225, and B-4240 were final adoption following publication at the 11/6/98 State Board meeting, with an effective date of 1/1/99 (CSPR# 98-8-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4100, B-4220, and B-4230 were adopted emergency at the 9/3/99 State Board meeting, with an effective date of 10/1/99 (CSPR# 99-8-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4100, B-4220, and B-4230 were final adoption of emergency at the 10/1/99 State Board meeting, with an effective date of 10/1/99 (CSPR# 99-8-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of External Affairs, Department of Human Services.~~

~~Revisions to sections B-4011, B-4214, B-4220, B-4221, B-4223, B-4240, B-4242, B-4321 B-4672, B-4694, B-4704, B-4733, and B-4770 were final adoption following publication at the 4/7/2000 State Board meeting, with an effective date of 6/1/2000 (CSPR# 99-12-6-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of Public Affairs, Department of Human Services.~~

~~Revisions to sections B-4100, B-4220, B-4223, and B-4230 were adopted emergency at the 9/8/2000 State Board meeting, with an effective date of 10/1/2000 (CSPR# 00-8-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to sections B-4100, B-4220, B-4223, and B-4230 were final adoption of emergency at the 10/6/2000 State Board meeting, with an effective date of 10/1/2000 (CSPR# 00-8-4-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to sections B-4242.11 to B-4242.12 were final adoption following publication at the 11/3/2000 State Board meeting, with an effective date of 1/1/2001 (CSPR# 00-8-17-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to sections B-4224.4 and B-4225 were final adoption following publication at the 12/1/2000 State Board meeting, with an effective date of 2/1/2001 (CSPR# 00-9-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revision to section B-4223.5 was adopted as emergency at the 2/2/2001 State Board meeting, with an effective date of 3/1/2001 (CSPR# 01-1-10-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revision to section B-4223.5 was final adoption of emergency rule at the 3/2/2001 State Board meeting, with an effective date of 3/1/2001 (CSPR# 01-1-10-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4224.4 through B-4225.6 were final adoption following publication at the 4/6/2001 State Board meeting, with an effective date of 6/1/2001 (CSPR# 01-1-22-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4011.2, B-4242.11, B-4242.21 and B-4242.33 were final adoption following publication at the 5/4/2001 State Board meeting, with an effective date of 7/1/2001 (CSPR# 01-2-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4224, B-4225 and B-4430 were final adoption following publication at the 7/6/2001 State Board meeting, with an effective date of 9/1/2001 (CSPR# 01-4-16-1 and 01-4-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Section B-4223.51 were adopted emergency at the 7/6/2001 State Board meeting, with an effective date of 7/6/2001 (CSPR# 01-5-22-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Section B-4223.51 were final adoption of emergency rule at the 8/3/2001 State Board meeting, with an effective date of 7/6/2001 (CSPR# 01-5-22-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4010 - B-4012, B-4100 - B-4112, B-4212 - B-4213, B-4221 - B-4223, B-4230 - B-4240, B-4243 - B-4316, and B-4321 - B-4322 were final adoption following publication at the 9/7/2001 State Board meeting, with an effective date of 11/1/2001 (CSPR# 01-2-21-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220, B-4223.5, and B-4230 were adopted on an emergency basis at the 9/7/2001 State Board meeting, with an effective date of 10/1/2001 (CSPR# 01-8-8-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220, B-4223.5, and B-4230 were adopted on as emergency and final at the 10/5/2001 State Board meeting, with an effective date of 10/5/2001 (CSPR# 01-8-8-1). Statement of~~

~~Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4224.2, B-4224.4, Br4225.11, B-4225.4 through B-4225.63, B-4225.9, and addition of B-4242.34 through B-4242.343 were final adoption following publication at the 4/5/2002 State Board meeting, with an effective date of 6/1/2002 (CSPR#s 01-12-20-1 and 01-12-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4011.3, B-4011.4, B-4011.52, B-4215.45, B-4215.6, B-4217.1, B-4221.13, B-4222.7, B-4240.1, B-4242.2, B-4314.1, B-4318, B-4318.4, B-4319.1, B-4330.1, 3-4430.21, and B-4430.22 were adopted following publication at the 7/12/2002 State Board meeting, with an effective date of 9/1/2002 (CSPR# 01-12-28-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, and B-4230 were adopted as emergency at the 9/6/2002 State Board meeting, with an effective date of 10/1/2002 (CSPR#01-8-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4212.3, B-4223.1, B-4223.6, B-4224, B-4242.342, and B-4242.343 were adopted as emergency at the 10/4/2002 State Board meeting, with an effective date of 10/1/2002 (CSPR# 01-7-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, and B-4230 were final adoption of emergency rules at the 11/1/2002 State Board meeting, with an effective date of 10/1/2002 (CSPR# 01-8-9-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4212.3, B-4223.1, B-4223.6, B-4224, B-4242.342, and B-4242.343 were adopted as emergency and final at the 11/1/2002 State Board meeting, with an effective date of 10/1/2002 (CSPR# 01-7-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4215.42, B-4215.72, B-4215.73, and B-4242.11 were adopted following publication at the 2/7/2003 State Board meeting, with an effective date of 4/1/2003 (Rule-making #02-11-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4111.2, B-4111.6, B4212.3, B-4215.2, B-4222.3, B-4240, B-4240.1, B-4242.11, B-4314.1, B-4319, B-4319.1, and B-4321.1 were adopted following publication at the 6/6/2003 State~~

~~Board meeting, with an effective date of 8/1/2003 (Rule-making #03-2-10-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4215.45, B-4242, and B-4242.11 were adopted following publication at the 9/5/2003 State Board meeting, with an effective date of 11/1/2003 (Rule-making# 03-6-27-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, and B-4230 were adopted as emergency at the 10/3/2003 State Board meeting, with an effective date of 10/1/2003 (Rule-making# 03-8-13-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement Boards and Commissions Division, State Board Administration.~~

~~Revisions to Section B-4223.51 were final adoption of emergency at the 1/9/2004 State Board meeting, with an effective date of 1/1/2004 (Rule-making# 03-11-14-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Section B-4230.1 were adopted following publication at the 3/5/2004 State Board meeting, with an effective date of 5/1/2004 (Rule-making# 03-8-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, B-4223.51, and B-4230 were adopted as emergency at the 10/1/2004 State Board meeting, with an effective date of 10/1/2004 (Rule-making# 04-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220.11, B-4220.12, B-4223.5, B-4223.51, and B-4230 were adopted as final emergency rules at the 11/5/2004 State Board meeting, with an effective date of 10/1/2004 (Rule-making# 04-8-25-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Section B-4223.51 were adopted as emergency at the 2/3/2006 State Board meeting, with an effective date of 3/1/2006 (Rule-making# 06-1-10-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Section B-4223.51 were final (permanent) adoption of emergency rules at the 3/3/2006 State Board meeting, with an effective date of 3/1/2006 (Rule-making# 06-1-10-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule.~~

~~These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4010, B-4010.1, B-4010.11, B-4011.21, B-4100, B-4220.11, B-4220.12, B-4222.7, B-4223, B-4223.1, B-4223.4, B-4223.5, B-4223.51, B-4224.1, B-4224.2, B-4224.3, B-4225.5, B-4230, and B-4242.11 were adopted as emergency at the 9/5/2008 State Board meeting, with an effective date of 10/1/2008 (Rule-making# 08-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4010, B-4010.1, B-4010.11, B-4011.21, B-4100, B-4220.11, B-4220.12, B-4222.7, B-4223, B-4223.1, B-4223.4, B-4223.5, B-4223.51, B-4224.1, B-4224.2, B-4224.3, B-4225.5, B-4230, and B-4242.11 were final (permanent) adoption of emergency rules at the at the 10/3/2008 State Board meeting, with an effective date of 12/1/2008 (Rule-making# 08-8-12-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration.~~

~~Revisions to Sections B-4010.11 and B-4230 were adopted on an emergency basis at the 3/6/2009 State Board meeting, with an effective date of 4/1/2009 (Rule-making# 09-3-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4010.11 and B-4230 were final (permanent) adoption of emergency rules at the 5/1/2009 State Board meeting, with an effective date of 7/1/2009 (Rule-making# 09-3-3-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4242 through B-4242.1 and B-4242.12 through B-4242.13 were final adoption following publication at the 1/8/2010 State Board meeting, with an effective date of 3/2/2010 (Rule-making# 09-10-20-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4011.1 through B-4011.11, B-4011.131 through B-4011.136, B-4011.22 through B-4011.23, B-4011.3, B-4220 through B-4220.12, B-4224, B-4230.1, B-4242.11 through B-4242.13, B-4430.11, B-4430.2 through B-4430.22 were final adoption following publication at the 12/3/2010 State Board meeting, with an effective date of 2/1/2011 (Rule-making# 10-7-19-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4222.8, B-4223, and B-4225.7 were adopted on an emergency basis at the 6/10/2011 State Board meeting, with an effective date of 6/10/2011 (Rule-making# 11-4-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4222.8, B-4223, and B-4225.7 were final (permanent) adoption of prior emergency rules at the 7/8/2011 State Board meeting, with an effective date of 9/1/2011 (Rule-making# 11-4-26-1). Statement of Basis and Purpose and specific statutory authority for these revisions were~~

~~incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Section B-4224 were adopted on an emergency basis at the 9/9/2011 State Board meeting, with an effective date of 10/1/2011 (Rule-making# 11-8-30-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Section B-4224 were adopted as final (permanent) at the 11/4/2011 State Board meeting, with an effective date of 1/1/2012 (Rule-making# 11-8-30-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.~~

~~Revisions and/or repeals of Sections B-4225.62 through B-4225.63, B-4230.11 through B-4230.12, B-4230.2 through B-4230.21, B-4240, B-4242.34 through B-4242.343, B-4242.35 through B-4242.36, B-4315, B-4315.2, B-4317.4, B-4317.6, B-4600 through B-4611.1, B-4640 through B-4653, B-4691.1 through B-4697.2, B-4698 through B-4698.3, B-4730 through B-4733, B-4740 through B-4760, and B-4800.1 through B-4800.3 were final adoption following publication at the 3/2/2012 State Board meeting (Rule-making# 11-11-16-2), with an effective date of 5/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions of Sections B-4430.22 and B-4430.32 were final adoption following publication at the 5/4/2012 State Board meeting (Rule-making# 12-1-27-1), with an effective date of 7/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions of Sections B-4010.42 through B-4010.424 were final adoption following publication at the 6/1/2012 State Board meeting (Rule-making# 11-8-11-2), with an effective date of 8/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions of Sections B-4011.31 through B-4011.32 and B-4110.1 through B-4110.2 were final adoption following publication at the 9/7/2012 State Board meeting (Rule-making# 11-12-23-1), with an effective date of 11/1/2012. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Section B-4224 were final adoption following publication at the 2/1/2013 State Board meeting (Rule-making# 12-12-3-1), with an effective date of 4/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220.11 and B-4220.12, B-4223.1, B-4223.5 and B-4223.51 were adopted on an emergency basis at the 9/6/2013 State Board meeting (Rule-making# 13-5-14-2), with an effective date of 10/1/2013. Statement of Basis and Purpose and specific statutory authority for these~~

~~revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4100, B-4220.11 and B-4220.12, B-4223.1, B-4223.5 and B-4223.51 were final (permanent) adoption of prior emergency rules at the 10/4/2013 State Board meeting (Rule-making# 13-5-14-2), with an effective date of 12/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4010.12, B-4230 through B-4230.1, and B-4430.4 were adopted as emergency at the 10/4/2013 State Board meeting (Rule-making# 13-8-19-1), with an effective date of 11/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Revisions to Sections B-4010.12, B-4230 through B-4230.1, and B-4430.4 were adopted as final (permanent) following publication at the 11/8/2013 State Board meeting (Rule-making# 13-8-19-1), with an effective date of 1/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.~~

~~Sections B-4000 through B-4800.4 were repealed in entirety and rewritten as Sections 4.000 through 4.906 and adopted as final following publication at the 7/11/14 State Board meeting (Rule-making# 12-1-3-2), with an effective date of 9/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration.~~

~~Revisions to Sections 4.207.3, 4.401.1, 4.407.1, and 4.407.3 through 4.407.31 were adopted on an emergency basis at the 9/5/2014 State Board meeting (Rule-making# 14-8-12-1), with an effective date of 10/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration.~~

~~Revisions to Sections 4.207.3, 4.401.1, 4.407.1, and 4.407.3 through 4.407.31 were final (permanent) adoption of prior emergency rules at the10/3/2014 State Board meeting (Rule-making# 14-8-12-1), with an effective date of 12/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration.~~

~~Revisions to Sections 4.207.3, 4.401.1, 4.401.2, 4.407.1, 4.407.3, and 4.407.31 were adopted as emergency at the10/2/2015 State Board meeting (Rule-making# 15-9-1-1), with an effective date of 10/1/2015. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration.~~

~~Revisions to Sections 4.207.3, 4.401.1, 4.401.2, 4.407.1, 4.407.3, and 4.407.31 were adopted as final (permanent) at the11/6/2015 State Board meeting (Rule-making# 15-9-1-1), with an effective date of 1/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during~~

~~normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.~~

~~Revisions to Sections 4.704.1, 4.801.2 through 4.801.43, 4.803 through 4.803.41, 4.803.43, 4.803.5, 4.803.7, and 4.804.1 were adopted as final following publication at the11/6/2015 State Board meeting (Rule-making# 15-2-9-1), with an effective date of 1/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.~~

~~Addition of Sections 4.609 through 4.609.6 were final adoption following publication at the12/4/2015 State Board meeting (Rule-making# 15-9-30-1), with an effective date of 2/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.~~

~~Revisions to Sections 4.208.1 and 4.603 were adopted as final following publication at the 2/5/2016 State Board meeting (Rule-making# 15-10-23-1), with an effective date of 4/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.~~

~~Revisions to Section 4.609.1 were adopted on an emergency basis at the 2/5/2016 State Board meeting (Rule-making# 16-1-14-1), with an effective date of 2/5/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.~~

~~Revisions to Section 4.609.1 were final (permanent) adoption of prior emergency rules at the 3/4/2016 State Board meeting (Rule-making# 16-1-14-1), with an effective date of 5/1/2016. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Strategic Communications and Legislative Relations, State Board Administration.~~

4.000 ~~FOOD ASSISTANCE PROGRAM~~ SNAP

4.000.1 SNAP DEFINITIONS

"ABLE-BODIED ADULT WITHOUT DEPENDENTS (ABAWD)" MEANS AN INDIVIDUAL BETWEEN THE AGES OF EIGHTEEN (18) AND FIFTY (50) WITHOUT A PHYSICAL OR MENTAL DISABILITY, WHO IS NOT PREGNANT, AND WHO LIVES IN A SNAP HOUSEHOLD WITH NO ONE UNDER THE AGE OF EIGHTEEN (18).

"ADMINISTRATIVE DISQUALIFICATION HEARING (ADH)" MEANS A DISQUALIFICATION HEARING AGAINST AN INDIVIDUAL ACCUSED OF WRONGFULLY OBTAINING OR ATTEMPTING TO OBTAIN ASSISTANCE.

"ADMINISTRATIVE LAW JUDGE (ALJ)" MEANS THE PERSON THAT PRESIDES OVER FAIR HEARINGS AND ADMINISTRATIVE DISQUALIFICATION HEARINGS AT THE STATE LEVEL.

"ADVERSE ACTION" MEANS ANY ACTION TAKEN BY A LOCAL OFFICE THAT CAUSES A HOUSEHOLD'S BENEFITS TO BE REDUCED OR TERMINATED.

“ADVERSE ACTION PERIOD” MEANS THE PERIOD OF TIME THAT ELAPSES PRIOR TO THE ADVERSE ACTION BECOMING EFFECTIVE DURING THE CERTIFICATION PERIOD.

“AGENCY ERROR CLAIM” MEANS THAT A DEBT HAS BEEN ESTABLISHED FOR THE HOUSEHOLD TO REPAY DUE TO AN OVERISSUANCE OF BENEFITS THAT WAS ISSUED TO THE HOUSEHOLD RESULTING FROM AN ERROR MADE BY THE LOCAL OFFICE.

“ALLOTMENT” MEANS THE TOTAL AMOUNT OF SNAP BENEFITS A HOUSEHOLD IS AUTHORIZED TO RECEIVE IN A PARTICULAR MONTH.

“APPEAL” MEANS A REQUEST MADE BY A HOUSEHOLD TO HAVE A DECISION ABOUT ITS CASE REVIEWED BY AN IMPARTIAL THIRD PARTY TO DETERMINE WHETHER THE DECISION WAS CORRECT.

“APPLICATION FILING DATE” MEANS THE DATE AN APPLICATION FOR ASSISTANCE IS RECEIVED BY THE COUNTY OFFICE. “APPLICATION” MEANS A REQUEST ON A STATE-APPROVED FORM FOR BENEFITS, WHICH CAN INCLUDE THE ELECTRONIC STATE-PRESCRIBED FORM.”

“APPLICATION FOR RECERTIFICATION” MEANS AN APPLICATION SUBMITTED PRIOR TO THE LAST MONTH OF THE CERTIFICATION PERIOD TO DETERMINE A HOUSEHOLD’S CONTINUED ELIGIBILITY FOR THE NEXT CERTIFICATION PERIOD.

“APPLICATION PROCESS” MEANS THE REQUIRED PROCESS A HOUSEHOLD MUST COMPLETE FOR PURPOSES OF DETERMINING ELIGIBILITY FOR BENEFITS.

“AUTHORIZED REPRESENTATIVE” MEANS AN INDIVIDUAL WHO HAS BEEN DESIGNATED IN WRITING BY A RESPONSIBLE MEMBER OF THE HOUSEHOLD TO ACT ON BEHALF OF OR ASSIST THE HOUSEHOLD WITH THE APPLICATION PROCESS, OBTAINING BENEFITS, AND/OR IN USING BENEFITS AT AUTHORIZED RETAILERS.

“AUTOMATED CHILD SUPPORT ENFORCEMENT SYSTEM (ACSES)” MEANS THE AUTOMATED COMPUTER SYSTEM USED BY CHILD SUPPORT SERVICES TO RECORD CHILD SUPPORT PAYMENTS.

“AVAILABLE FOR INSPECTION” MEANS COPIES OF DOCUMENTS CAN BE VIEWED DURING NORMAL WORKING HOURS OR BY CONTACTING: FOOD AND ENERGY ASSISTANCE DIVISION DIRECTOR, COLORADO DEPARTMENT OF HUMAN SERVICES, 1575 SHERMAN STREET, 3RD FLOOR, DENVER, COLORADO 80203; OR A STATE PUBLICATIONS DEPOSITORY LIBRARY.

“BASIC CATEGORICAL ELIGIBILITY (BCE)” MEANS THE STATUS GRANTED TO ANY HOUSEHOLD THAT IS NOT ELIGIBLE FOR EXPANDED CATEGORICAL ELIGIBILITY AND CONTAINS ONLY MEMBERS WHO RECEIVE, OR ARE ELIGIBLE TO RECEIVE, BENEFITS FROM COLORADO WORKS, SUPPLEMENTAL SECURITY INCOME, OLD AGE PENSION, AID TO THE NEEDY AND DISABLED, AID TO THE BLIND, OR A COMBINATION OF THESE BENEFITS.

“BASIC UTILITY ALLOWANCE (BUA)” MEANS A FIXED DEDUCTION APPLIED TO A HOUSEHOLD THAT DOES NOT PAY FOR HEATING OR COOLING AND INCURS AT LEAST TWO (2) NON-HEATING OR NON-COOLING UTILITY COSTS, SUCH AS ELECTRICITY, WATER, SEWER, TRASH, COOKING FUEL, OR TELEPHONE.

“BOARDER” MEANS AN INDIVIDUAL RESIDING WITH OTHERS AND PAYING REASONABLE COMPENSATION TO OTHERS FOR LODGING AND MEALS.

“BOARDING HOUSE” MEANS AN ESTABLISHMENT THAT IS LICENSED AS A COMMERCIAL ENTERPRISE AND WHICH OFFERS MEALS AND LODGING FOR COMPENSATION.

“CASE RECORD” MEANS A COMBINATION OF THE PHYSICAL CASE FILE THAT CONTAINS DOCUMENTS PERTINENT TO A HOUSEHOLD’S CASE; SIMILAR DOCUMENTS MAINTAINED IN AN ELECTRONIC DATABASE; AND INFORMATION ABOUT THE HOUSEHOLD THAT IS CONTAINED WITHIN THE STATEWIDE AUTOMATED SYSTEM.

“CERTIFICATION PERIOD” MEANS THE PERIOD OF TIME FOR WHICH A HOUSEHOLD HAS BEEN CERTIFIED TO RECEIVE BENEFITS.

“CIVIL UNION” MEANS A LEGALLY BINDING PARTNERSHIP BETWEEN TWO INDIVIDUALS WITHOUT THE LEGAL RECOGNITION OF THESE INDIVIDUALS AS SPOUSES.

“CLAIM” MEANS A DEBT RESULTING FROM AN OVERISSUANCE OF BENEFITS THAT A HOUSEHOLD IS OBLIGATED TO REPAY.

“CLEAR AND CONVINCING EVIDENCE” MEANS EVIDENCE WHICH IS STRONGER THAN A PREPONDERANCE OF EVIDENCE AND WHICH IS UNMISTAKABLE AND FREE FROM SERIOUS OR SUBSTANTIAL DOUBT.

“COLLATERAL CONTACT” MEANS A VERBAL OR WRITTEN CONFIRMATION OF A HOUSEHOLD'S CIRCUMSTANCES BY A PERSON OUTSIDE THE HOUSEHOLD WHO HAS FIRST-HAND KNOWLEDGE OF THE INFORMATION, MADE EITHER IN PERSON, ELECTRONICALLY SUBMITTED OR BY TELEPHONE.

“COLORADO ELECTRONIC BENEFIT TRANSFER SYSTEM (CO/EBTS)” MEANS THE ELECTRONIC SYSTEM THAT ENABLES SNAP PARTICIPANTS OR THEIR AUTHORIZED REPRESENTATIVES TO REDEEM THEIR SNAP BENEFITS AT POINT-OF-SALE TERMINALS.

“COLORADO UNEMPLOYMENT BENEFITS SYSTEM (CUBS)” MEANS THE ELECTRONIC SYSTEM BY WHICH UNEMPLOYMENT INSURANCE BENEFITS (UIB) ARE DETERMINED BY THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT.

“COMMUNAL DINING FACILITY” MEANS AN ESTABLISHMENT APPROVED BY FNS THAT PREPARES AND SERVES MEALS FOR PERSONS AGED 60 AND OLDER, OR FOR SUPPLEMENTAL SECURITY INCOME (SSI) RECIPIENTS, AND THEIR SPOUSES. THIS ALSO INCLUDES FEDERALLY SUBSIDIZED HOUSING FOR PERSONS AGED 60 AND OLDER AT WHICH MEALS ARE PREPARED FOR AND SERVED TO THE RESIDENTS. IT ALSO INCLUDES PRIVATE ESTABLISHMENTS THAT CONTRACT WITH AN APPROPRIATE STATE OR LOCAL AGENCY TO OFFER MEALS AT CONCESSIONAL PRICES TO PERSONS AGED 60 AND OLDER OR SSI RECIPIENTS, AND THEIR SPOUSES.

“COMPROMISE” MEANS THE DECISION TO REDUCE THE AMOUNT OF A CLAIM THAT IS OWED BY A HOUSEHOLD.

“COUNTABLE MONTH” MEANS A MONTH IN WHICH AN ABAWD RECEIVED A FULL SNAP ALLOTMENT BUT DID NOT MEET WORK REQUIREMENTS OR HAVE AN EXEMPTION FROM THOSE REQUIREMENTS.

“DEMAND LETTER”, SEE “NOTICE OF OVERPAYMENT.”

“DISASTER SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (D-SNAP) MEANS THE ASSISTANCE PROVIDED TO THE AFFECTED AREAS WHEN A PRESIDENTIAL DISASTER DECLARATION FOR INDIVIDUAL ASSISTANCE IS DECLARED AND THE DECISION TO IMPLEMENT THIS PROGRAM AFTER A PRESIDENTIAL DECLARATION SHALL BE AT THE AFFECTED COUNTY'S DISCRETION IN COORDINATION WITH THE STATE SNAP OFFICE AND FNS.

“DISPUTE RESOLUTION CONFERENCE (DRC)” MEANS AN INFORMAL MEETING BETWEEN A HOUSEHOLD AND THE LOCAL OFFICE TO REVIEW AN ACTION TAKEN ON A CASE AND THE RELEVANT FACTS PERTAINING TO SUCH ACTION.

“DISQUALIFICATION CONSENT AGREEMENT (DCA)” MEANS THE FORM THAT ALLOWS THE INDIVIDUAL(S) SUSPECTED OF INTENTIONAL PROGRAM VIOLATION/FRAUD TO CONSENT TO HIS/HER DISQUALIFICATION IN CASES OF DEFERRED ADJUDICATION.

“DISQUALIFIED INDIVIDUALS” MEANS ANY INDIVIDUAL WHO IS INELIGIBLE TO RECEIVE SNAP DUE TO HAVING BEEN DISQUALIFIED FOR AN INTENTIONAL PROGRAM VIOLATION/FRAUD, FAILURE TO PROVIDE OR OBTAIN A SSN, INELIGIBLE NON-CITIZENS, INDIVIDUALS DISQUALIFIED FOR FAILURE TO COOPERATE WITH WORK REQUIREMENTS, INDIVIDUALS DISQUALIFIED FOR FAILURE TO COOPERATE WITH THE STATE QUALITY ASSURANCE DIVISION, AND ABAWDS WHO ALREADY RECEIVED THREE COUNTABLE MONTHS OF SNAP WITHIN THIRTY-SIX (36) MONTHS WITHOUT MEETING AN EXEMPTION OR ABAWD WORK REQUIREMENTS.

“DOCUMENTARY EVIDENCE” MEANS WRITTEN INFORMATION USED TO VERIFY THE INCOME, EXPENSES, AND OTHER CIRCUMSTANCES OF A HOUSEHOLD.

“DOCUMENTATION” MEANS THE COLLECTION OF DOCUMENTARY EVIDENCE, VERIFICATION, CASE NOTES, AND OTHER INFORMATION RELATED TO A HOUSEHOLD’S CASE UPON WHICH ELIGIBILITY DETERMINATIONS AND OTHER DECISIONS ARE BASED.

“DRUG AND ALCOHOL TREATMENT CENTER (DAA)” MEANS ANY RESIDENTIAL FACILITY RUN BY A PRIVATE, NONPROFIT ORGANIZATION OR INSTITUTION, OR A PUBLICLY OPERATED COMMUNITY MENTAL HEALTH CENTER, UNDER PART B OF TITLE XIX OF THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 300X ET SEQ.) THAT PROVIDES REHABILITATIVE TREATMENT TO PERSONS PARTICIPATING IN A DRUG OR ALCOHOL TREATMENT PROGRAM.

“DUAL PARTICIPATION” MEANS THE RECEIPT OF BENEFITS IN MORE THAN ONE SNAP HOUSEHOLD OR STATE IN THE SAME CALENDAR MONTH.

“EBT” MEANS ELECTRONIC BENEFIT TRANSFER.

“ELIGIBILITY HAS BEEN DETERMINED” MEANS A REQUIRED INTERVIEW WAS COMPLETED AND ALL REQUIRED VERIFICATIONS WERE RECEIVED FOR A VALID SNAP APPLICATION AND A DETERMINATION OF ELIGIBILITY OR INELIGIBILITY WAS MADE WITH A RESULTING NOTICE OF ACTION.

“EBT CARD” MEANS THE CARD ISSUED TO PERSONS AUTHORIZED TO RECEIVE SNAP TO WHICH THE HOUSEHOLD’S ALLOTMENT IS CREDITED. USED FOR SNAP PURPOSES TO PURCHASE ELIGIBLE FOODS AT APPROVED RETAILERS.

“EMPLOYMENT AND TRAINING PROGRAM” MEANS A PROGRAM OPERATED BY THE DEPARTMENT OF HUMAN SERVICES CONSISTING OF WORK, TRAINING, EDUCATION, WORK EXPERIENCE, AND/OR JOB SEARCH ACTIVITIES DESIGNED TO HELP RECIPIENTS OBTAIN GAINFUL EMPLOYMENT.

“EMPLOYMENT FIRST (EF)” MEANS COLORADO’S EMPLOYMENT AND TRAINING PROGRAM.

“EXCESS MEDICAL DEDUCTION” MEANS A DEDUCTION FROM A HOUSEHOLD'S TOTAL GROSS INCOME APPLIED WHEN A PERSON WITH A DISABILITY OR A PERSON AGED 60 AND OLDER HAS MEDICAL EXPENSES OVER A SPECIFIED MONTHLY AMOUNT.

“EXEMPT INCOME” MEANS INCOME THAT IS EXEMPT FROM CONSIDERATION WHEN DETERMINING ELIGIBILITY FOR SNAP.

“EXPANDED CATEGORICAL ELIGIBILITY (ECE)” MEANS HOUSEHOLDS THAT ARE EXEMPT FROM HAVING RESOURCES CONSIDERED WHEN DETERMINING ELIGIBILITY FOR SNAP.

“EXPEDITED SERVICE” MEANS THE METHOD BY WHICH AN APPLICATION FOR SNAP IS PROCESSED TO ENSURE THAT THE NEEDIEST HOUSEHOLDS HAVE ACCESS TO BENEFITS NO LATER THAN THE SEVENTH (7TH) CALENDAR DAY FOLLOWING THE DATE OF APPLICATION.

“FAIR HEARING” MEANS A HEARING CONDUCTED IN PERSON OR ON THE TELEPHONE BY THE OFFICE OF ADMINISTRATIVE COURTS TO PROVIDE AN IMPARTIAL DECISION ON A HOUSEHOLD’S APPEAL OF A LOCAL OFFICE’S DECISION OR ACTION.

“FINANCIAL CRITERIA” MEANS THE SET OF RULES GOVERNING GROSS AND NET INCOME AND RESOURCE STANDARDS AND THE PROPER METHODS FOR COMPUTING A HOUSEHOLD’S INCOME AND RESOURCES.

“FLEEING FELON” MEANS AN INDIVIDUAL WHO IS FLEEING TO AVOID PROSECUTION OR ARREST FOR A FELONY UNDER A STATE OR FEDERAL LAW.

“FNS” MEANS THE FOOD AND NUTRITION SERVICE OF THE U.S. DEPARTMENT OF AGRICULTURE.

“FRAUD” MEANS THE ACT COMMITTED BY A PERSON WHEN OBTAINING, ATTEMPTING TO OBTAIN, OR AIDING AND ABETTING ANOTHER TO OBTAIN ASSISTANCE BENEFITS THROUGH INTENTIONALLY FALSE STATEMENTS, REPRESENTATIONS, OR THE WITHHOLDING OF MATERIAL INFORMATION.

“FULL-TIME STUDENT” MEANS A PERSON WHO HAS A SCHOOL SCHEDULE EQUIVALENT TO A FULL-TIME CURRICULUM AS DEFINED BY THE INSTITUTION OF HIGHER EDUCATION THE PERSON IS ATTENDING.

“G-845” MEANS THE FORM SUBMITTED TO THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES TO REQUEST IMMIGRATION STATUS VERIFICATION FOR A SNAP APPLICANT OR PARTICIPANT.

“GOOD CAUSE” MEANS A WAIVER GRANTED TO A PERSON OR HOUSEHOLD A) EXCUSING THEM FROM COMPLYING WITH A SPECIFIC ELIGIBILITY REQUIREMENT BECAUSE COMPLIANCE COULD CAUSE ADVERSE CONSEQUENCES TO THE PERSON OR HOUSEHOLD, OR B) PROVIDING THE HOUSEHOLD WITH MORE TIME TO COMPLY WITH A SPECIFIC ELIGIBILITY REQUIREMENT.

“GROSS INCOME” MEANS THE TOTAL OF ALL NON-EXEMPT EARNED AND UNEARNED INCOME ADDED TOGETHER BEFORE ANY DEDUCTION OR DISREGARD IS CONSIDERED.

“GROUP LIVING ARRANGEMENT (GLA)” MEANS A PUBLIC OR PRIVATE NON-PROFIT FACILITY CERTIFIED UNDER SECTION 1616(E) OF THE SOCIAL SECURITY ACT WHICH SERVES NO MORE THAN SIXTEEN (16) PEOPLE.

“HEAD OF HOUSEHOLD (HOH)” MEANS THE PERSON WHO IS GENERALLY REGARDED AS THE PERSON WITH THE MOST KNOWLEDGE OF THE HOUSEHOLD’S CIRCUMSTANCES. THE HEAD OF HOUSEHOLD IS THE PERSON TO WHOM THE LOCAL OFFICE ADDRESSES CORRESPONDENCE AND NOTICES ABOUT THE HOUSEHOLD’S CASE. THIS PERSON IS GENERALLY THE INDIVIDUAL WHO COMPLETES THE APPLICATION PROCESS AND IS RESPONSIBLE FOR OBTAINING AND USING THE HOUSEHOLD’S EBT CARD.

“HEATING/COOLING UTILITY ALLOWANCE (HCUA)” MEANS A FIXED DEDUCTION APPLIED TO ANY HOUSEHOLD THAT INCURS A HEATING OR COOLING EXPENSE.

“HOMELESS” MEANS AN INDIVIDUAL WHO LACKS A FIXED AND REGULAR NIGHTTIME RESIDENCE OR WHOSE PRIMARY RESIDENCE IS: A SUPERVISED SHELTER DESIGNED FOR TEMPORARY ACCOMMODATIONS, A HALFWAY HOUSE OR SIMILAR FACILITY THAT PROVIDES TEMPORARY RESIDENCE, A PLACE NOT DESIGNED FOR OR ORDINARILY USED AS REGULAR SLEEPING ACCOMMODATIONS FOR HUMAN BEINGS, OR A TEMPORARY ACCOMMODATION IN THE RESIDENCE OF ANOTHER INDIVIDUAL FOR NINETY (90) DAYS OR LESS.

“HOMELESS MEAL PROVIDER” MEANS:

1. A PUBLIC OR PRIVATE NONPROFIT ESTABLISHMENT THAT FEEDS PERSONS EXPERIENCING HOMELESSNESS; OR,
2. A RESTAURANT WHICH CONTRACTS WITH AN APPROPRIATE STATE AGENCY TO OFFER MEALS AT CONCESSIONAL (LOW OR REDUCED) PRICES TO PERSONS EXPERIENCING HOMELESSNESS.

“HOUSEHOLD” MEANS A GROUP OF INDIVIDUALS WHO LIVE TOGETHER AND CUSTOMARILY PURCHASE AND PREPARE FOOD TOGETHER.

“HOUSEHOLD INCOME” MEANS ALL EARNED AND UNEARNED INCOME RECEIVED OR ANTICIPATED TO BE RECEIVED BY HOUSEHOLD MEMBERS FROM ALL SOURCES, UNLESS SPECIFICALLY EXEMPTED FOR SNAP ELIGIBILITY PURPOSES.

“INADVERTENT HOUSEHOLD ERROR CLAIM” MEANS A DEBT THAT HAS BEEN ESTABLISHED FOR THE HOUSEHOLD TO REPAY DUE TO AN OVERISSUANCE OF BENEFITS THAT WAS ISSUED TO A HOUSEHOLD DUE TO A MISUNDERSTANDING OR UNINTENTIONAL ERROR ON THE PART OF THE HOUSEHOLD.

“INCOME AND ELIGIBILITY VERIFICATION SYSTEM (IEVS)” MEANS A SYSTEM USED TO MATCH APPLICANTS’ AND PARTICIPANTS’ SOCIAL SECURITY NUMBERS WITH THE SOCIAL SECURITY ADMINISTRATION, INTERNAL REVENUE SERVICE, AND THE DEPARTMENT OF LABOR AND EMPLOYMENT TO OBTAIN INFORMATION ABOUT HOUSEHOLD INCOME.

“INDIGENT NON-CITIZEN” MEANS A SPONSORED NON-CITIZEN WHO, AFTER CONSIDERING ALL INCOME AND CONTRIBUTIONS PROVIDED BY THE SPONSOR AND OTHER SOURCES IN CONJUNCTION WITH THE NON-CITIZEN’S OWN INCOME, IS UNABLE TO OBTAIN FOOD AND SHELTER AMOUNTING TO ONE HUNDRED THIRTY PERCENT (130%) OF THE FEDERAL POVERTY LEVEL FOR THE NON-CITIZEN’S HOUSEHOLD SIZE. WHEN A NON-CITIZEN IS DECLARED INDIGENT, ONLY THE AMOUNT PROVIDED BY THE SPONSOR SHALL BE DEEMED TO THE NON-CITIZEN. A DECLARATION OF INDIGENCE MAY LAST UP TO TWELVE (12) MONTHS BUT MAY BE RENEWED AT THE END OF SUCH A PERIOD, IF NECESSARY. THE LOCAL OFFICE MUST NOTIFY THE U.S. ATTORNEY GENERAL OF EACH INDIGENCE DETERMINATION, INCLUDING THE NAME OF THE SPONSOR AND THE SPONSORED NON-CITIZEN.

“INITIAL APPLICATION” MEANS A HOUSEHOLD’S FIRST APPLICATION FOR ASSISTANCE OR AN APPLICATION FOR ASSISTANCE THAT IS RECEIVED AFTER THE HOUSEHOLD HAS BEEN OFF OF THE PROGRAM FOR ANY PERIOD FOLLOWING THE END OF A CERTIFICATION PERIOD.

“INITIAL MONTH OF APPLICATION” MEANS THE FIRST MONTH FOR WHICH THE HOUSEHOLD IS CERTIFIED FOR PARTICIPATION IN THE PROGRAM FOR THOSE WHO HAVE NOT RECEIVED FOOD BENEFITS IN THE STATE PREVIOUSLY OR FOLLOWING ANY BREAK AFTER THE END OF THE CERTIFICATION PERIOD WHERE THE HOUSEHOLD WAS NOT CERTIFIED FOR PARTICIPATION. IF THE HOUSEHOLD APPLIES FOR RECERTIFICATION PRIOR TO THE EXPIRATION OF ITS CERTIFICATION PERIOD AND IS FOUND ELIGIBLE FOR THE FIRST MONTH FOLLOWING THE END OF THE CERTIFICATION PERIOD, THAT MONTH SHALL NOT BE AN INITIAL MONTH.

“INSTITUTION OF HIGHER EDUCATION” MEANS INSTITUTIONS THAT NORMALLY REQUIRE A HIGH SCHOOL DIPLOMA OR EQUIVALENCY CERTIFICATE FOR A STUDENT TO ENROLL, SUCH AS COLLEGES, UNIVERSITIES, AND VOCATIONAL OR TECHNICAL SCHOOLS.

“INTENTIONAL” MEANS A FALSE REPRESENTATION OF A MATERIAL FACT WITH KNOWLEDGE OF THAT FALSITY OR OMISSION OF A MATERIAL FACT WITH KNOWLEDGE OF THAT OMISSION.

“INTENTIONAL PROGRAM VIOLATION (IPV)” MEANS WHEN AN INDIVIDUAL HAS INTENTIONALLY MADE A FALSE OR MISLEADING STATEMENT OR MISREPRESENTED, CONCEALED OR WITHHELD FACTS, OR COMMITTED OR INTENDED TO COMMIT ANY ACT THAT CONSTITUTES A VIOLATION OF THE FOOD AND NUTRITION ACT OF 2008, THE SNAP REGULATIONS, OR ANY STATE STATUTE RELATING TO THE USE, PRESENTATION, TRANSFER, ACQUISITION, RECEIPT OR POSSESSION OF SNAP BENEFITS.

“IPV HEARING”, SEE “ADMINISTRATIVE DISQUALIFICATION HEARING.”

“IPV HEARING WAIVER”, SEE “WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING.”

“ISSUANCE MONTH” MEANS THE CALENDAR MONTH FOR WHICH A BENEFIT ALLOTMENT IS ISSUED.

“LAWFUL PERMANENT RESIDENT” MEANS A NON-CITIZEN LEGALLY ADMITTED INTO THE UNITED STATES TO RESIDE ON A PERMANENT BASIS.

“LEVEL SANCTION” MEANS A SPECIFIED PERIOD OF INELIGIBILITY IMPOSED AGAINST AN INDIVIDUAL WHO FAILED TO TAKE A REQUIRED ACTION AS PART OF HIS OR HER ELIGIBILITY FOR SNAP.

“LIQUID RESOURCES” MEANS ASSETS SUCH AS CASH ON HAND OR ASSETS THAT CAN BE EASILY CONVERTED TO CASH SUCH AS MONEY IN CHECKING OR SAVINGS ACCOUNTS, SAVING CERTIFICATES, OR STOCKS AND BONDS.

“LIVE-IN ATTENDANTS” MEANS INDIVIDUALS WHO RESIDE WITH A HOUSEHOLD TO PROVIDE MEDICAL, HOUSEKEEPING, CHILD CARE, OR OTHER PERSONAL SERVICES.

“LOCAL OFFICE” MEANS THE COUNTY DEPARTMENT OF SOCIAL/HUMAN SERVICES THAT IS RESPONSIBLE FOR ADMINISTERING SNAP. IN THOSE COUNTIES THAT HAVE MORE THAN ONE OFFICE THAT ADMINISTERS SNAP, “LOCAL OFFICE” SHALL BE INCLUSIVE OF ALL LOCAL OFFICES WITHIN THE COUNTY THAT ADMINISTER THE PROGRAM.

“LOCAL-LEVEL DISPUTE RESOLUTION CONFERENCE”, SEE “DISPUTE RESOLUTION CONFERENCE.”

“LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LEAP)” MEANS THE COLORADO PROGRAM DESIGNED TO HELP LOW-INCOME APPLICANTS PAY A PORTION OF THEIR WINTER HEATING COSTS.

“MANAGEMENT EVALUATION (ME) REVIEWS” MEANS STATE OR FEDERAL REVIEWS OF EACH COUNTY’S ADMINISTRATION OF SNAP TO DETERMINE EACH COUNTY’S ADHERENCE TO FEDERAL- AND STATE-MANDATED REQUIREMENTS. SUCH REVIEWS ARE MANDATED BY THE FOOD AND NUTRITION SERVICE OF THE USDA.

“MASS UPDATE” MEANS A CHANGE IN DATA OR POLICY THAT AFFECTS THE ENTIRE STATE-WIDE CASELOAD OR A PORTION OF THE CASELOAD.

“MATERIAL INFORMATION” MEANS INFORMATION TO WHICH A REASONABLE PERSON WOULD ATTACH IMPORTANCE WHEN DETERMINING A COURSE OF ACTION.

“MIGRANT FARM WORKER” MEANS A PERSON WHO TRAVELS AWAY FROM HOME ON A REGULAR BASIS TO FOLLOW THE FLOW OF SEASONAL AGRICULTURAL WORK.

“MINIMUM BENEFIT” MEANS THE MINIMUM AMOUNT OF BENEFITS ISSUED TO ONE- AND TWO-PERSON HOUSEHOLDS THAT ARE ELIGIBLE FOR ASSISTANCE, BUT WHOSE ISSUANCE CALCULATES TO LESS THAN THE FEDERALLY PRESCRIBED MINIMUM ALLOTMENT.

“NET INCOME TEST” MEANS THE ONE HUNDRED PERCENT (100%) FEDERAL POVERTY LEVEL UNDER WHICH A HOUSEHOLD’S INCOME MUST FALL AFTER ALL ALLOWABLE DEDUCTIONS ARE CONSIDERED IN ORDER TO BE CONSIDERED ELIGIBLE. THIS LEVEL IS SPECIFIC TO THE HOUSEHOLD SIZE AS DEFINED BY USDA, FNS.

“NON-FINANCIAL CRITERIA” MEANS THE SET OF RULES GOVERNING ELEMENTS NOT RELATED TO THE GROSS AND NET INCOME AND RESOURCE STANDARDS.

“NON-LIQUID RESOURCES” MEANS ASSETS WHICH CANNOT BE EASILY CONVERTED INTO CASH SUCH AS VEHICLES AND REAL PROPERTY.

“NOTICE OF ACTION (NOA)” MEANS THE STATE-PRESCRIBED FORM SENT TO A HOUSEHOLD EVERY TIME AN ACTION IS TAKEN TO INCREASE, DECREASE, SUSPEND, DENY, TERMINATE, OR OTHERWISE AFFECT A HOUSEHOLD’S BENEFITS. THIS FORM DESCRIBES THE ACTION TAKEN UPON A HOUSEHOLD’S CASE AND THE RESULTING EFFECT.

“NOTICE OF OVERPAYMENT” MEANS A NOTICE SENT TO A HOUSEHOLD UPON THE ESTABLISHMENT OF A CLAIM AGAINST THE HOUSEHOLD FOR AN OVERPAYMENT OF BENEFITS.

“ON-THE-JOB TRAINING (OJT)” MEANS TRAINING PROVIDED TO AN EMPLOYEE AFTER HE OR SHE IS HIRED. SUCH TRAINING IS DESIGNED FOR INDIVIDUALS WHO DO NOT HAVE THE NECESSARY WORK EXPERIENCE REQUIRED FOR THE JOB.

“ONE UTILITY ALLOWANCE (OUA)” MEANS A FIXED DEDUCTION GIVEN TO ANY HOUSEHOLD THAT IS NOT ELIGIBLE TO RECEIVE THE HCUA OR BUA AND INCURS ONLY ONE (1) NON-HEATING OR NON-COOLING UTILITY EXPENSE, SUCH AS ELECTRICITY, WATER, SEWER, TRASH, OR COOKING FUEL. THE OUA IS NOT ALLOWED IF THE HOUSEHOLD’S ONLY UTILITY EXPENSE IS A TELEPHONE.

“OVER-ISSUANCE” MEANS THE AMOUNT OF SNAP BENEFITS ISSUED TO A HOUSEHOLD THAT EXCEEDS THE AMOUNT IT WAS ELIGIBLE TO RECEIVE.

“PA HOUSEHOLDS” MEANS HOUSEHOLDS THAT CONTAIN ONLY PERSONS WHO RECEIVE TANF OR ADULT FINANCIAL CASH GRANTS.

“PAROLEE” MEANS A NON-CITIZEN ALLOWED INTO THE UNITED STATES FOR URGENT HUMANITARIAN REASONS OR WHEN THE NON-CITIZEN’S ENTRY IS DETERMINED TO BE FOR SIGNIFICANT PUBLIC BENEFIT. PAROLE DOES NOT CONSTITUTE A FORMAL ADMISSION TO THE UNITED STATES AND CONFERS TEMPORARY STATUS ONLY, REQUIRING PAROLEES TO LEAVE WHEN THE CONDITIONS SUPPORTING THEIR PAROLE CEASE TO EXIST.

“PAYMENT ERROR RATE (PER)” MEANS THE SUM OF THE OVERPAYMENT ERROR RATE AND THE UNDERPAYMENT ERROR RATE, WHICH IS THE VALUE OF ALL OVER AND UNDERPAID ALLOTMENTS EXPRESSED AS A PERCENTAGE OF ALL ALLOTMENTS ISSUED TO THE CASES REVIEWED, EXCLUDING THOSE CASES PROCESSED BY SSA PERSONNEL OR PARTICIPATING IN CERTAIN DEMONSTRATION PROJECTS DESIGNATED BY FNS.

“PERIOD OF INELIGIBILITY” MEANS THE PERIOD OF TIME A PERSON IS INELIGIBLE TO RECEIVE SNAP BENEFITS AS A RESULT OF A FAILURE TO COOPERATE WITH EITHER A STATE OR FEDERAL QA REVIEW.

“PERIODIC REPORT FORM (PRF)” MEANS THE REPORT THAT MUST BE SUBMITTED BY THE HOUSEHOLD DURING THE TWELFTH (12TH) MONTH OF A TWENTY FOUR (24) MONTH CERTIFICATION PERIOD. THE PURPOSE OF THIS FORM IS TO ALLOW THE HOUSEHOLD TO REPORT ANY CHANGES THAT OCCURRED DURING THE FIRST HALF OF THE TWENTY FOUR (24) MONTH CERTIFICATION PERIOD AND FOR THE LOCAL OFFICE TO DETERMINE THE HOUSEHOLD’S CONTINUED ELIGIBILITY FOR THE REMAINING TWELVE (12) MONTHS OF THE HOUSEHOLD’S CERTIFICATION PERIOD.

“PERSON WITH DISABILITIES” MEANS A PERSON WHO:

1. RECEIVES SUPPLEMENTAL SECURITY INCOME BENEFITS UNDER TITLE XVI OF THE SOCIAL SECURITY ACT, OR THE COLORADO SUPPLEMENT, OR AID TO THE NEEDY AND DISABLED- SUPPLEMENTAL SECURITY INCOME- COLORADO SUPPLEMENT (AND-SSI-CS), OR AID TO THE BLIND-SUPPLEMENTAL SECURITY INCOME- COLORADO SUPPLEMENT (AB-SSI-CS); OR DISABILITY OR BLINDNESS PAYMENTS UNDER TITLE I, II, X, OR IXV OF THE SOCIAL SECURITY ACT;

2. IS A VETERAN WITH A SERVICE-CONNECTED DISABILITY RATED OR PAID AS A TOTAL DISABILITY UNDER TITLE 38 OF THE UNITED STATES CODE OR IS A VETERAN RECEIVING A PENSION FOR A NON-SERVICE CONNECTED DISABILITY;

3. IS A VETERAN CONSIDERED BY THE VA TO BE IN NEED OF REGULAR AID AND ATTENDANCE OR PERMANENTLY HOUSEBOUND UNDER TITLE 38 OF THE CODE;

4. IS A SURVIVING SPOUSE OF A VETERAN AND CONSIDERED IN NEED OF AID AND ATTENDANCE OR PERMANENTLY HOUSEBOUND OR A SURVIVING CHILD OF A VETERAN AND CONSIDERED BY THE VA TO BE PERMANENTLY INCAPABLE OF SELF-SUPPORT UNDER TITLE 38 OF THE UNITED STATES CODE;

5. IS A SURVIVING SPOUSE OR CHILD OF A VETERAN AND CONSIDERED BY THE VA TO BE ENTITLED TO COMPENSATION FOR A SERVICE-CONNECTED DEATH OR PENSION BENEFITS FOR A NON-SERVICE-CONNECTED DEATH UNDER TITLE 38 OF THE UNITED STATES CODE AND HAS A DISABILITY CONSIDERED PERMANENT UNDER SECTION 221(I) OF THE SOCIAL SECURITY ACT. “ENTITLED”, AS USED IN THIS DEFINITION, REFERS TO THOSE VETERANS’ SURVIVING SPOUSES AND CHILDREN WHO ARE RECEIVING THE COMPENSATION OR BENEFITS OR HAVE BEEN APPROVED FOR SUCH BENEFITS BUT ARE NOT YET RECEIVING THEM;

6. IS A PERSON WHO HAS A DISABILITY CONSIDERED PERMANENT UNDER SECTION 221(I) OF THE SOCIAL SECURITY ACT (SSA) AND RECEIVES A FEDERAL, STATE, OR LOCAL PUBLIC DISABILITY RETIREMENT PENSION;

7. IS A PERSON WHO RECEIVES AN ANNUITY FOR DISABILITY FROM THE RAILROAD RETIREMENT BOARD WHO IS CONSIDERED AS A DISABLED PERSON WITH DISABILITIES BY THE SSA OR WHO QUALIFIES FOR MEDICARE AS DETERMINED BY THE RAILROAD RETIREMENT BOARD; OR

8. IS A RECIPIENT OF INTERIM ASSISTANCE BENEFITS PENDING THE RECEIPT OF THE SUPPLEMENTAL SECURITY INCOME (SSI), DISABILITY-RELATED MEDICAL ASSISTANCE UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, OR DISABILITY-BASED STATE ASSISTANCE BENEFITS PROVIDED THAT THE ELIGIBILITY TO RECEIVE THESE BENEFITS IS BASED ON DISABILITY OR BLINDNESS CRITERIA WHICH ARE AT LEAST AS STRINGENT AS THOSE USED UNDER TITLE XVI OF THE SOCIAL SECURITY ACT.

“POST HIGH SCHOOL EDUCATION” MEANS COLLEGES, UNIVERSITIES, AND POST-HIGH SCHOOL LEVEL TECHNICAL AND VOCATIONAL SCHOOLS.

“PROSPECTIVE BUDGETING” MEANS THE METHOD OF COMPUTING A HOUSEHOLD’S MONTHLY ALLOTMENT BY USING CURRENT CIRCUMSTANCES AND REASONABLY ANTICIPATED INCOME FOR THE MONTH IN WHICH THE ALLOTMENT WILL BE ISSUED.

“PRUDENT PERSON PRINCIPLE (PPP)” MEANS A WORKER’S DISCRETION TO APPLY REASONABLE JUDGMENT WHEN DETERMINING THE PROPER COURSE OF ACTION IN SPECIFIC SITUATIONS IN ORDER TO MAKE AN ELIGIBILITY DETERMINATION.

“PUBLIC ASSISTANCE (PA)” MEANS ANY OF THE FOLLOWING PROGRAMS AUTHORIZED BY THE SOCIAL SECURITY ACT OF 1935, AS AMENDED: OLD AGE PENSION, TANF, AID TO THE BLIND, AID TO THE PERMANENTLY AND TOTALLY DISABLED, AND AID TO THE AGED, BLIND, OR DISABLED.

“QUALITY ASSURANCE (QA)” MEANS THE DIVISION RESPONSIBLE FOR REVIEWING SNAP CASES TO DETERMINE IF THE PROPER ELIGIBILITY DETERMINATION WAS MADE AND IF THE CORRECT AMOUNT OF BENEFITS WERE ISSUED TO A HOUSEHOLD IN A GIVEN MONTH.

“QA ACTIVE CASE” MEANS CASES WHERE A HOUSEHOLD WAS CERTIFIED PRIOR TO OR DURING THE SAMPLE MONTH AND ISSUED SNAP BENEFITS FOR THE SAMPLE MONTH.

“QA NEGATIVE CASE” MEANS CASES WHERE A HOUSEHOLD WAS DENIED CERTIFICATION TO RECEIVE SNAP BENEFITS IN THE SAMPLE MONTH OR WHICH HAD ITS PARTICIPATION IN THE PROGRAM TERMINATED DURING A CERTIFICATION PERIOD EFFECTIVE FOR THE SAMPLE MONTH.

“QUALIFIED NON-CITIZEN” MEANS AN INDIVIDUAL WHO MEETS THE SPECIFIC DEFINITION OF “QUALIFIED ALIEN” AS DEFINED BY THE FOOD AND NUTRITION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, WHICH INCLUDES LAWFUL PERMANENT RESIDENTS, ASYLEES, REFUGEES, PAROLEES, INDIVIDUALS GRANTED WITHHOLDING OF DEPORTATION OR REMOVAL, CONDITIONAL ENTRANTS, CUBAN OR HAITIAN ENTRANTS, BATTERED ALIENS, AND NON-CITIZEN VICTIMS OF A SEVERE FORM OF TRAFFICKING. THIS TERM IS NOT ITSELF AN IMMIGRATION STATUS, BUT RATHER INCLUDES A COLLECTION OF IMMIGRATION STATUSES. IT IS A TERM USED SOLELY FOR FEDERAL PUBLIC BENEFITS PURPOSES. QUALIFIED NON-CITIZENS ARE NOT AUTOMATICALLY ELIGIBLE FOR ASSISTANCE, BUT RATHER MUST MEET ALL OTHER ELIGIBILITY REQUIREMENTS.

“QUALITY CONTROL REVIEW” MEANS A REVIEW OF A STATISTICALLY VALID SAMPLE OF ACTIVE AND NEGATIVE CASES TO DETERMINE THE EXTENT TO WHICH HOUSEHOLDS ARE RECEIVING SNAP ALLOTMENTS TO WHICH THEY ARE ENTITLED, AND TO DETERMINE THE EXTENT TO WHICH DECISIONS TO DENY, SUSPEND, OR TERMINATE CASES ARE CORRECT.

“QUEST CARD” MEANS COLORADO’S SPECIFIC VERSION OF THE EBT CARD.

“QUESTIONABLE” MEANS INCONSISTENT OR CONTRADICTORY INFORMATION, STATEMENTS, DOCUMENTS OR CASE DOCUMENTATION THAT REQUIRES VERIFICATION FROM THE HOUSEHOLD TO DETERMINE ELIGIBILITY.

“RECOUPMENT” MEANS THE WITHHOLDING OF A PORTION OF A HOUSEHOLD’S MONTHLY ALLOTMENT TO PAY BACK AN OVER-ISSUANCE.

“REPAYMENT AGREEMENT” MEANS THE FORM SENT TO A HOUSEHOLD UPON THE ESTABLISHMENT OF A CLAIM THAT OUTLINES THE HOUSEHOLD’S RESPONSIBILITY AND OPTIONS FOR REPAYMENT.

“RESTORATION” MEANS A PAYMENT OF BENEFITS MADE TO A HOUSEHOLD WHO WAS ELIGIBLE TO RECEIVE THE AMOUNT IN A PAST MONTH BUT DID NOT RECEIVE THE PAYMENT.

“ROOMER” MEANS AN INDIVIDUAL TO WHOM A HOUSEHOLD FURNISHES LODGING, BUT NOT MEALS, FOR COMPENSATION.

“SANCTION” MEANS A SPECIFIED PERIOD OF INELIGIBILITY IMPOSED AGAINST AN INDIVIDUAL WHO FAILED TO TAKE A REQUIRED ACTION AS PART OF HIS OR HER ELIGIBILITY FOR EITHER SNAP OR COLORADO WORKS.

“SELF-EMPLOYMENT” MEANS A SITUATION WHERE SOME OR ALL INCOME IS RECEIVED FROM A SELF-OPERATED BUSINESS OR ENTERPRISE IN WHICH THE INDIVIDUAL RETAINS CONTROL OVER WORK OR SERVICES OFFERED AND ASSUMES THE NECESSARY BUSINESS RISKS AND EXPENSES CONNECTED WITH THE OPERATION OF THE BUSINESS.

“SHELTER FOR BATTERED WOMEN AND CHILDREN” MEANS A PUBLIC OR PRIVATE NONPROFIT RESIDENTIAL FACILITY THAT SERVES BATTERED WOMEN AND THEIR CHILDREN. IF SUCH A FACILITY SERVES OTHER INDIVIDUALS, A PORTION OF THE FACILITY MUST BE SET ASIDE ON A LONG-TERM BASIS TO SERVE ONLY BATTERED WOMEN AND CHILDREN.

“SIMPLIFIED REPORTING” MEANS SNAP HOUSEHOLDS ARE REQUIRED TO REPORT MID-CERTIFICATION CHANGES THAT CAUSE THE HOUSEHOLD’S COMBINED GROSS INCOME TO RISE ABOVE ONE HUNDRED THIRTY PERCENT (130%) FPL FOR THE APPLICABLE HOUSEHOLD SIZE, WHEN A MEMBER OF THE HOUSEHOLD WINS SUBSTANTIAL LOTTERY OR GAMBLING WINNINGS, AND IF AN ABAWD’S WORK/VOLUNTEER HOURS FALL BELOW TWENTY (20) HOURS PER WEEK.

“SNAP" MEANS SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, FORMERLY KNOWN AS THE FOOD ASSISTANCE PROGRAM IN COLORADO.

“SPONSOR” MEANS A PERSON WHO HAS EXECUTED AN AFFIDAVIT(S) OF SUPPORT OR SIMILAR AGREEMENT ON BEHALF OF A NON-CITIZEN AS A CONDITION OF THE NON-CITIZENS ENTRY OR ADMISSION TO THE US AS A PERMANENT RESIDENT.

“SPONSORED NON-CITIZEN” MEANS THOSE NON-CITIZENS LAWFULLY ADMITTED FOR PERMANENT RESIDENCE INTO THE UNITED STATES WHO HAVE BEEN SPONSORED BY AN INDIVIDUAL FOR ENTRY INTO THE COUNTRY.

“STANDARD ELIGIBILITY” MEANS THE SET OF RULES APPLICABLE TO HOUSEHOLDS THAT DO NOT FALL UNDER “EXPANDED CATEGORICAL ELIGIBILITY” OR “BASIC CATEGORICAL ELIGIBILITY.” HOUSEHOLDS CONSIDERED UNDER STANDARD ELIGIBILITY RULES ARE SUBJECT TO RESOURCE LIMITS AS A CONDITION OF ELIGIBILITY.

“STATE DEPARTMENT” MEANS THE OFFICE/DIVISION WITHIN THE COLORADO DEPARTMENT OF HUMAN SERVICES THAT ADMINISTERS SNAP. CURRENTLY, THIS IS THE FOOD AND ENERGY ASSISTANCE DIVISION WITHIN THE OFFICE OF ECONOMIC SECURITY.

“STATE-LEVEL FAIR HEARING” MEANS A REVIEW REQUESTED BY AN APPLICANT OR RECIPIENT WHICH IS HELD BEFORE AN ALJ TO ESTABLISH WHETHER AN ACTION OR ELIGIBILITY DETERMINATION TAKEN WAS CORRECT.

“STRIKER” MEANS AN INDIVIDUAL WHO IS INVOLVED IN A STRIKE OR OTHER CONCERTED STOPPAGE OF WORK BY EMPLOYEES, INCLUDING A STOPPAGE BY REASON OF THE EXPIRATION OF A COLLECTIVE BARGAINING AGREEMENT AND ANY CONCERTED SLOWDOWN OR OTHER CONCERTED INTERRUPTION OF OPERATIONS BY EMPLOYEES.

“SUBSTANTIAL LOTTERY OR GAMBLING WINNINGS” IS A CASH PRIZE WON IN A SINGLE GAME, BEFORE TAXES OR OTHER AMOUNTS ARE WITHHELD, THAT IS EQUAL TO OR GREATER THAN THE RESOURCE LIMIT FOR PERSONS AGED 60 AND OLDER AND PERSONS WITH DISABILITIES.

“SUPPLEMENT” MEANS A PAYMENT OF ADDITIONAL ALLOWABLE BENEFITS MADE FOR THE CURRENT ISSUANCE MONTH.

“SUPPLEMENTAL SECURITY INCOME (SSI)” MEANS MONTHLY CASH PAYMENTS MADE UNDER THE AUTHORITY OF: (1) TITLE XVI OF THE SOCIAL SECURITY ACT, AS AMENDED, TO THE AGED, BLIND AND DISABLED; (2) SECTION 1616(A) OF THE SOCIAL SECURITY ACT; OR (3) SECTION 212(A) OF PUB. L. 93-66.

“SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE)” MEANS THE SYSTEM ALLOWING FOR THE VALIDATION OF IMMIGRATION STATUSES OF NON-CITIZEN APPLICANTS AND PARTICIPANTS THROUGH ACCESS TO CENTRALIZED U.S. CITIZENSHIP AND IMMIGRATION SERVICE (USCIS) DATA.

“TELEPHONE ALLOWANCE” MEANS A FIXED DEDUCTION GIVEN TO ANY HOUSEHOLD NOT INCURRING UTILITY EXPENSES OTHER THAN THE EXPENSE FOR A TELEPHONE.

“TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) OR COLORADO WORKS (CW)” MEANS THE CASH ASSISTANCE PROGRAM ALSO KNOWN AS TITLE IV-A OF THE SOCIAL SECURITY ACT.

“TEMPORARY EMERGENCY” MEANS AN EMERGENCY CAUSED BY ANY NATURAL OR HUMAN-CAUSED DISASTER, OTHER THAN A MAJOR DISASTER DECLARED BY THE PRESIDENT OF THE UNITED STATES UNDER THE DISASTER RELIEF ACT OF 1974, WHICH IS DETERMINED BY FNS TO HAVE DISRUPTED COMMERCIAL CHANNELS OF FOOD DISTRIBUTION.

“THRIFTY FOOD PLAN” MEANS THE DIET REQUIRED TO FEED A FAMILY OF FOUR (4) PERSONS CONSISTING OF A MAN AND A WOMAN TWENTY (20) THROUGH FIFTY (50) YEARS OF AGE, A CHILD SIX (6) THROUGH EIGHT (8) YEARS OF AGE, AND A CHILD NINE (9) THROUGH ELEVEN (11) YEARS OF AGE, DETERMINED IN ACCORDANCE WITH THE U.S. DEPARTMENT OF AGRICULTURE. THE COST OF SUCH A DIET SHALL BE THE BASIS FOR UNIFORM ALLOTMENTS FOR ALL HOUSEHOLDS REGARDLESS OF THEIR ACTUAL COMPOSITION.

“TRAFFICKING” MEANS ATTEMPTING TO BUY, SELL, STEAL, OR OTHERWISE AFFECT AN EXCHANGE OF SNAP BENEFITS ISSUED AND ACCESSED VIA ELECTRONIC BENEFIT TRANSFER (EBT) CARDS, CARD NUMBERS AND PERSONAL IDENTIFICATION NUMBERS (PINS), OR BY MANUAL VOUCHER AND SIGNATURE, FOR CASH OR CONSIDERATION OTHER THAN ELIGIBLE FOOD, EITHER DIRECTLY, INDIRECTLY, IN COMPLICITY OR COLLUSION WITH OTHERS, OR ACTING ALONE. TRAFFICKING ALSO INCLUDES (1) THE EXCHANGE OF SNAP BENEFITS FOR FIREARMS, AMMUNITION, EXPLOSIVES, OR CONTROLLED SUBSTANCES, (2) THE RESALE OF A PRODUCT PURCHASED WITH SNAP BENEFITS IN EXCHANGE FOR CASH OR CONSIDERATION OTHER THAN ELIGIBLE FOOD, AND (3) THE PURCHASE OF A PRODUCT THAT HAS A CONTAINER REQUIRING A RETURN DEPOSIT WITH THE INTENT OF OBTAINING CASH BY DISCARDING THE PRODUCT AND RETURNING THE CONTAINER FOR THE DEPOSIT AMOUNT.

“UNCLEAR INFORMATION” UNCLEAR INFORMATION IS INFORMATION THAT IS NOT VERIFIED, OR INFORMATION THAT IS VERIFIED BUT THE LOCAL OFFICE NEEDS ADDITIONAL INFORMATION TO ACT ON THE CHANGE.

“UNDER-ISSUANCE” MEANS THE DIFFERENCE BETWEEN THE ALLOTMENT THE HOUSEHOLD WAS ELIGIBLE TO RECEIVE AND THE ALLOTMENT THE HOUSEHOLD ACTUALLY RECEIVED, WHICH WAS LOWER THAN WHAT THE HOUSEHOLD WAS ELIGIBLE TO RECEIVE.

“VALID APPLICATION” MEANS A STATE-PRESCRIBED FORM COMPLETED WITH NAME, ADDRESS, AND SIGNATURE.

“VENDOR PAYMENTS” MEANS MONEY PAYMENTS THAT ARE NOT PAYABLE DIRECTLY TO A HOUSEHOLD, BUT ARE PAID TO A THIRD PARTY FOR A HOUSEHOLD EXPENSE.

“VERIFICATION” MEANS CONFIRMATION OF A HOUSEHOLD’S STATEMENTS THROUGH WRITTEN, VERBAL, OR ELECTRONIC MEANS

“VERIFIED UPON RECEIPT (VUR)” MEANS INFORMATION THAT IS PROVIDED DIRECTLY FROM THE PRIMARY SOURCE AND WHICH IS NOT QUESTIONABLE.

“VOLUNTARY QUIT” MEANS WHEN A SNAP RECIPIENT VOLUNTARILY QUIT A JOB OF 30 OR MORE HOURS A WEEK OR REDUCED WORK EFFORT TO LESS THAN 30 HOURS A WEEK WITHOUT GOOD CAUSE.

“VOLUNTARY WORK REGISTRANT” MEANS AN INDIVIDUAL WHO CHOOSES TO PARTICIPATE IN THE PROGRAM AND IS NOT MANDATED TO PARTICIPATE BY THE STATE OR FEDERAL REGULATIONS.

“WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING” MEANS A WAIVER SENT TO INDIVIDUALS SUSPECTED OF INTENTIONAL PROGRAM VIOLATION WHICH PRESENTS THE INDIVIDUAL WITH THE OPTION OF WAIVING HIS OR HER RIGHT TO AN ADMINISTRATIVE HEARING, ESSENTIALLY ACCEPTING THE APPROPRIATE DISQUALIFICATION WITHOUT NECESSARILY ADMITTING THE VIOLATION.

4.~~010~~100 ~~PROGRAM~~ SNAP INTRODUCTION

This material sets forth rules, policies, and procedures concerned with eligibility determination and certification of persons who apply to participate in the SNAP ~~Food Assistance Program~~, and, if determined eligible, the requirements concerning the use of SNAP ~~Food Assistance~~ benefits. The rules and regulations herein are promulgated in accordance with Program regulations of the United States Department of Agriculture (USDA), 7 CFR 271–274 (2012), as amended, and the State Plan of Operation. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of 7 CFR Parts 271 through 274 are available for inspection ~~during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203~~. Electronic copies of 7 CFR parts 271 through 274 may be found by accessing the electronic code of federal regulations at http://www.ecfr.gov.

4.110~~020~~ USE OF THE SNAP~~FOOD ASSISTANCE~~ MANUAL

Below is a summary of the information contained in each section:

Section 4.000 contains ~~general Program information, confidentiality requirements,~~ SNAP SPECIFIC DEFINITIONS.~~, and complaint procedures, including complaints regarding alleged discrimination.~~

Section 4.100 contains GENERAL PROGRAM INFORMATION, CONFIDENTIALITY REQUIREMENTS, AND COMPLAINT PROCEDURES (INCLUDING COMPLAINTS REGARDING ALLEGED DISCRIMINATION) ~~Program specific definitions~~.

Section 4.200 sets forth policies and procedures for the application and recertification processes. Information contained in this section includes the process of filing an application and recertification, interview requirements, timely processing standards, determination of certification periods, and initial month allotment proration.

Section 4.300 outlines the non-financial criteria a household must meet ~~in order~~ to be eligible for SNAP ~~the Program~~. Non-financial criteria include identity of applicant, Social Security Number (SSN)

requirement, residency, household composition, citizenship and non-citizenship status, and work program requirements.

Section 4.400 sets forth the financial criteria a household must meet ~~in order~~ to be eligible for the Program. Financial criteria include gross and net income standards, resource standards, and deductions from income.

Section 4.500 sets forth policies and procedures regarding the verification and documentation of a household's circumstances.

Section 4.600 outlines a household's obligation to report changes during the certification period, and how certain changes are handled by the LOCAL OFFICE ~~county department~~.

Section 4.700 sets forth policies and procedures for issuing SNAP ~~Food Assistance~~ benefits, including restoration and replacement of issuances.

Section 4.800 outlines the rules and processes regarding claims, appeals, and fraud.

Section 4.900 outlines state and county administrative requirements.

~~4.100 DEFINITIONS~~

~~"Able-Bodied Adult Without Dependent (ABAWD)" means an individual between the ages of eighteen (18) and fifty (50) without a physical or mental disability, who is not pregnant, and who lives in a Food Assistance household with no one under the age of eighteen (18).~~

~~"Administrative disqualification hearing (ADH)" means a disqualification hearing against an individual accused of wrongfully obtaining or attempting to obtain assistance.~~

~~"Administrative law judge (ALJ)" means the person that presides over fair hearings and administrative disqualification hearings at the state level.~~

~~"Adverse action" means any action taken by a local office that causes a household's benefits to be reduced or terminated.~~

~~"Adverse action period" means the period of time that elapses prior to the adverse action becoming effective during the certification period.~~

~~"Agency error claim" means that a debt has been established for the household to repay due to an overpayment of benefits that was issued to the household resulting from an error made by the local office.~~

~~"Allotment" means the total amount of Food Assistance benefits a household is authorized to receive in a particular month.~~

~~"Appeal" means a request made by a household to have a decision about its case reviewed by an impartial third party to determine whether the decision was correct.~~

~~"Application filing date" means the date an application for assistance is received by the county office.~~
~~"Application" means a request on a state-approved form for benefits, which can include the electronic State-prescribed form."~~

~~"Application for redetermination/recertification (RRR)" means an application submitted prior to the last month of the certification period to determine a household's continued eligibility for the next certification period.~~

~~"Application process" means the required process a household must complete for purposes of determining eligibility for benefits.~~

~~"Authorized representative" means an individual who has been designated in writing by a responsible member of the household to act on behalf of or assist the household with the application process, obtaining benefits, and/or in using benefits at authorized retailers.~~

~~"Automated Child Support Enforcement System (ACSES)" means the automated computer system used by Child Support Services to record child support payments.~~

~~"Basic Categorical Eligibility (BCE)" means the status granted to any household that is not eligible for Expanded Categorical Eligibility and contains only members who receive, or are eligible to receive, benefits from Colorado Works, Supplemental Security Income, Old Age Pension, Aid to the Needy and Disabled, Aid to the Blind, or a combination of these benefits.~~

~~"Basic Utility Allowance (BUA)" means a fixed deduction applied to a household that does not pay for heating or cooling and incurs at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone.~~

~~"Boarder" means an individual residing with others and paying reasonable compensation to others for lodging and meals.~~

~~"Boarding house" means an establishment that is licensed as a commercial enterprise and which offers meals and lodging for compensation.~~

~~"Case payee" means the person appointed to receive the household's benefits.~~

~~"Case record" means a combination of the physical case file that contains documents pertinent to a household's case; similar documents maintained in an electronic database; and information about the household that is contained within the statewide automated system.~~

~~"Certification period" means the period of time for which a household has been certified to receive benefits.~~

~~"Civil union" means a legally binding partnership between two individuals without the legal recognition of these individuals as spouses.~~

~~"Claim" means a debt resulting from an overpayment of benefits that a household is obligated to repay.~~

~~"Clear and convincing evidence" means evidence which is stronger than a preponderance of evidence and which is unmistakable and free from serious or substantial doubt.~~

~~"Collateral contact" means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted or by telephone.~~

~~"Colorado Benefits Management System (CBMS)" means the computer system used to determine food assistance eligibility.~~

~~"Colorado Electronic Benefit Transfer System (CO/EBTS)" means the electronic system that enables Food Assistance participants or their authorized representatives to redeem their Food Assistance benefits at point-of-sale terminals.~~

~~"Colorado Unemployment Benefits System (CUBS)" means the electronic system by which Unemployment Insurance Benefits (UIB) are determined by Colorado Department of Labor and Employment.~~

~~"Communal dining facility" means an establishment approved by FNS that prepares and serves meals for elderly persons, or for Supplemental Security Income (SSI) recipients, and their spouses. This also includes federally subsidized housing for elderly persons at which meals are prepared for and served to~~

the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

"Compromise" means the decision to reduce the amount of a claim that is owed by a household.

"Countable month" means a month in which an ABAWD received full Food Assistance allotment but did not meet work requirements or have an exemption from those requirements.

"County Assistance Office" means the county social or human services office that is responsible for administering the Food Assistance Program.

"Demand letter", see "Notice of Overpayment."

"Disaster Supplemental Nutrition Assistance Program (D-SNAP) means the food assistance provided to the affected areas when a Presidential disaster declaration for individual assistance is declared and the decision to implement this Program after a Presidential declaration shall be at the affected county's discretion in coordination with the State Food Assistance Office and FNS.

"Dispute resolution conference (DRC)" means an informal meeting between a household and the local office to review an action taken on a case and the relevant facts pertaining to such action.

"Disqualification Consent Agreement (DCA)" means the form that allows the individual(s) suspected of intentional Program violation/fraud to consent to his/her disqualification in cases of deferred adjudication.

"Disqualified individuals" means any individual who is ineligible to receive Food Assistance due to having been disqualified for an Intentional Program Violation/fraud, failure to provide or obtain a SSN, ineligible non-citizens, individuals disqualified for failure to cooperate with work requirements, individuals disqualified for failure to cooperate with the State quality assurance division, and ABAWDs who already received three countable months of Food Assistance within thirty-six (36) months without meeting an exemption or ABAWD work requirements.

"Documentary evidence" means written information used to verify the income, expenses, and other circumstances of a household.

"Documentation" means the collection of documentary evidence, verification, case notes, and other information related to a household's case upon which eligibility determinations and other decisions are based.

"Drug and Alcohol Treatment Center (DAA)" means any residential facility run by a private, nonprofit organization or institution, or a publicly operated community mental health center, under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) that provides rehabilitative treatment to persons participating in a drug or alcohol treatment program.

"Dual participation" means the receipt of benefits in more than one Food Assistance household or state in the same calendar month.

"Elderly" means an individual that is sixty (60) years of age or older.

"EBT" means Electronic Benefit Transfer.

"EBT card" means the card issued to persons authorized to receive Food Assistance to which the household's allotment is credited. Used for Food Assistance purposes to purchase eligible foods at approved retailers.

"Employment and Training Program" means a program operated by the Department of Human Services consisting of work, training, education, work experience, and/or job search activities designed to help recipients obtain gainful employment.

~~"Employment First (EF)" means Colorado's Employment and Training program.~~

~~"Excess medical deduction" means a deduction from a household's total gross income applied when a person with a disability or a person who is elderly has medical expenses over a specified monthly amount.~~

~~"Exempt income" means income that is exempt from consideration when determining eligibility for Food Assistance.~~

~~"Expanded Categorical Eligibility (ECE)" means households that are exempt from having resources considered when determining eligibility for Food Assistance.~~

~~"Expedited service" means the method by which an application for Food Assistance is processed to ensure that the neediest households have access to Food Assistance benefits no later than the seventh (7th) calendar day following the date of application.~~

~~"Fair Hearing" means a hearing conducted in person or on the telephone by the Office of Administrative Courts to provide an impartial decision on a household's appeal of a local office's decision or action.~~

~~"Financial criteria" means the set of rules governing gross and net income and resource standards and the proper methods for computing a household's income and resources.~~

~~"Fleeing felon" means an individual who is fleeing to avoid prosecution or arrest for a felony under a state or federal law.~~

~~"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.~~

~~"Fraud" means the act committed by a person when obtaining, attempting to obtain, or aiding and abetting another to obtain assistance benefits through intentionally false statements, representations, or the withholding of material information.~~

~~"Full-time student" means a person who has a school schedule equivalent to a full-time curriculum as defined by the institute of higher education the person is attending.~~

~~"Good cause" means a waiver granted to a person or household a) excusing them from complying with a specific eligibility requirement because compliance could cause adverse consequences to the person or household, or b) providing the household with more time to comply with a specific eligibility requirement.~~

~~"G-845" means the form submitted to the U.S. Citizenship and Immigration Services to request immigration status verification for a Food Assistance applicant or participant.~~

~~"Gross Income" means the total of all non-exempt earned and unearned income added together before any deduction or disregard is considered.~~

~~"Group Living Arrangement (GLA)" means a public or private non-profit facility certified under Section 1616(e) of the Social Security Act which serves no more than sixteen (16) people.~~

~~"Head of household (HOH)" means the person who is generally regarded as the person with the most knowledge of the household's circumstances. The head of household is the person to whom the local office addresses correspondence and notices about the household's case. This person is generally the individual who completes the application process and is responsible for obtaining and using the household's EBT card.~~

~~"Heating/Cooling Utility Allowance (HCUA)" means a fixed deduction applied to any household that incurs a heating or cooling expense.~~

~~"Homeless" means an individual who lacks a fixed and regular nighttime residence or whose primary residence is: a supervised shelter designed for temporary accommodations, a halfway house or similar facility that provides temporary residence, a place not designed for or ordinarily used as regular sleeping accommodations for human beings, or a temporary accommodation in the residence of another individual for ninety (90) days or less.~~

~~"Homeless meal provider" means:~~

~~A. A public or private nonprofit establishment that feeds homeless persons; or,~~

~~B. A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons.~~

~~"Household" means a group of individuals who live together and customarily purchase and prepare food together.~~

~~"Household income" means all earned and unearned income received or anticipated to be received by household members from all sources, unless specifically exempted for Food Assistance eligibility purposes.~~

~~"Inadvertent Household Error Claim" means a debt that has been established for the household to repay due to an overpayment of benefits that was issued to a household due to a misunderstanding or unintentional error on the part of the household.~~

~~"Income and Eligibility Verification System (IEVS)" means a system used to match applicants' and participants' Social Security Numbers with the Social Security Administration, Internal Revenue Service, and the Department of Labor and Employment to obtain information about household income.~~

~~"Initial application" means a household's first application for assistance or an application for assistance that is received after the household has been off of the Program for any period following the end of a certification period.~~

~~"Initial month of application" means the first month for which the household is certified for participation in the Program for those who have not received food benefits in the State previously or following any break after the end of the certification period where the household was not certified for participation. If the household submits an application for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, that month shall not be an initial month.~~

~~"Indigent non-citizen" means a sponsored non-citizen who, after considering all income and contributions provided by the sponsor and other sources in conjunction with the non-citizen's own income, is unable to obtain food and shelter amounting to one hundred thirty percent (130%) of the federal poverty level for the non-citizen's household size. When a non-citizen is declared indigent, only the amount provided by the sponsor shall be deemed to the non-citizen. A declaration of indigence may last up to twelve (12) months, but may be renewed at the end of such a period, if necessary. The local office must notify the U.S. Attorney General of each indigence determination, including the name of the sponsor and the sponsored non-citizen.~~

~~"Institution of higher education" means institutions that normally require a high school diploma or equivalency certificate for a student to enroll, such as colleges, universities, and vocational or technical schools.~~

~~"Intentional Program Violation (IPV)" means when an individual has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts, or committed or intended to commit any act that constitutes a violation of the Food and Nutrition Act of 2008, the Food Assistance Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Assistance benefits.~~

~~"Intentional" means a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.~~

~~"IPV hearing", see "Administrative disqualification hearing."~~

~~"IPV hearing waiver", see "Waiver of administrative disqualification hearing."~~

~~"Issuance month" means the calendar month for which a benefit allotment is issued.~~

~~"Lawful Permanent Resident" means a non-citizen legally admitted into the United States to reside on a permanent basis.~~

~~"Level sanction" means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for Food Assistance.~~

~~"Liquid resources" means assets such as cash on hand or assets that can be easily converted to cash such as money in checking or savings accounts, saving certificates, or stocks and bonds.~~

~~"Live-in attendants" means individuals who reside with a household to provide medical, housekeeping, child care, or other personal services.~~

~~"Local-level Dispute Resolution Conference", see "Dispute Resolution Conference."~~

~~"Local office" means the county department of social/human services that is responsible for administering the Food Assistance Program. In those counties that have more than one office that administers the Food Assistance Program, "local office" shall be inclusive of all local offices within the county that administer the Program.~~

~~"Low-Income Home Energy Assistance Program (LEAP)" means the Colorado program designed to help low-income applicants pay a portion of their winter heating costs.~~

~~"Management Evaluation (ME) reviews" means state or federal reviews of each county's administration of the Food Assistance Program to determine each county's adherence to federal- and state-mandated requirements. Such reviews are mandated by the Food and Nutrition Service of the USDA.~~

~~"Mandatory Work Registrant" means an individual age sixteen (16) to sixty (60) who has not met any Federal exemptions from SNAP work requirements and is therefore required to register for work or be registered by the State agency.~~

~~"Mass update" means a change in data or policy that affects the entire state-wide caseload or a portion of the caseload.~~

~~"Material information" means information to which a reasonable person would attach importance when determining a course of action.~~

~~"Migrant farm worker" means a person who travels away from home on a regular basis to follow the flow of seasonal agricultural work.~~

~~"Minimum benefit" means the minimum amount of benefits issued to one- and two-person households that are eligible for assistance, but whose issuance calculates to less than the federally prescribed minimum allotment.~~

~~"Net income test" means the one hundred percent (100%) federal poverty level under which a household's income must fall after all allowable deductions are considered in order to be considered eligible. This level is specific to the household size as defined by USDA, FNS.~~

~~"Non-liquid resources" means assets which cannot be easily converted into cash such as vehicles and real property.~~

~~"Non-financial criteria" means the set of rules governing elements not related to the gross and net income and resource standards.~~

~~"Notice of Action (NOA)" means the state-prescribed form sent to a household every time an action is taken to increase, decrease, suspend, deny, terminate, or otherwise affect a household's benefits. This form describes the action taken upon a household's case and the resulting effect.~~

~~"Notice of overpayment" means a notice sent to a household upon the establishment of a claim against the household for an overpayment of benefits.~~

~~"On-the-job training (OJT)" means training provided to an employee after he or she is hired. Such training is designed for individuals who do not have the necessary work experience required for the job.~~

~~"One Utility Allowance (OUA)" means a fixed deduction given to any household that is not eligible to receive the HCUA or BUA and incurs only one (1) non-heating or non-cooling utility expense, such as electricity, water, sewer, trash, or cooking fuel. The OUA is not allowed if the household's only utility expense is a telephone.~~

~~"Over-issuance" means the amount of Food Assistance benefits issued to a household that exceeds the amount it was eligible to receive.~~

~~"Parolee" means a non-citizen allowed into the United States for urgent humanitarian reasons or when the non-citizen's entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States and confers temporary status only, requiring parolees to leave when the conditions supporting their parole cease to exist.~~

~~"Payment Error Rate (PER)" means the sum of the overpayment error rate and the underpayment error rate, which is the value of all over and underpaid allotments expressed as a percentage of all allotments issued to the cases reviewed, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.~~

~~"Period of ineligibility" means the period of time a person is ineligible to receive Food Assistance benefits as a result of a failure to cooperate with either a state or federal QA review.~~

~~"Periodic Report Form (PRF)" means the report that must be submitted by the household during the twelfth (12th) month of a twenty four (24) month certification period. The purpose of this form is to allow the household to report any changes that occurred during the first half of the twenty four (24) month certification period and for the local office to determine the household's continued eligibility for the remaining twelve (12) months of the household's certification period.~~

~~"Person with disabilities" means a person who:~~

~~1. Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid To The Needy And Disabled- Supplemental Security Income-Colorado Supplement (AND-SSI-CS), or Aid To The Blind-Supplemental Security Income-Colorado Supplement (AB-SSI-CS); or Disability Or Blindness Payments under Title I, II, X, or IXV of the Social Security Act;~~

~~2. Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service connected disability;~~

~~3. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the Code;~~

4. Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

5. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. "Entitled", as used in this definition, refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not yet receiving them;

6. Is a person who has a disability considered permanent under Section 221(i) of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension;

7. Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered AS A disabled person with disabilities by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board; or

8. Is a recipient of interim assistance benefits pending the receipt of the Supplemental Security Income (SSI), disability-related medical assistance under Title XIX of the Social Security Act, or disability-based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.

"Post high school education" means colleges, universities, and post high school level technical and vocational schools.

"Prospective budgeting" means the method of computing a household's monthly allotment by using current circumstances and reasonably anticipated income for the month in which the allotment will be issued.

"Prudent Person Principle (PPP)" means a worker's reasonable judgment when determining the proper course of action in a given situation in order to make an eligibility determination.

"Public Assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old Age Pension, TANF, Aid to the Blind, Aid to the Permanently and Totally Disabled, and Aid to the Aged, Blind, or Disabled.

"PA households" means households that contain only persons who receive TANF or adult financial cash grants.

"Quality Assurance (QA)" means the division responsible for reviewing Food Assistance cases to determine if the proper eligibility determination was made and if the correct amount of benefits were issued to a household in a given month.

"QA active case" means cases where a household was certified prior to or during the sample month and issued Food Assistance benefits for the sample month.

"QA negative case" means cases where a household was denied certification to receive Food Assistance benefits in the sample month or which had its participation in the Program terminated during a certification period effective for the sample month.

"Qualified non-citizen" means an individual who meets the specific definition of "qualified alien" as defined by the Food and Nutrition Service, United States Department of Agriculture, which includes lawful permanent residents, asylees, refugees, parolees, individuals granted withholding of deportation or removal, conditional entrants, Cuban or Haitian entrants, battered aliens, and non-citizen victims of a severe form of trafficking. This term is not itself an immigration status, but rather includes a collection of

~~immigration statuses. It is a term used solely for Federal public benefits purposes. Qualified non-citizens are not automatically eligible for assistance, but rather must meet all other eligibility requirements.~~

~~"Quality Control review" means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the Food Assistance allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.~~

~~"QUEST card" means Colorado's specific version of the EBT card.~~

~~"Questionable" means inconsistent or contradictory information, statements, documents or case documentation that requires verification from the household to determine eligibility.~~

~~"Recoupment" means the withholding of a portion of a household's monthly allotment to pay back an over-issuance.~~

~~"Repayment agreement" means the form sent to a household upon the establishment of a claim that outlines the household's responsibility and options for repayment.~~

~~"Restoration" means a payment of benefits made to a household who was eligible to receive the amount in a past month but did not receive the payment.~~

~~"Roomer" means an individual to whom a household furnishes lodging, but not meals, for compensation.~~

~~"Sanction" means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for either Food Assistance or Colorado Works.~~

~~"Self-employment" means a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered and assumes the necessary business risks and expenses connected with the operation of the business.~~

~~"Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.~~

~~"Simplified Reporting" means the reporting status granted to households receiving either a six (6) or twenty-four (24) month certification period. Households considered simplified reporting households are not required to report any changes to household circumstances throughout the course of the certification period unless the change that occurred causes the household's combined gross income to rise above one hundred thirty percent (130%) of the federal poverty level for the applicable household size. Households receiving a twenty four (24) month certification period have the additional requirement of completing and submitting a periodic report form (PRF) (see "Periodic report form") at the twelve (12) month point of the certification period on which all changes that have occurred since initial application must be reported.~~

~~"SNAP" means Supplemental Nutrition Assistance Program, which is referred to as the Food Assistance Program in Colorado.~~

~~"Sponsor" means a person who has executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen's entry or admission to the US as a permanent resident.~~

~~"Sponsored non-citizen" means those non-citizens lawfully admitted for permanent residence into the United States who have been sponsored by an individual for entry into the country.~~

~~"Standard Eligibility" means the set of rules applicable to households that do not fall under "Expanded categorical eligibility" or "Basic categorical eligibility." Households considered under standard eligibility rules are subject to resource limits as a condition of eligibility.~~

~~"State Department" means the Colorado Department of Human Services.~~

~~"State office or Division" means the agency of the state government that has the responsibility for the oversight and monitoring of each county department's administration of the Food Assistance Program.~~

~~"State-level fair hearing" means a review requested by an applicant or recipient which is held before an Administrative Law Judge (ALJ) to establish whether an action or eligibility determination taken was correct.~~

~~"Striker" means an individual who is involved in a strike or other concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement and any concerted slowdown or other concerted interruption of operations by employees.~~

~~"Substantial lottery or gambling winnings" is a cash prize won in a single game before taxes or other amounts are withheld that is equal to or greater than the resource limit for elderly and persons with disabilities.~~

~~"Supplement" means a payment of additional allowable benefits made for the current issuance month.~~

~~"Supplemental Security Income (SSI)" means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) Section 1616(A) of the Social Security Act; or (3) Section 212(A) of Pub. L. 93-66.~~

~~"Systematic Alien Verification for Entitlements (SAVE)" means the system allowing for the validation of immigration statuses of non-citizen applicants and participants through access to centralized U.S. Citizenship and Immigration Service (USCIS) data.~~

~~"Telephone allowance" means a fixed deduction given to any household not incurring utility expenses other than the expense for a telephone.~~

~~"Temporary Assistance for Needy Families (TANF) or Colorado Works (CW)" means the cash assistance program also known as Title IV-A of the Social Security Act.~~

~~"Temporary emergency" means an emergency caused by any natural or human-caused disaster, other than a major disaster declared by the President of the United States under the Disaster Relief Act of 1974, which is determined by FNS to have disrupted commercial channels of food distribution.~~

~~"Thrifty Food Plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty (50) years of age, a child six (6) through eight (8) years of age, and a child nine (9) through eleven (11) years of age, determined in accordance with the U.S. Department of Agriculture. The cost of such a diet shall be the basis for uniform allotments for all households regardless of their actual composition.~~

~~"Trafficking" means attempting to buy, sell, steal, or otherwise affect an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and Personal Identification Numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Trafficking also includes (1) the exchange of food assistance benefits for firearms, ammunition, explosives, or controlled substances, (2) the resale of a product purchased with food assistance benefits in exchange for cash or consideration other than eligible food, and (3) the purchase of a product that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount.~~

~~"Under-issuance" means the difference between the allotment the household was eligible to receive and the allotment the household actually received, which was lower than what the household was eligible to receive.~~

~~"Valid application" means a state-prescribed form completed with name, address, and signature.~~

~~"Vendor payments" means money payments that are not payable directly to a household, but are paid to a third party for a household expense.~~

~~"Verification" means confirmation of a household's statements through written, verbal, or electronic means~~

~~"Verified upon receipt (VUR)" means information that is provided directly from the primary source and which is not questionable.~~

~~"Voluntary quit" means when a Food Assistance recipient voluntarily quit a job of 30 or more hours a week or reduced work effort to less than 30 hours a week without good cause.~~

~~"Voluntary Work Registrant" means an individual who chooses to participate in the program and is not mandated to participate by the State or Federal regulations.~~

~~"Waiver of Administrative Disqualification Hearing" means a waiver sent to individuals suspected of intentional Program violation which presents the individual with the option of waiving his or her right to an administrative hearing, essentially accepting the appropriate disqualification without necessarily admitting the violation.~~

4.120030 PURPOSE OF SNAP ~~THE FOOD ASSISTANCE PROGRAM~~

The purpose of SNAP ~~the Food Assistance Program~~ is expressed by the United States Congress in Section 2 of the Food and Nutrition Act of 2008, Public Law No. 110-246 (codified at 7 USC 2012). The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection ~~during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203~~.

SNAP ~~The Food Assistance Program~~ is designed to promote the general welfare and to safeguard the health and well-being of the nation's population by raising the levels of nutrition among low-income households.

4.130040 USING SNAP ~~FOOD ASSISTANCE~~ BENEFITS

SNAP ~~Food assistance~~ benefits received by an eligible household may be used at any time by the household or other persons whom the household selects to purchase eligible food for the household. SNAP ~~Food Assistance~~ benefits are issued through an Electronic Benefit Transfer (EBT) system in which benefit allotments are stored on an electronic benefit transfer card and used to purchase authorized items at a point-of-sale (POS) terminal. EBT cards shall be presented only to retailers authorized by USDA/FNS to accept food benefit payment for food purchases.

SNAP ~~Food Assistance~~ benefits must be used to pay for food currently purchased and cannot be used to pay for foods previously or subsequently secured or to pay back bills owed the grocer. The only exceptions are that SNAP ~~Food Assistance~~ benefits may be used to pay for food items such as milk or bakery goods that are delivered to the home on a regular basis, or for advance payment to a non-profit cooperative food venture when food purchased is to be delivered ~~at a~~ later ~~date~~.

A. EXPUNGEMENT

1. UPON APPROVAL OF BENEFITS, SNAP RECIPIENTS ARE PROVIDED INFORMATION IN WRITING THAT ANY SNAP BENEFITS ISSUED TO THE EBT CARD THAT ARE UNUSED AFTER 9 MONTHS (274 DAYS) WILL BE CONSIDERED AS AN EXPUNGEMENT AND REMOVED FROM THE ACCOUNT.
2. UPON APPROVAL OF BENEFITS, SNAP RECIPIENTS ARE PROVIDED INFORMATION IN WRITING THAT IF THE EBT ACCOUNT GOES INACTIVE (NO FOOD PURCHASES OR RETURNS) AFTER 9 MONTHS (274 DAYS), THE INACTIVE

SNAP BENEFITS WILL BE CONSIDERED AS AN EXPUNGEMENT AND REMOVED FROM THE ACCOUNT.

4.130.1~~040.1~~ WHERE HOUSEHOLDS CAN USE SNAP ~~FOOD ASSISTANCE~~ BENEFITS

A. Specified persons may use their SNAP ~~Food Assistance~~ benefits to purchase meals from the following:

1. A meal delivery service approved by the USDA, Food and Nutrition Service (FNS);

2. A communal dining facility for ~~elderly~~ persons AGED 60 AND OLDER and/or SSI households;

3. An authorized drug or alcoholic treatment and rehabilitation center;

4. An authorized public or private, nonprofit group living arrangement facility; and

5. A shelter for battered women and children.

B. ~~Homeless~~ ~~Hh~~ouseholds CONTAINING PERSONS EXPERIENCING HOMELESSNESS shall be permitted to use their benefits to purchase prepared meals from an authorized public or private nonprofit provider for ~~homeless~~ persons EXPERIENCING HOMELESSNESS. A meal provider for ~~homeless~~ persons EXPERIENCING HOMELESSNESS means a public or private non-profit establishment, including, but not limited to, soup kitchens and temporary shelters which feed ~~homeless~~ persons EXPERIENCING HOMELESSNESS. ~~In order t~~To be considered a ~~homeless~~ meal provider TO PERSONS EXPERIENCING HOMELESSNESS, the meal provider must be approved as such by the USDA, FNS.

~~Homeless h~~Households CONTAINING PERSONS EXPERIENCING HOMELESSNESS may also purchase meals from restaurants if the restaurant offers discounts to ~~homeless households~~ or serves food to ~~homeless~~ households CONTAINING PERSONS EXPERIENCING HOMELESSNESS at concessional (reduced) prices, and the restaurant is authorized by the USDA, FNS as a retailer.

4.130.2~~040.2~~ ELIGIBLE FOODS

Households can only purchase eligible foods with SNAP ~~Food Assistance~~ benefits. Eligible foods include:

A. Any food or food product intended for human consumption, except for alcoholic beverages, tobacco, and hot food, including hot food products prepared by the retailer and sold at above room temperature for immediate consumption.

B. Seeds and plants to grow foods for ~~the~~ personal consumption by eligible household members.

4.140~~050~~ CONFIDENTIALITY

A. If there is a written request by a responsible member of the household, or THE ~~it's ITS~~ current~~ly~~ authorized representative, or a person acting on behalf of the household to review materials contained in the case record, the material and information contained in the case record shall be made available for inspection ~~during normal business hours~~.

B. The local office shall withhold confidential information, such as the names of persons who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal investigations or prosecutions.

C. Use or disclosure of information obtained from a SNAP ~~Food Assistance~~ applicant or household or from any State or Federal agency included in the Income and Eligibility Verification System (IEVS),

including the Internal Revenue Service (IRS), Social Security Administration (SSA) and Colorado Department of Labor and Employment (DOLE) exclusively for SNAP ~~the Food Assistance Program~~, shall be restricted to the following persons:

1. Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally- assisted State programs providing assistance on a means-tested basis to LOW-INCOME ~~low income~~ individuals, or general assistance programs which are subject to the joint processing requirements in 4.202.1.

2. Employees of the Comptroller General's office of the United States for audit examination authorized by any other provision of law;

3. Local, State or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested;

   Local, State, or Federal law enforcement officers acting in their official capacity, upon written request by such law enforcement officers that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under a Federal or State law. The agency shall provide information regarding a household member, upon written request of a law enforcement officer acting in his or her official capacity that includes the name of the person being sought, if the other household member has information necessary for the apprehension or investigation of the other household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole imposed under Federal or State law.

   The agency must accept any document that reasonably establishes the identity of the household member being sought by law enforcement authorities. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the agency shall follow the procedures in 4.304.4 to determine whether the member's eligibility FOR ~~in the~~ SNAP ~~Food Assistance program~~ should be terminated. A determination and request for information that does not comply with the terms and procedures in 4.304.4 is not sufficient to terminate the member's participation. The agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.

4. Persons C~~C~~onnected with the Parent Locator Service. Information made available to the Parent Locator Service must be restricted to the recipient or applicant's most recent address and place of employment;

5. Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act, in order to assist in the administration of their program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under titles II and XVI of the Social Security Act;

6. Persons directly connected with the verification of immigration status of non-citizen SNAP ~~Food Assistance~~ applicants through the Systematic Alien Verification for Entitlements (SAVE) system, to the extent the information is necessary to identify the individual for verification purposes;

7. School authorities for the purpose of determining which children are from families who participate in the Program. This information is used to determine eligibility for meals under the National School Lunch or Breakfast Program; and,

8. Persons directly connected with the administration or enforcement of programs included in the Income and Eligibility Verification System (IEVS). Information obtained through the IEVS will be stored and processed so that no unauthorized personnel may acquire or retrieve the information for unauthorized purposes. All persons with access to information obtained pursuant to the IEVS requirements will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

4.150~~060~~ RIGHT AND OPPORTUNITY TO REGISTER TO VOTE

An applicant for SNAP ~~Food Assistance~~ benefits shall be provided the opportunity to register to vote. The LOCAL OFFICE ~~county department~~ shall provide to all applicants the prescribed voter registration application.

The LOCAL OFFICE ~~county department~~ shall not:

A. Seek to influence the applicant's political preference or party registration.

B. Display any political preference or party allegiance.

C. Make any statement to an applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote.

D. Make any statement to an applicant or take any action, the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

4.150.1~~060.1~~ Transmittal of Voter Registration Records

A completed voter registration application shall be transmitted to the county clerk and recorder for the county in which the LOCAL OFFICE ~~county department~~ is located not later than ten (10) calendar days after the date of acceptance; except that, if a registration application is accepted within five (5) calendar days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk and recorder for the county not later than five (5) calendar days after the date of acceptance.

4.150.2~~060.2~~ Confidentiality of Voter Registration Records

Records concerning voter registration and declination to register to vote shall be maintained for two years by the LOCAL OFFICE ~~county department~~, and these records shall not be a part of the SNAP ~~Food Assistance~~ case record and are not subject to subpoena. The LOCAL OFFICE ~~county department~~ shall ensure the confidentiality of individuals registering or declining to register to vote. A voter registration application completed at the agency is not to be used for any purpose other than voter registration.

4.160~~070~~ COMPLAINT REQUIREMENTS

The local office shall publicize the state's complaint system. In addition, the local office shall advise any household wishing to file a complaint of the complaint procedure and ASSIST THE HOUSEHOLD WITH ~~offer assistance in~~ filing a complaint, if appropriate.

The State Department shall ensure that information is made available to potential participants, applicants, participants, or other interested persons concerning the complaint system, and the procedure for filing a complaint at the state or county level. Such information shall be made available to potential participants, applicants, and other interested parties through written materials and posters which shall be prominently displayed in all certification and issuance offices.

The local office shall make every effort to resolve all complaints, excluding complaints of discrimination, brought to their attention at the local level. However, all complainants shall be informed they have the right to contact the State Department if they are not satisfied with the action taken at the local level.

4.160.1~~070.1~~ State DEPARTMENT and LOCAL OFFICE ~~County Department~~ Responsibility

A. The State Department shall maintain records of complaints received. These records will be reviewed on an office-by-office basis at least annually. Any potential or actual patterns of deficiencies identified shall be reported to the State DEPARTMENT ~~Food Assistance Division coordinator~~ for action or for inclusion, if appropriate, in the state and/or COUNTY'S ~~county department's~~ Performance Improvement Plan.

   The State DEPARTMENT ~~Food Assistance Division~~ shall be the primary contact through which complaints are filed. State staff shall either handle the complaint when filed, or refer the complaint to appropriate state or county staff for disposition.

B. When requested to do so by the State Department, the local office shall provide information sufficient to enable the State DEPARTMENT ~~Food Assistance Division~~ to provide notification to the complainant in accordance with timeframes specified in item C below.

C. The State level complaint system shall include notification to the complainant, either verbally or in writing, of the action taken by the State Department in resolving the complaint. Notification to the complainant by the State Department shall be accomplished within the following time frames:

1. Complaints involving expedited services shall be investigated and a response provided to the complainant no later than three (3) business days following the date the complaint was received by the State Department.

2. All other complaints shall be investigated and a response provided to the complainant no later than thirty (30) calendar days following the date the complaint was received by the State Department.

D. If a complaint can be resolved through the fair hearing process, the State Department shall advise the complainant of the process for requesting a fair hearing and offer the complainant assistance to request a fair hearing.

4.160.2~~070.2~~ Non-Discrimination Complaint Requirements

State and local agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, disability, religious creed, national origin, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity funded by the USDA. Discrimination in any aspect of program administration is prohibited. Local offices shall ensure that the nondiscrimination poster provided by FNS is prominently displayed. Posters may be obtained through the State Department.

The local office shall explain ~~the~~ complaint procedures~~, as outlined in 4.070.21 "Discrimination Complaint Procedure,"~~ to each person expressing an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint under this procedure. Such information shall be made available within ten (10) calendar days from the date of request.

4.160.21~~070.21~~ Discrimination Complaint Procedure

A. Individuals who believe they have been subject to discrimination may file a written complaint with the USDA, FNS national office, the local office, and/or the State Department. All complaints of alleged discrimination shall be made in writing and shall be submitted to the FNS national office.

If allegations of discrimination are made verbally, and if the complainant is unable or unwilling to put the allegations in writing, the State or county employee to whom the allegation is made shall document the complaint in writing. The person accepting the complaint shall make every effort to secure the information specified in Subsection C, below.

B. The complainant shall be advised that a complaint may be submitted to the State Department, FNS or both, and that a complaint shall not be investigated unless information specified in items C, 2, through C, 4, below, is provided. In addition, the complainant shall be advised that a complaint must be filed no later than one hundred eighty (180) calendar days from the date of the alleged discrimination. The local office shall date stamp or otherwise note the date the complaint is received by the office.

1. Complaints directed to the FNS national office shall be addressed to: U.S. Department of Agriculture, Director, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410; Fax: (202) 690-7442; Email: program.intake@usda.gov.

2. Complaints directed to the State Department shall be addressed to: Colorado Department of Human Services, SNAP~~Food Assistance Program~~, 1575 Sherman St., Denver, CO 80203.

C. The complaint shall include the following information to facilitate investigations TO BE CONSIDERED COMPLETE:

1. The name, address and telephone number or other means of contacting the person alleging discrimination;

2. The location and name of the office which is accused of discriminatory practices;

3. The nature of the incident or action, or the aspect of Program administration that led the person to allege discrimination;

4. The reason for the alleged;

5. The name(s) and title(s), if appropriate, of person(s) who may have knowledge of the alleged discriminatory act; and

6. The date(s) on which the alleged discriminatory action(s) occurred.

4.160.22~~070.22~~ Disposition of Discrimination Complaints

When the local office receives a complaint of alleged discrimination and obtains A COMPLETE DISCRIMINATION COMPLAINT, ~~the information specified in 4.070.21 "Discrimination Complaint Procedure,"~~ it shall transmit a copy of the complaint to the FNS national office and/or the State Department within five (5) working days. The State Department shall file the complaint with the FNS national office on behalf of the complainant if the local office does not file the complaint with the FNS national office.

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4.201 APPLICATION PROCESSING

A. LOCAL ~~County~~ offices shall not apply additional conditions or processing requirements that are beyond those prescribed by State SNAP~~Food Assistance~~ rules. The application process includes the filing and completion of an application form, being interviewed, and verifying certain information. Signs shall be posted in certification offices that explain the application processing standards and the right to file an application on the day of initial contact. Similar information about same-day filing shall be included in outreach materials and on the application form.

B. The local office shall act promptly on all applications and provide SNAP~~Food Assistance~~ benefits retroactive to the month of application to those households that have completed the application process and have been determined to be eligible.

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D. The household may voluntarily withdraw its application at any time prior to a determination of eligibility. Once a determination of eligibility is made, the household may voluntarily terminate its participation. Any reason given by the household for withdrawal or termination shall be documented in the case file. A Notice of Action form, indicating voluntary withdrawal of application or voluntary termination of participation, shall be sent to the household within ten (10) calendar days of the decision, to confirm the action taken. The household shall be advised of its right to reapply at any time AFTER~~subsequent to~~ a withdrawal.

E. No household shall have its SNAP~~Food Assistance~~ benefits denied solely BASED ON~~on the basis of~~ its application to participate in another program being denied or its benefits under another program being terminated, without a separate determination by the local office that a household failed to satisfy a SNAP~~Food Assistance Program~~ eligibility requirement.

F. Households denied SNAP~~Food Assistance~~ that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. Residents of public institutions who apply jointly for SSI and SNAP~~Food Assistance~~ benefits prior to their release from the institution shall not be eligible for SNAP~~Food Assistance~~ until the individual has been released from the public institution.

G. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that SNAP~~Program~~ benefits are distributed without regard to race, color, or national origin. In those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility worker challenge or change a self-declaration made by a household member.

4.202 FILING AN APPLICATION

A. Regardless of what type of application system is used, the local office must provide a means for applicants to immediately begin the application process. The household shall be advised it may file an incomplete application form IF~~as long as~~ the form contains a name, address, and is signed by a responsible household member or the household's authorized representative. Signatures include handwritten signatures, electronic signature techniques, recorded telephonic signatures, or documented gestured signatures. A valid handwritten signature includes a designation of an X. Local offices shall accept applications for Food Assistance during normal business hours and shall not be restricted to a certain day or time of day. The household shall be advised that it need not be interviewed before filing an application. The LOCAL OFFICE~~county department~~ shall inform applicants that receiving SNAP~~Food Assistance~~ will have no bearing on any other program's time limits that may apply to the household.

B. Persons who request information for SNAP~~Food Assistance~~ must be advised of expedited service provisions and encouraged to APPLY~~submit an application~~ so that eligibility processing can begin. County local offices shall encourage the filing of an application form on the same day the household or its representative contacts the local office in person or by telephone and expresses interest in obtaining SNAP~~Food Assistance~~, or indicates the household is without food or the means to obtain food.

C. Local offices shall make application forms readily accessible to applicant households, as well as to groups and organizations, and shall also provide an application form to anyone who requests the form. If a household contacting the local office by telephone does not wish to come to the

appropriate office to file the application that same day and instead prefers receiving an application through the mail, the local office shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for SNAP~~Food Assistance~~ is received.

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E. Households must file applications by submitting the forms in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an online electronic application. The local office must inform the applicant that they CAN~~have the opportunity to~~ obtain a copy of their application and provide the household with a copy of their completed application upon the request of the client. A copy of a completed application can be a copy of the information provided by the client that was used or will be used to determine a household's eligibility and benefit allotment. At the option of the household, this may be provided in an electronic format.

F. Applications are valid for a period of sixty (60) calendar days OR UNTIL ELIGIBILITY HAS BEEN DETERMINED, WHICHEVER IS SOONER. ~~Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application date must submit a new application.~~ ONCE ELIGIBILITY HAS BEEN DETERMINED, HOUSEHOLDS MUST SUBMIT A NEW APPLICATION IF THE HOUSEHOLD:

1. FAILED TO ATTEND AN INTERVIEW IN THE FIRST THIRTY (30) DAYS OF THE APPLICATION, OR
2. WAS DETERMINED INELIGIBLE DUE TO HOUSEHOLD CIRCUMSTANCES

G. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that SNAP~~Program~~ benefits are distributed without regard to race, color, or national origin. In those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility TECHNICIAN~~worker~~ challenge or change a self-declaration made by a household member.

4.202.1 Public Assistance Applications and Processing

A. Households applying for PA~~public assistance (PA)~~ shall be notified of their right to apply for SNAP~~Food Assistance~~ at the same time~~,~~ and shall be allowed to apply for SNAP~~Food Assistance~~ at the same time they apply for PA~~public assistance~~ benefits.

B. The local office shall provide benefits using the original application and any other pertinent information occurring AFTER~~subsequent to~~ that application for any household filing a joint application for SNAP~~Food Assistance~~ and PA~~public assistance~~ benefits. The original application and relevant subsequent information shall also be used for households that are categorically eligible when they are determined eligible to receive PA~~public assistance~~ after being denied for SNAP~~Food Assistance~~. The local office shall not re-interview the household~~,~~ but shall use mail or telephone contact to obtain information about any changes.

C. Households whose PA~~public assistance (PA)~~ applications are denied shall not be required to file a new SNAP~~Food Assistance~~ application. The household shall have its SNAP~~Food Assistance~~ eligibility determined or continued based on the applications filed jointly for PA and SNAP~~Food Assistance~~ purposes and any other documented information obtained AFTER~~subsequent to~~ the application that may have been used in the PA determination.

4.202.2 Application Filing by Ineligible Individuals

The ineligibility of certain individuals for Program benefits will not prohibit the remaining household members from applying for and receiving SNAP~~Food Assistance~~. Ineligible individuals living in an applicant household shall not be considered eligible household members for SNAP~~Food Assistance~~ purposes; however the ineligible individual's income and resources are considered in the household's eligibility determination and benefit allotment.

When the eligible members of a household are all unemancipated minors and the only adult is an ineligible individual, the ineligible individual may APPLY~~make application~~ on behalf of the eligible minors without being considered as having applied for him/herself. However, if there is any other eligible adult of an unemancipated minor in the household, even though they would not normally be considered the household head, that eligible person should make application as the head of household.

~~**4.202.3 SSI Households Submitting Food Assistance Applications to the SSA**~~

~~A. Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the member has a right to make a household application for Food Assistance at the SSA office or the local office. The SSA office is not required to accept applications for SSI applicants or recipients who are not members in a household consisting entirely of SSI recipients unless a county has outstationed a worker at the SSA office. The SSA office will refer non-SSI households to the correct local office. An applicant or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Assistance Program and the availability of the Food Assistance application at the SSA office. The SSA office shall also complete joint SSI and Food Assistance applications for residents of public institutions who apply for SSI prior to their release from the institutions. The applicants shall be permitted to apply for Food Assistance at the same time that they apply for SSI.~~

~~B. The SSA office will accept and complete Food Assistance applications from SSI households and forward them, within one working day after receipt of a signed application, to the appropriate county local office. The SSA will use the Food Assistance application. The application will be transmitted to the local office with documentation of verification obtained. When an SSA office sends a Food Assistance application and supporting documentation to an incorrect local office, the application and documentation shall be sent to the correct office within one working day.~~

~~C. The SSA office is required to prescreen all Food Assistance applications for entitlement to expedited service and shall mark "expedited processing" on the first page of all applications of households that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benefits may be issued a few days sooner if the household applies directly at the local office. The household may take the application from the SSA office to local office for screening, interviewing, and processing of the application. Each local office shall furnish the SSA office(s) serving its geographical area with a street map and/or map defining its boundaries together with the addresses of the certification offices in the project area.~~

~~D. The local office shall prescreen all applications received from the SSA office for entitlement to expedited service on the day the application is received at the correct local office. All households entitled to expedited service shall be certified in accordance with Sections 4.205.1 and 4.205.11, except that the expedited processing time standard shall begin on the date the application is received at a local office in the correct county. To prevent duplication, the local office shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA office are currently participating in the Food Assistance Program.~~

~~**4.202.31 SSI Telephone Applications and Recertifications Completed by the SSA**~~

~~A. If an SSA office takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a Food Assistance application shall also be completed during the telephone interview and shall be mailed by the SSA office to the applicant for signature for return to the SSA office or to the local office. The SSA office shall then forward any Food Assistance applications it receives to the local office. The local office shall not require the~~

household to be interviewed again. The local office may contact the household further to obtain additional information for the eligibility determination.

B. The SSA office shall mail information of the client's right to file a Food Assistance application at the SSA office if they are members of a pure SSI household, or at their local office, and their right to an interview to be performed by the county department.

C. For households consisting entirely of applicants for, or recipients of, SSI who apply for Food Assistance certification at an SSA office, the application shall be considered filed for normal processing purposes when the application is received by the SSA.

4.202.32 SSI and Food Assistance Joint Processing

A. In those instances where the application has been completed at the SSA office, the local office shall ensure that information required by Section 4.502 is verified prior to certification for households initially applying, and households entitled to expedited certification services shall be processed in accordance with Sections 4.205.1 and 4.205.11. In those cases where the SSI household submits its Food Assistance application to the local office rather than through the SSA office, all verification, including that pertaining to SSA program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the local office rather than being provided by the SSA.

For those cases in which SSI and Food Assistance are being processed simultaneously, the local office shall question the household and/or use SDX listings to obtain information on SSI determinations. If the information cannot be obtained through SDX listings and/or questioning the households, a written inquiry may be made to the SSA office to obtain information of the status of SSI determinations. Within ten (10) calendar days of learning of the determination of the SSI application, the local office shall take action in accordance with Section 4.604.

B. The expedited processing time standard for applicants who filed prior to the release from a public institution will begin on the date that the individual is released from the public institution. The SSA shall notify the local office of the date of release of the applicant from the institution. Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and Food Assistance, but the local office was not notified on a timely basis of the applicant's release.

4.202.33 Outstationing Eligibility Workers in SSA Offices

If the county, with the approval of the State Department, chooses to outstation eligibility workers at SSA offices, with SSA's concurrence, the following actions shall be completed:

A. SSA will provide adequate space for Food Assistance eligibility workers in SSA offices;

B. The county shall have at least one outstationed worker on duty at all time periods during which households will be referred for Food Assistance application processing. In most cases, this would require the availability of an outstationed worker throughout normal SSA business hours;

C. The following households shall be entitled to file Food Assistance applications with, and be interviewed by, an outstationed eligibility worker:

1. Households containing an applicant for or recipient of SSI.

2. Households which do not have an applicant for or recipient of SSI but which contain an applicant for or recipient of benefits under Title II of the Social Security Act, if the county and the SSA have an agreement to allow the processing of such households at SSA offices.

~~D. Households shall be interviewed for Food Assistance on the day of application unless there is insufficient time to conduct an interview. The county shall arrange for the outstationed worker to interview applicants as soon as possible;~~

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4.203.1 Designating a Head of Household

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B. The local office shall not use the head of household designation to impose special requirements on the household, such as require that the head of household, rather than another responsible memberS of the household, appear at the local office to APPLY~~make application~~ for benefits. If the household is not able to select its head of household, or an eligible household does not choose to select its head of household, the local office may make a reasonable determination of the head of household with an understanding that the head of household is usually the household member who has the most knowledge of the household's financial circumstances. Such individualS must be a household member, except that, if the only adult in the SNAP~~Food Assistance~~ household is a non-household member, such individual may APPLY~~make application~~ on behalf of the household of minors as the authorized representative.

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4.203.2 Designating Authorized Representatives

A. The head of the household, spouse or any other responsible household member may designate in writing someone to act on behalf of the household to APPLY~~make an application~~, obtain an EBT card, and/or use the EBT card to purchase food for the household. In instances where a household NEEDS~~is in need of~~ an authorized representative but is unable to obtain one, the local office will assist such a household in finding ONE~~an authorized representative~~. The local ~~certification~~ office will assure that authorized representatives are properly designated; that is, the name of the authorized representative and the justification for appointing a person outside the household shall be maintained as part of the household's permanent case record.

1. SUBMITTING~~Making~~ an Application

The authorized representative must be a person who is sufficiently aware of relevant household circumstances. Whenever possible, the head of the household or spouse should prepare or review the application even though another household member or an authorized representative is the person interviewed.

The local office shall inform the household that the household will be held liable for any over-issuance which results from erroneous information given by the authorized representative.

2. Obtaining an EBT Card

An authorized representative may be designated to obtain an EBT card for the household at the time the household applies for participation. The authorized representative responsible for obtaining an EBT card may be the same individual designated to APPLY~~make application~~ for the household or may be another individual. Even if a household member CAN APPLY~~is able to make an application~~ and obtain an EBT card, the household should be encouraged to name an authorized representative responsible for obtaining an EBT Card in case of illness or other circumstances which might result in an inability to obtain SNAP~~Food Assistance~~ benefits.

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4.203.21 Individuals Who Cannot Be an Authorized Representative

The following individuals cannot be an authorized representative unless otherwise stated:

A. LOCAL OFFICE~~County department~~ employees who are involved in Program eligibility determination and/or issuance processes, or the supervisors of such workers, unless the local office determines that no other representative is available.

B. Employees of FNS-authorized retailers and meal services that are authorized to accept SNAP~~Food Assistance~~ benefits, unless the local office determines that no other representative is available.

C. An individual disqualified for IPV~~Intentional Program Violation (IPV)~~/fraud shall not be an authorized representative during the period of disqualification unless the individual is the only adult in the household and the office is unable to arrange for another authorized representative. Local offices shall determine whether these disqualified individuals are needed to apply on behalf of the household, to obtain SNAP~~Food Assistance~~ benefits for the household, and to use the household's SNAP~~Food Assistance~~ benefits to purchase food.

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4.203.22 Disqualification of an Authorized Representative

An authorized or emergency representative may be disqualified from representing a household in the SNAP~~Food Assistance Program~~ for up to one (1) year if the local office has obtained evidence that the representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household~~,~~ or has made improper use of SNAP~~Food Assistance~~ benefits. The local office shall send written notification to the affected household(s) and to the representative thirty (30) calendar days prior to the date of disqualification. The notification shall include the proposed action, the reason for the proposed action, the household's right to request a fair hearing, the telephone number of the office, and, if possible, the name of the person to contact for additional information.

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4.204 Interviews

A. Interview Requirements

All applicant households shall undergo a ~~face-to-face or~~ phone OR FACE-TO-FACE interview with a qualified eligibility ~~worker~~ prior to initial certification and at least once every twelve (12) months. THE STATE DEPARTMENT RECOMMENDS PHONE INTERVIEWS AS THE DEFAULT OPTION WITH FACE-TO-FACE INTERVIEWS ONLY SCHEDULED UPON CLIENT REQUEST. IF AN INDIVIDUAL DOES NOT LIST A WORKING PHONE NUMBER ON THE APPLICATION, THEN A NUMBER FOR THE CLIENT TO CALL THE COUNTY OFFICE SHOULD BE PROVIDED.

A household certified for twenty-four (24) months is not required to complete an interview at the 12-month PRF or at twenty-four (24) month recertification, unless the household either requests an interview, is potentially going to be denied for SNAP~~Food Assistance~~ (24-MONTH HOUSEHOLDS ONLY) or has any outstanding issues or questions about the recertification process.

The applicant may include any person(s) he or she chooses for the interview. The individual interviewed may be the head of the household, spouse, or any other responsible member of the household, or an authorized representative.

A face-to-face interview may be conducted at the ~~county~~ local office or a mutually acceptable location, including the household's residence upon household request. If the interview is to be conducted at the residence, it must be scheduled in advance. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

The eligibility TECHNICIANworker shall not simply review the information entered on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes. The interviewer must advise households which are applying for other PApublic assistance programs that any time limits and other requirements for the receipt of other PApublic assistance do not apply to the receipt of SNAPFood Assistance. Households may still qualify for SNAPFood Assistance if they have reached a time limit, begun working, or lost benefits from another program for another reason.

Upon determination that a person should be referred to an Employment First Unit, the LOCAL OFFICEcounty department shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The local office shall provide a written statement of these requirements to each work registrant in the household and to each previously exempt or new household member when that person becomes subject to the work registration and at recertification.

B. Scheduling Interviews

The local office must schedule an interview for all applicant households who are not interviewed on the same day they APPLYsubmit an application to the LOCAL OFFICEcounty department. Interviews shall be scheduled for a specific date and time and an appointment letter MUST BE PROVIDEDshall be given to the client AT THE ADDRESS ON FILE. All interviews, including the date and time of the interview, shall be documented in the case record.

IF THE LOCAL OFFICE FAILS TO SCHEDULE AN INTERVIEW WITH THE HOUSEHOLD BEFORE THE 30TH DAY AND NO LATER THAN THE 60TH DAY, THE ORIGINAL APPLICATION CAN BE USED AND BENEFITS ARE ISSUED FROM THE ORIGINAL DATE OF APPLICATION.

IF THE HOUSEHOLD REQUESTS AN INTERVIEW DATE AFTER THE 30TH DAY, THE LOCAL OFFICE WILL DENY THE APPLICATION ON THE 30TH DAY AND THE HOUSEHOLD MUST FILE A NEW APPLICATION.

C. Missed Interviews

If the household fails to attend its scheduled interview, the local office shall mail the household a notice of missed interview, informing the household that it missed the scheduled interview and that the household is responsible for rescheduling the interview. If the household does not schedule a subsequent interview for a date within thirty (30) calendar days after the application is filed, the application shall be denied by the local office on the thirtieth (30th) day following the date of application. The application shall not be denied before the thirtieth (30th) day. If the household fails to appear for a rescheduled interview, no further action need be taken by the local office, unless requested by the household.

If a household misses its first interview, the household forfeits its right to expedited service, unless the second interview is rescheduled for a date within seven (7) days following the date of application.

If a household completes an interview any time after the thirtieth (30th) day but no later than the sixtieth (60th) day from the date of application, then the original application shall be used to determine eligibility, and the household shall not be required to complete a new application. However, the household's benefits will be prorated from the date the required action was taken within the second thirty (30) day period.

If the household makes contact with the agency after the sixtieth (60th) day following the date of application, the household shall be required to complete a new application.

D. Interviews for PAPublic Assistance Households

If a household is applying for both PApublic assistance and SNAPFood Assistance, the LOCAL OFFICEcounty department shall conduct a single interview at initial application for both PApublic assistance and SNAPFood Assistance purposes. The applicant household shall complete the combined application for PApublic assistance and SNAPFood Assistance. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for SNAPFood Assistance and PApublic assistance. A household's eligibility for an out-of-office interview for SNAPFood Assistance purposes does not relieve the household of any responsibility for a face-to-face interview for PApublic assistance purposes. Except for households which may be eligible under basic categorical eligibility, the household's SNAPFood Assistance eligibility and benefit level shall be based solely on SNAPFood Assistance eligibility criteria, and all households shall be certified in accordance with the noticing, procedural, and timeliness requirements of the SNAPFood Assistance regulations. The PA applicant household shall indicate on the single purpose application if it does not wish to apply for SNAPFood Assistance.

E. Interviews for SSI Households

Households in which all members are applying for SSI or receiving SSI and are applying and being interviewed for Food Assistance by SSA, will not be required to see a Food Assistance eligibility worker or otherwise be subjected to an additional certification interview. The local office shall accept SSA documentation and shall not contact the household to obtain additional information for the eligibility determination unless the application is improperly completed, mandatory verification required by Section 4.502 is missing, or the local office determines that certain information on the application is questionable. In no event shall the applicant be required to appear at the local office to finalize the eligibility determination. Further contact made in accordance with this paragraph shall not constitute a second Food Assistance certification interview.

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4.205.2 Normal Processing Standards

A. The county local office shall process applications as expeditiously as possible and provide eligible households a written notification of their eligibility. The applicant household must receive a Notice of Action form, which will indicate the household's period of eligibility and SNAPFood Assistance allotment. Eligible households shall be provided an opportunity to obtain benefits as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Except for applications filed at an SSA office, Aan application shall be considered filed the day a local office in the correct county receives a valid application containing the applicant's name, address, and signature.

Households found to be ineligible shall be sent a Notice of Action form denying the household as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Applicant households that refuse to cooperate in completing the application process shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly refuse to take actions that are required to complete the application process.

B. In cases where verification is incomplete, the local office shall provide the household with a statement of required verification on the state-prescribed notice form and offer to assist the household in obtaining the required verification. The office shall allow the household ten (10) calendar days to provide the missing verifications, unless the household missed the first appointment. If the household misses the first appointment and the interview cannot otherwise be rescheduled until after the twentieth (20th) day but before the thirtieth (30th) day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the thirtieth (30th) day. A household can be found ineligible or eligible for the month of application and for the following month based on one (1) application, if sufficient information for such determination is available. The state-prescribed notice form shall reflect specific months of eligibility and ineligibility.

~~C. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application must submit a new application.~~

4.205.3 Delays in Processing Beyond Thirty (30) Days

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A. If a household has failed to complete a SNAP~~Food Assistance~~ application form even though the local office offered to assist the client in its completion, the household shall be at fault. If the local office failed to ASSIST~~offer assistance to~~ the household, the local office is at fault. If the local office offered the household assistance in completing the application but the household failed to cooperate or failed to complete the application process, the local office shall document in the case record its attempt to assist the household.

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C. If requested verification is missing even though the local office offered ASSISTANCE~~to provide assistance~~ and a written notice of needed verification was provided and the household was allowed ten (10) calendar days to supply necessary verification, the household shall be considered at fault unless paragraph D of this section applies. If the local office did not request necessary verification through a written notice, or assist the client as required by these regulations, or give the client time to provide information, then the local office is at fault.

D. If the household failed to appear for the first (1st) interview, failed to schedule a second (2nd) interview and/or requested to postpone the ~~subsequent~~ interview until after the ~~thirtieth (~~30th~~)~~ day following the date of application, the delay shall be the household's fault.

4.205.31 Delays Caused by the Household

Any time the household requests a postponement which delays the thirty (30) calendar day processing, it shall be THE~~a~~ household'S fault. ~~If, by the thirtieth (30th) day, the local office cannot take further action on an application because the household has failed to take the required action requested by the local office, the household shall lose its entitlement to benefits for the month of application and shall be sent a notice of action form on the thirtieth day. However, the local office shall give the household an additional thirty calendar days to take the required action requested by the local office after the notice of denial is sent.~~

~~The local office shall reopen the case, without requiring a new application, i~~If the household PROVIDES REQUESTED VERIFICATION AFTER THE 30TH DAY AND ON OR BEFORE THE 60TH DAY FROM THE DATE OF APPLICATION, THE LOCAL OFFICE SHALL REOPEN THE CASE WITHOUT REQUIRING A NEW APPLICATION AND BENEFITS WILL BE PRORATED FROM THE DATE THE REQUESTED VERIFICATION IS PROVIDED. ~~takes the necessary action within sixty (60) calendar days following the date the application was filed. Any changes in the household situation must be taken into account for determining eligibility. If the household is found to be eligible during the second thirty (30) day period and still within the second (2nd) calendar month, the local office shall prorate benefits from the date verification/documentation is provided only for the month following the month of application. If the delay is beyond the second calendar month, but within the sixty day period, the benefits will be prorated for the third (3rd) calendar month from the date that action is taken.~~

4.205.32 Delays Caused by the LOCAL~~Food Assistance~~ Office

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4.206 CATEGORIES OF ELIGIBILITY

A. Households applying for SNAP~~Food Assistance~~ must be determined eligible using one of the following categories of eligibility: Basic Categorical Eligibility (BCE), Expanded Categorical Eligibility (ECE) or Standard Eligibility.

B. SNAP~~Food Assistance~~ households that are applying for or receiving benefits from other assistance programs in addition to SNAP~~Food Assistance~~ are still required to meet the resource limits and follow the reporting and verification requirements of the other program. Requests for information and verification to determine eligibility for other programs shall not affect or delay the determination of SNAP~~Food Assistance~~ eligibility.

C. Eligibility

1. ~~Basic Categorical Eligibility (~~BCE~~)~~

a. ~~Basic categorically eligible~~ households are:

1. Households in which all members receive, or are authorized to receive, ~~Supplemental Security Income (~~SSI~~),~~ CW~~or benefits from the Colorado Works Program~~, Old Age Pension (OAP), Aid to the Needy Disabled (AND), Aid to the Blind (AB) or a combination of these benefits. The CW~~Colorado Works~~, SSI, OAP, and/or AB program(s) need only to authorize benefits for participants ~~in order for~~ the household to be considered for BCE~~basic categorical eligibility~~. Individuals who are authorized to receive a benefit from one or more of these programs, but who are not paid such benefits because the grant is less than a minimum benefit or the benefits are suspended or are being recouped, are still considered eligible under BCE~~basic categorical eligibility~~ rules.

   Households not receiving, or authorized to receive, TANF~~Temporary Assistance for Needy Families (TANF)~~ Title IV-A or SSI benefits, who are entitled to Medicaid only, shall not be considered SSI or Title IV-A participants.

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b. Households eligible under BCE~~basic categorical eligibility~~ have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors~~. I~~If these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the SNAP~~Food Assistance Program~~. This includes:

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c. A household cannot be considered under BCE~~basic categorical eligibility~~ rules if, at the time of application:

1) Any member is disqualified for a~~n~~ SNAP IPV~~Intentional Program Violation of the Food Assistance Program~~.

2) Any member has been convicted of a drug-related felony where SNAP~~Food Assistance~~ benefits were used to purchase drugs.

d. Households that are ineligible for SNAP~~Food Assistance~~ benefits under BCE~~basic categorical eligibility~~ rules shall have their eligibility determined under ECE OR SE~~expanded or standard eligibility~~ rules.

2. Expanded Categorical Eligibility (ECE)

a. ECE~~Expanded categorical eligibility~~ households are:

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b.Households eligible under ECE~~expanded categorical eligibility~~ have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors~~., I~~~~f~~ these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to SNAP~~the Food Assistance Program~~. This includes:

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c. A household's eligibility cannot be determined using ECE~~expanded categorical eligibility~~ rules if, at the time of application:

1) Any member is disqualified for a~~n~~ SNAP IPV~~Intentional Program Violation of the food assistance program~~.

2) Any member has been convicted of a drug-related felony where SNAP~~Food Assistance~~ benefits were used to purchase drugs.

d. Households that are ineligible for SNAP~~Food Assistance~~ benefits under ECE~~expanded categorical eligibility~~ rules shall have their eligibility determined under SE~~standard eligibility~~ rules.

3. Standard Eligibility (SE)

a. SE~~Standard eligibility~~ rules shall only be applied to the following households:

1) Households that include a member who is serving a disqualification for an IPV or a fraud conviction.

2) Households that include a member who has been convicted of a drug related felony where SNAP~~Food Assistance~~ benefits were used to purchase drugs.

3) Households that do not meet the criteria to be considered under BCE OR ECE~~basic or expanded categorical eligibility~~ rules.

b. Households having their eligibility reviewed under SE~~standard eligibility~~ rules must meet the following criteria:

1. Households that include a member who is AGED 60 AND OLDER~~elderly~~ or a person with a disability must have a combined net income, after all applicable deductions, at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408.
2. Households that do not include a member who is AGED 60 AND OLDER~~elderly~~ or a person with a disability must have a combined gross income at or below one hundred thirty percent (130%) of the federal poverty level. After all applicable deductions, the household's net income must be at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408.

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c. Households, as defined in Section 4.304, that are found ineligible under SE~~standard eligibility~~ rules shall be considered ineligible for participation in SNAP~~the Food Assistance Program~~.

D. If the circumstances which allowed the household to meet the criteria to be considered under BCE OR ECE~~basic or expanded categorical~~ rules change during the certification period or at the time of recertification or periodic report, the household's eligibility must be re-evaluated according to the appropriate category. If there is insufficient documentation to make an eligibility determination based on the new category of eligibility, the agency shall send the household a request for verification in accordance with Sections 4.604, Action on Reported Changes, and 4.604.1, Verification of Reported Changes.

E. Substantial lottery or gambling winnings from an individual will disqualify the entire SNAP~~Food Assistance~~ household from eligibility in the month the winnings are received. The next time such a household reapplies and is certified for SNAP~~snap~~ after losing eligibility, the household would not be considered categorically eligible for the next eligible certification period. After receiving SNAP~~snap~~ as a SE~~standard eligibility~~ household, the SNAP~~snap~~ household will be re-evaluated for categorical eligibility at the next eligible certification period.

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4.207.2 Initial Month Allotment Prorating

A. THE HOUSEHOLD~~A household's~~ benefit level for the initial month of application shall be based on the day of the month it applies for benefits. Benefits for the initial month shall be prorated from the date of application to the end of the month. Applicant households consisting of residents of a public institution who apply jointly for SSI and SNAP~~Food Assistance~~ prior to release from an institution will have their eligibility determined for the month in which the applicant household was released from the institution. The benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release through the end of the month. Eligible households are entitled to a full month allotment for all months except an initial month of application.

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4.207.3 Benefit Allotment

A. After eligibility has been established, the monthly SNAP~~Food Assistance~~ benefit allotment will be determined. The state automated system will compute the household's allotment. The following formula shall be used to determine a household's benefit allotment.

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B. If the calculation of benefits for an initial month yields an allotment of less than the federal minimum allotment referenced in 4.207.3~~, (~~D~~),~~ no benefits shall be issued to the household for the initial month.

   For eligible households that are entitled to no benefits in their initial month of application, but are entitled to benefits in subsequent months, the LOCAL OFFICE~~county department~~ shall certify the household for a certification period beginning with the month of application.

   Except for households that are eligible under BCE OR ECE~~basic or expanded categorical eligibility~~, households with three or more members who are entitled to zero benefits shall have their SNAP~~Food Assistance~~ application denied. This provision does not apply if zero benefits are due to the pro-ration requirements or due to the initial month's allotment being less than the federal minimum allotment referenced in 4.207.3~~,~~(D).

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D. The SNAPFood Assistance maximum and minimum monthly benefit allotment tables will be adjusted as announced by the USDA, FNSUnited States Department of Agriculture (USDA, Food and Nutrition Service (FNS)).

4.208 CERTIFICATION PERIODS

A. Certification periods shall conform to calendar months. Households shall be assigned the longest certification period possible based on the predictability of the household's anticipated income and other circumstances. At the expiration of each certification period, entitlement to SNAPFood Assistance benefits ends. Further eligibility shall only be established on a newly completed application for RECERTIFICATIONredetermination. Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility. The State-prescribed Notice of Action form provided to the applicant household shall indicate the period of certification if the household is determined to be eligible for benefits.

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C. A delinquent PA redetermination shall not delay the SNAPFood Assistance recertification beyond the date of the household's SNAPFood Assistance certification period ending date.

4.208.1 Certification Period Guidelines [Rev. eff. 4/1/16]

Households will be assigned a six (6) month or twenty-four (24) month certification period as follows:

A. Twenty-Four (24) Month Certification Period

A twenty-four (24) month certification period shall be assigned to households that contain only members who are AGED 60 AND OLDERelderly and/or have a disability and have no earned income, as defined in Section 4.403 at the time of certification.

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4.208.2 Classification of Households as Public Assistance (PA) or Non-Public Assistance (Non-PA)

A. Public Assistance (PA) Households

PAPublic Assistance households are those SNAPFood Assistance households that contain only persons who receive the following:

1. CWColorado Works Basic Cash Assistance grant or any type of TANF payment or services under the CWColorado Works Program. The household will be considered a PA household if one (1) member received cash assistance or services, but the entire household benefits from the receipt of this cash or services, such as when one (1) individual in a household is authorized for family preservation; or,

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B. Non-public assistance (Non-PA) Households

All other households are classified as NON-PAnon-public assistance households.

Any household that contains at least one member who does not receive a Public Assistance benefit, as listed in Subsection A, above, will be classified as Non-PA. County General

Assistance (GA), SSI with no Colorado Supplemental payment, and medical-only programs are not considered PA~~Public Assistance~~ benefits.

4.209 RECERTIFICATION PROCESS REQUIREMENTS

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B. A household shall receive the notice of expiration not less than thirty (30) calendar days and not more than sixty (60) calendar days prior to expiration of its current certification period. If mailed, the notice shall be sent for the same timely receipt, allowing two (2) extra days for delivery delay.

All households that file on or before the fifteenth (15th) of the last month of their certification period will have timely reapplied. Notices which are mailed must specify a date that allows at least two (2) days mail time and still gives the household fifteen (15) calendar days to respond. Households that submit an application for recertification by the date specified on their notice of expiration shall be considered to have timely reapplied to prevent an interruption in SNAP~~Food Assistance~~ benefits.

4.209.1 Recertification Processing Standards and Timeframes

A. Timely Applications for Recertification~~s~~

1. Households that file an application for recertification on or before the fifteenth (15th) of the last month of their certification period will have ~~timely~~ reapplied TIMELY. A timely application for recertification shall be approved or denied prior to the end of the household's current certification period and shall provide eligible households with an opportunity to obtain their benefits by their normal issuance day of the month following the expiration of their certification period.

2. Households which have timely reapplied, but because of local office error are not determined eligible in sufficient time to permit normal issuance to the household in the following month, shall receive an immediate opportunity to participate upon being determined eligible. Such households shall be entitled to participate and receive a full month's allotment for the month following the expiration of the certification period.

B. UNTIMELY Applications for Recertification ~~that are not Timely~~

1. Households which file an application for recertification anytime between the sixteenth (16th) and the last day of the last month of the certification period shall not be considered as having timely reapplied. For households that have not timely reapplied, but have been found eligible, benefits may be delayed past the household's normal issuance day. The household shall be notified of approval or denial on a notice of action form within thirty (30) calendar days of when the application for recertification was submitted to the local office.

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C. LATE Applications for Recertification ~~That are not Timely~~

1~~2~~. If a household files an application form within thirty (30) calendar days after the end of the certification period, the application shall be considered as an application for recertification; however, the application shall be processed as an initial application in accordance with Section 4.201, C, and shall have the allotment for the initial month of application prorated from the day of application to the end of the month, unless the local office was at fault for the delay. For applications received within thirty (30) calendar days after the expiration of the certification period, verification requirements shall remain consistent with the verification requirements for applications which were filed prior to the expiration of the certification period as outlined at Section 4.502, B.

DC. If an application for recertification is denied for a failure of the household to take a required action, the local office shall reopen the case if the required action is taken by the end of the certification period and provide benefits for the first month of the new certification period.

If the household takes the required action after the end of the certification period, but within the next thirty (30) calendar days, the local office shall reopen the case and provide benefits retroactive to the date that the action was taken by the household.

ED. A household shall lose its right to uninterrupted benefits if one of the following occurs after the fifteenth (15th) day of the last month of the household's certification period:

1. A household fails to timely APPLYsubmit an application for recertification in accordance with Section 4.209.1, A; or,

2. A household timely files an application for recertification but fails to appear for a scheduled interview; or,

3. A household fails to submit all necessary verification by the date specified on the request for such verification. The request for verification shall allow the household no less than ten (10) days to provide the verification to prevent an interruption in benefits.

If the household is eligible after providing such verification(s), the county/district shall provide benefits within thirty (30) calendar days after the application was filed. If the local office is unable to provide benefits within thirty (30) calendar days due to the time allowed for providing verification, the office shall provide benefits within five (5) calendar days after the household supplies the missing verification. Households that refuse to cooperate in providing required information or taking the required actions to determine eligibility shall be denied.

4.210 PERIODIC REPORTING REQUIREMENTS

A. A household consisting solely of members who are persons with a disability and/or members who are AGED 60 AND OLDERelderly with no earned income can be certified for twenty-four (24) months. For households certified for twenty-four months, no interview during the certification period shall be required. Households with a twenty-four (24) month certification period are considered simplified reporting households and are required to report changes at the twelve (12) month interim reporting period and at redetermination.

B. A PRFperiodic report form shall be mailed to the household during the eleventh (11th) month of the certification period for the household to report all changes. If the PRFchange report form is not submitted to the local office by the fifth (5THTH) day of the twelfth (12th) month of the certification period, a reminder notice shall be sent advising the household that it has ten (10) calendar days plus one (1) calendar day for mailing to return the completed report. Households participating in ACPthe Address Confidentiality Program shall be afforded five (5) days mailing time. If the household has not submitted the completed FORMreport by THE extended due date on the reminder notice, the SNAPFood Assistance case shall be terminated effective the first day of the thirteenth (13th) month and a termination letter shall be mailed to the household. If the household submits a PRFperiodic report form or REPORTS CHANGESa change report from for any other PApublic assistance program within thirty (30) calendar days following the effective date of the termination notice and provides all required verification, benefits shall be ISSUED reinstated without proration FROM THE BEGINNING OF THE THIRTEENTH (13TH) MONTH.

C. The local office must act on all changes reported by those households filing a PRFperiodic report. If the household files a complete PRFreport that results in A reduction or termination of benefits, the agency shall send an adequate notice. The adequate notice must be mailed at least two (2) business days prior to the date that benefits are normally received by the household. If the household fails to provide sufficient information or verification regarding a deductible expense, the county local office shall not terminate the household but shall instead determine the household's benefits without allowing the deduction.

D. THE HOUSEHOLD SHALL REPORT CHANGES IN CIRCUMSTANCES TO THE FOLLOWING ITEMS ON THE PERIODIC REPORT:

1. A CHANGE OF MORE THAN $100 IN THE AMOUNT OF UNEARNED INCOME.
2. A CHANGE IN THE SOURCE OF INCOME, INCLUDING STARTING A JOB.
3. ALL CHANGES IN HOUSEHOLD COMPOSITION, SUCH AS THE ADDITION OR LOSS OF A HOUSEHOLD MEMBER.
4. CHANGES IN HOME ADDRESS AND ANY RESULTING CHANGES IN SHELTER COSTS.
5. ACQUISITION OF A LICENSED VEHICLE THAT IS NOT FULLY EXCLUDABLE.
6. A CHANGE IN LIQUID RESOURCES, SUCH AS CASH, STOCKS, BONDS, AND BANK ACCOUNTS THAT REACH OR EXCEED THE RESOURCE LIMITS FOR ELDERLY OR DISABLED HOUSEHOLDS AND FOR ALL OTHER HOUSEHOLDS, UNLESS THESE ASSETS ARE EXCLUDED.
7. CHANGES IN THE LEGAL OBLIGATION TO PAY CHILD SUPPORT.
8. WHENEVER A MEMBER OF THE HOUSEHOLD WINS SUBSTANTIAL LOTTERY OR GAMBLING WINNINGS.

E. IF ALLOWABLE MEDICAL EXPENSES ARE REPORTED AND VERIFIED, THE CHANGE SHOULD BE ACTED UPON FOR THE REMAINDER OF THE CERTIFICATION PERIOD BUT ONLY IF THE CHANGE RESULTS IN AN INCREASE IN BENEFITS.

4.300 NON-FINANCIAL ELIGIBILITY CRITERIA

Non-financial criteria for eligibility shall apply to all households (including those receiving PA~~public assistance~~) and shall be considered prospectively for the issuance month based on the eligibility TECHNICIAN'S~~worker's~~ anticipation of circumstances at the time of application and when changes are made known to the local office. Non-financial criteria shall consist of:

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4.302 SOCIAL SECURITY NUMBER REQUIREMENT

A. General Requirements

1. As a condition of SNAP~~Food Assistance~~ eligibility, each member of a household participating in or applying for participation in SNAP~~the Food Assistance Program~~ shall provide a Social Security Number (SSN), or proof that an application for aN SSN~~Social Security Number~~ has been submitted to the SSA~~Social Security Administration~~. The local office shall not require any household member to submit a Social Security card or other official documents as a means of verifying aN SSN~~Social Security Number~~. Household members who provide aN SSN shall not be denied benefits for failure or inability to present a Social Security card or other official documentation. If individuals have more than one SSN~~Social Security Number~~, all numbers shall be required.

2. The local office shall explain that a member is not required to provide aN ~~Social Security Number (~~SSN~~)~~, but the failure to provide one shall result in disqualification of the individual(s) for whom the number is not provided. The member who does not provide aN SSN shall still be required to provide other eligibility information such as income and resources that will affect eligibility of other members. The local office shall advise individuals that any SSN that is provided voluntarily will be used in the same manner as SSNs of eligible household members. The SSNs will be matched against federal and state databases to verify information. SSNs will be used for the initial application matching for duplicate participation.

3. If the household member required to provide aN SSN either refuses to supply his/her SSN at the time of application or fails to provide the local office with a form or letter as proof of application for aN SSN without good cause, he or she shall be ineligible to participate in SNAP~~the Food Assistance Program~~. The disqualification applies to the individual(s) who refused to cooperate with the application process to obtain the SSN and not the entire household. The household

member(s) disqualified may become eligible by providing the local office with a SSNSocial Security Number, or by providing verification that an application for aN SSN has been submitted to the SSA.

B. Individuals and Newborns Without aN SSNSocial Security Number

1. Those household members who do not have the required SSNSocial Security Number(s) shall obtain proof of application for aN SSN prior to being certified as a member of the household, unless the member is a newborn child. The applicant/recipient shall be instructed to obtain from the SSA proof that he or she has completed an application for aN SSNSocial Security Number and that the SSA has received that application. A specifically addressed letter from the SSA verifying that application for a SSN has been made is also acceptable proof of application for aN SSNSocial Security Number. The applicant/recipient shall be instructed to return the completed form as soon as possible to the eligibility TECHNICIANworker. A copy of the form shall be maintained in the case record.

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2. Household members who provide the eligibility TECHNICIANworker with a copy of a form or a letter from THE SSA, or who demonstrate good cause for not providing the proof from SSA (e.g., difficulty in obtaining birth certificates) shall be allowed to continue to participate in SNAPthe Food Assistance Program as follows:

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C. Determining Good Cause for Not Providing aN SSNSocial Security Number

1. In determining good cause, the local office shall consider information received from the household member and/or the SSASocial Security Administration. Documentary evidence or collateral information that the household has applied for the number or made every effort to supply the SSASocial Security Administration with the necessary information shall be considered good cause. If the household member can show good cause why an application has not been completed in a timely manner, that person shall be allowed to participate until good cause is no longer applicable or until the household's next recertification. If the household member(s) applying for aN SSNSocial Security Number has been unable to obtain the documents required by THE SSASocial Security Administration, the eligibility TECHNICIANworker should assist the individual(s) in obtaining these documents.

2. If an individual refuses to provide aN SSNSocial Security Number based on a sincere religious objection, all members of the household may participate in the Program, if otherwise eligible. In these situations, the local office may check with the SSASocial Security Administration to see if the household members already have SSNs, and may use any existing SSNs for verification and matching purposes without further notice to the household.

4.303 RESIDENCY REQUIREMENTS

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B. Individuals may not participate in more than one household in THE SAMEany one (1) month unless they are a resident of a shelter for battered women and children, nor may a household participate in more than one (1) county or district in any month unless all household members are residents of a shelter for battered women and children.

Households on Indian reservations participating in the Commodity Food Distribution Program for a particular period shall not be allowed to participate in SNAPthe Food Assistance Program during the same period. Participation shall be limited to participation in the Commodity FOOD DISTRIBUTION Program or SNAPthe Food Assistance Program.

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4.304 DETERMINING HOUSEHOLD COMPOSITION

A. All applications shall be submitted on behalf of a household. Some groups of individuals living together are required to be included in the same SNAP~~Food Assistance~~ household in accordance with Section 4.304.1.

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4.304.1 Persons Ineligible for Separate Household Status

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C. A spouse of a member of a household shall not be a separate household.

1. Spouses refer to:

a. Persons who are defined as married to each other under state law. Same-sex spouses must be considered married if the marriage is recognized by the state in which the marriage was celebrated; or,
b. Persons who are living together, are free to marry, and are representing themselves as husband and wife to relatives, friends, neighbors, and trades people.

2. Spouses who are legally separated are eligible for separate household status, unless paragraph A of this section applies.

3. For purposes of SNAP~~the Food Assistance Program~~, partners in a same-sex marriage are not considered spouses, unless married in a state that recognizes the marriage. If, in a same-sex relationship the spouses are not considered married as specified in C, 1, of this section, and there is a child living in the home but only one (1) of the parents is the biological parent to the child, the non-biological parent does not have to be considered part of the household if the non-biological parent is not the natural parent or adoptive parent to the child and purchases and prepares meals separately from the rest of the household.

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4.304.2 Shared Living Arrangements

A. In instances when two (2) households request SNAP~~Food Assistance~~ for the same child, the child shall be considered a member of the household that provides the majority of the child's monthly meals.

If only one (1) household is applying for or requesting SNAP~~Food Assistance~~ benefits for a child, then determining a majority of meals shall not be a factor when determining household composition.

B. If two (2) households request assistance for the same child and both households provide an equal number of meals to the child, and the households cannot agree on who should receive SNAP~~Food Assistance~~ benefits for the child for the duration of the certification period, then the household that applies for SNAP~~Food Assistance~~ benefits for the child first shall be able to receive benefits for the child.

C. In instances when an applicant or ongoing household requests benefits for a child who is already receiving SNAP~~Food Assistance~~ in another household, the household who provides the child with the majority of meals shall be eligible to receive benefits for the child.

4.304.3 Non-Household Members

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D. Boarders

Boarders Individuals residing with others and paying reasonable compensation to others for lodging and meals. Boarders are not eligible to participate in SNAP~~the Food Assistance Program~~ as a separate household.

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3. Boarder status shall not be granted to the following persons:

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d.

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1. Boarders, whose board arrangement is for more than two (2) meals per day, shall pay an amount which equals or exceeds the maximum SNAP~~Food Assistance~~ allotment for the number of persons in the boarder household.

***

4.304.4 Persons Disqualified or Ineligible to Participate in SNAP~~the Food Assistance Program~~

A. Disqualified individuals shall not be allowed to participate in SNAP~~the Program~~ as separate households. “Disqualified individuals” are individuals disqualified for:

1. IPV~~Intentional Program violation~~/fraud;

2. Failure to either provide or obtain aN SSN~~Social Security Number~~;

3. Being an ineligible non-citizen~~ as defined in Section 4.305.12~~;

4. Failure to comply with work requirements;

5. Being an ~~able-bodied adult without dependents (~~ABAWD~~)~~ who has been disqualified after receiving three (3) months of SNAP~~Food Assistance~~ benefits within a period of thirty-six (36) months; or,

***

B. Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony shall not be considered eligible household members. If an individual is suspected of being a fleeing felon, either by their own admission or based on a report from law enforcement, the fleeing status must be verified ~~in order~~ to determine if the client is eligible for SNAP~~Food Assistance~~ benefits.

The following four part test must be used to determine if the individual would be considered a fleeing felon for SNAP~~Food Assistance purposes~~:

C. .

1. For the purposes of this provision, actively seeking is defined as follows:
   1. A Federal, State, or local law enforcement agency informs the local ~~Food Assistance~~ office that it intends to enforce an outstanding felony warrant or to

arrest an individual for a probation or parole violation within twenty (20) days of submitting a request for information about the individual to the local office;
2. A Federal, State, or local law enforcement agency presents a felony arrest warrant as provided in 4.304.4(B)(1); or
3. A Federal, State, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within thirty (30) days of the date of a request from a local ~~Food Assistance~~ office about a specific outstanding felony warrant or probation or parole violation.

D~~E~~. Residents of commercial and noncommercial boarding houses and institutions are not eligible to participate in the Program unless exempt in Section 4.304.41.

***

2. An institution is a place which has not been authorized by FNS to accept SNAP~~Food Assistance~~ benefits but which provides its residents with MORE THAN FIFTY PERCENT (50%)~~the majority~~ of their daily meals as a part of its normal services. Residents of a halfway house for persons with a disability are ~~considered to be~~ residents of an institution if they are provided meals as part of their regular service.

***

4.304.41 EXEMPTIONS FROM THE BOARDING HOUSE AND INSTITUTION PROHIBITIONS

A. An individual who is a resident of federally subsidized housing for ~~elderly~~ persons AGED 60 AND OLDER under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act. ~~A person who is elderly is defined as a member of a household who is sixty (60) years of age or older.~~

***

4.305 Citizenship and Non-Citizenship Status

Citizens of the United States are potentially eligible for participation in SNAP~~the Food Assistance Program~~, provided they meet other eligibility requirements. Most non-citizens must be in a qualified NON-CITIZEN~~alien~~ status and meet one (1) additional condition to be eligible for participation in the Program. Some classes of non-citizens are eligible for participation without having to meet an additional condition.

A. Citizens and Non-Citizen Nationals

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2. Although not considered U.S. citizens, non-citizen nationals HAVE~~enjoy~~ the same potential eligibility for SNAP~~Food Assistance benefits~~ as U.S. citizens. Non-citizen nationals are those individuals born in an outlying possession of the United States (either American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals.

B. Non-Citizens

Non-citizens in a qualified ~~alien~~ status and certain groups of non-citizens who are not in a qualified alien status are eligible for participation under certain conditions. Some non-citizens in a qualified alien status must also meet an additional condition, as outlined in Section 4.305, B, 3, to be eligible for participation. Each of the following categories of eligible non-citizen status stands alone for the purposes of determining eligibility. If eligibility expires under one (1) eligible status, the local office shall determine if eligibility exists under another status.

1. Non-Citizens in a Qualified ~~Alien~~ Status

The following classes of non-citizens, based on the immigration status of an individual, are defined as a qualified status. The non-citizen shall be qualified as listed below at the time the non-citizen applies for, receives, or attempts to receive SNAP~~Food Assistance~~ benefits.

A non-citizen under the age of eighteen (18) that is in a qualified alien status, as outlined in paragraphs A and B of this subsection, shall be eligible for participation in the program without having to meet an additional requirement. Once the non-citizen turns eighteen (18), the eligibility of the non-citizen shall be reviewed.

a. A non-citizen in one (1) of the following qualified alien statuses is not required to meet an additional condition to be eligible for participation in the Program and is eligible for participation indefinitely from the date the non-citizen obtains status as a qualified alien or enters the U.S. in a qualifying status.

1) A refugee who is admitted to the United States under Section 207 of the Immigration and Nationality Act (INA), which is codified throughout Title 8 of the United States Code. The rules contained in this manual do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection ~~during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203~~.

2) Victims of trafficking, under the Trafficking Victims Protection Act of 2000, as amended, certified by the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR). This person shall have a certification letter.

a. ORR issues a letter of eligibility for adults and children under the age of eighteen (18). A trafficked minor shall have either an interim assistance letter or an eligibility letter from ORR to be eligible for SNAP~~Food Assistance~~. The local office shall accept these letters in place of Department of Homeland Security documentation.
b. Certification letters and eligibility letters do not expire; however, interim assistance letters that are provided to children are valid for ninety (90) calendar days from the effective date of the letter. ORR may extend the interim eligibility an additional thirty (30) calendar days. Children with an interim assistance letter can only receive SNAP~~Food Assistance~~ benefits until the expiration of the time period established in the interim letter.

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3) Asylees granted asylum under Section 208 of the INA, which is codified throughout Title 8 of the United States Code. The U.S. Code does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection ~~during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository~~.

***

b. Non-citizens in one (1) of the following qualified alien statuses are required to meet an additional condition (see Section 4.305, B, 3) to be eligible for participation in the Program.

1. Lawfully Admitted for Permanent Residence (LPRs) under the Immigration and Nationality Act (INA). LPRs are holders of Green Cards. If a non-citizen is in a

qualified alien status as outlined in paragraph a. of this section and later adjusts to LPR status, the non-citizen does not have to meet an additional condition to be eligible for participation and shall remain eligible based on the previous qualified alien status.

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4)

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b) There is substantial connection between the battery or extreme cruelty and the need for SNAP~~Food Assistance~~ benefits; and

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2. Eligible Non-Citizens Not in a Qualified ~~Alien~~ Status:

The following classes of non-citizens are not defined as having a qualified ~~alien~~ status, but are potentially eligible for participation in SNAP~~the Food Assistance Program~~ without having to meet an additional condition (see Section 4.305, B, 3). All other classes of non-citizens that are not in a qualified ~~alien~~ status are not eligible for participation in SNAP~~the Program~~.

***

3. Additional Conditions

Non-citizens in a qualified ~~alien~~ status as outlined in subsection 4.305, B, 1, are required to meet one additional condition in order to be eligible for participation in the Program. At the time the non-citizen applies for SNAP~~Food Assistance~~, he or she need only satisfy one of the following conditions to be eligible ~~for Food Assistance~~:

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b) Forty (40) Qualifying Work Quarters

1.

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c) Quarters credited from the work of the non-citizen's spouse. Quarters are only creditable to the non-citizen for work performed by his or her spouse if the couple is still legally married, or if the spouse becomes deceased while married to the non-citizen, and the work being credited to the non-citizen was performed after the marriage began.

If a couple divorces prior to determination of SNAP~~Food Assistance~~ eligibility, a spouse may not get credit for quarters of their spouse. However, if the local office determines eligibility of a non-citizen based on the quarters of the spouse, and then the couple divorces, the non-citizen's eligibility continues until the next RECERTIFICATION~~re-certification~~. At that time, the local office shall determine the non-citizen's eligibility without crediting the non-citizen with the former spouse's quarters of coverage.

2. The sum of work quarters cannot include:

a. Quarters in which not enough income was earned to qualify, or,

b. Quarters earned after December 31, 1996, cannot be counted if the non-citizen, during the quarter, received SNAP~~Food Assistance~~ or any other federal means-tested public benefits, such as Medicaid, SSI, TANF, or state Children's Health Insurance Program.

***

e. ~~Elderly b~~Born on or before August 22, 1931 who lawfully resided in the U.S. on August 22, 1996.

f. Military Connection

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3) The definition of "veteran shall also include:

***

c. The spouse of a veteran who served at least twenty-four (24) months in the Armed Forces. This includes the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. Copies of the federal laws are available for inspection ~~during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203, or state publications depository~~; or

***

4.305.1 Non-Citizens Ineligible for Participation in SNAP~~the Program~~

The following non-citizens are not eligible to participate in SNAP~~the Food Assistance Program~~ as a member of any household.

***

B. Undocumented non-citizens (e.g., individuals who entered the country as temporary residents and overstayed their visas or who entered without a visa) ~~are not eligible for Food Assistance benefits~~;

***

I. Individuals with U Visas, including minor children under the age of eighteen (18), are ineligible ~~for Food Assistance~~ as they have temporary status and are not considered qualified NON-CITIZENS~~aliens~~. However, if the individual adjusts to qualified alien status, such as LPR or battered immigrant status, then the individual's non-citizen eligibility shall be reviewed under the new status.

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4.305.2 Households Containing a Sponsored Non-Citizen Member

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D. Calculating Sponsor Income

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b. An amount equal to the SNAP~~Food Assistance Program's~~ monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes; and,

3. If the sponsored non-citizen has already reported gross income information on his/her sponsor in compliance with the sponsored non-citizen rules of another state assistance program, and the local office is aware of the amounts that income amount shall be used for SNAP~~Food Assistance~~ deeming purposes. However, the local office shall limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the non-citizen. The only reduction will be twenty percent (20%) earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse and an amount equal to the SNAP~~Food Assistance Program's~~ monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes.

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E. The counting of a sponsor's income and resource provisions do not apply to a non-citizen who is:

1. A member of his or her sponsor's SNAP~~Food Assistance~~ household;

***

F. Verification Requirements

The local office shall verify the following information at the time of initial application and recertification:

1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if the spouse is living with the sponsor) at the time of the non-citizen's application for SNAP~~Food Assistance~~.

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H. Sponsored Non-Citizen's Responsibility

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2. The local office will determine how many of such non-citizens are SNAP~~Food Assistance Program~~ applicants or participants and initiate appropriate proration. The eligible sponsored non-citizen shall also be responsible for reporting the required information about the sponsor and sponsor's spouse should the non-citizen obtain a different sponsor during the certification period. The eligible sponsored non-citizen shall report changes in income should the sponsor or sponsor's spouse change or lose employment or become deceased during the certification period. The local office shall act on the information as a reported change in household circumstances as set forth in Section 4.604.

4.305.3 Reporting Undocumented Non-Citizens

A. The local office shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive SNAP~~Food Assistance~~ because the member is present in the United States in violation of the Immigration and Nationality Act.

B. In determining whether the member is present in the United States in violation of the Immigration and Nationality Act, caution shall be exercised to ENSURE~~insure~~ that the determination is not made merely on the non-citizen's inability or unwillingness to provide documentation of non-citizen status. When a person indicates inability or unwillingness to provide documentation of non-citizen status, the local office shall not continue efforts to obtain documentation other than that necessary to obtain information on the income and resources to be made available to remaining members of the household.

C. Because many non-citizens who are legally present in the United States are not eligible for SNAP~~Food Assistance~~, eligibility TECHNICIANS~~workers~~ are cautioned that a determination that a person is an ineligible non-citizen is not equivalent to a determination that a person is a~~n illegal~~ non-citizen PRESENT IN THE UNITED STATES IN VIOLATION OF IMMIGRATION LAWS.

D. When and if a SNAP~~Food Assistance~~ eligibility TECHNICIAN~~worker~~ is able, BASED ON~~on the basis of~~ information that becomes available to him/her in the process of reviewing a household's eligibility for SNAP~~Food Assistance~~, to determine that a member or members of that household are in fact ~~illegal~~ non-citizens present in the United States in violation of the immigration laws, the eligibility TECHNICIAN~~worker~~ will report the determination to his or her supervisor. The report to INS, if made, shall be in writing.

E. The failure to report a~~n illegal~~ non-citizen ILLEGALLY PRESENT IN THE UNITED STATES to INS will not be considered a quality assurance error or assessed as an administrative deficiency.

4.306 STUDENT ELIGIBILITY

A. Any person who is age eighteen (18) through forty-nine (49), physically and mentally fit, and enrolled at least half time in an institution of higher education shall not be eligible to participate in SNAP~~the Food Assistance Program~~ unless the person meets at least one of the criteria listed below.

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4.306.1 Student Eligibility Criteria

To be eligible to participate in SNAP~~the Food Assistance Program~~, a student shall meet at least one (1) of the following criteria:

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B. The student is participating in a state or federally financed work-study program. The student shall be approved for a work-study program at the time of application for SNAP~~Food Assistance~~. The work-study shall be approved for the school term and THE student shall anticipate actually working during that time. The student qualifies for this exemption the month the school term in which the work-study will occur begins or the month work-study is approved, whichever is later. The exemption will continue until the end of the school term or until it becomes known that the student has refused an assignment. The exemption shall not continue between terms when there is a break of one (1) full month or longer unless the student is participating in work-study during the break.

C. The student is responsible for ~~the~~ more than half of the physical care of a dependent household member under the age of six (6), or a full-time student who is a single parent with responsibility for the care of a dependent child under age twelve (12). The single parent provision applies in those situations

where only one natural, adoptive, or stepparent regardless of marital status is in the same SNAP~~Food Assistance~~ household as the child. A full-time student in the same SNAP~~Food Assistance~~ household with a child who is under his/her parental control may qualify if he/she does not reside with his/her spouse.

***

F. The student is assigned to or placed in an institution of higher education through a program under the Workforce Innovation and Opportunity Act (WIOA), EF~~Employment First Program~~, a program under Section 236 of the Trade Act of 1974 (19 USC 2296), another program for the purpose of employment and training operated by the state or local government (program shall have at least one (1) component equivalent to the SNAP EF~~Food Assistance Employment First~~ Program), or as a result of participating in the JOBS program under Title IV of the Social Security Act.

***

4.307 STRIKER ELIGIBILITY

A. Households containing a striking member shall not be eligible for SNAP~~Food Assistance~~ unless the household was eligible for the Program the day before the strike and are otherwise eligible at time of the strike. Households where the striking member was exempt from work registration the day before the strike shall not be subject to these provisions and shall be certified if otherwise eligible, unless the exemption was based on the employment.

***

C. For SNAP~~Food Assistance~~ purposes, a striker is anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Individuals will be deemed participants in a strike whether or not they personally voted for the strike.

***

4.308 VOLUNTARY QUIT

A. No individual who quit his or her most recent job without good cause or reduces work effort and, after the reduction, is working less than thirty (30) hours each week, without good cause, or earning less than the federal minimum wage multiplied by thirty (30) hours, shall be eligible for participation in SNAP~~the Food Assistance Program~~. At the time of application, the eligibility technician shall explain to the applicant the potential penalties if a household member quits his or her job or reduced hours or wages without good cause or if another member joins the household if that individual has voluntarily quit employment.

**

C. In the case of an applicant household, the local office shall determine whether any currently unemployed household member who is required to register for work or was exempt from registration for being employed has voluntarily quit his or her most recent job within the last sixty (60) days. If the local office learns that a household has lost a source of income after the date of application but before the household is certified, the local office shall determine whether a voluntary quit occurred.

The nonexempt individual who quit or reduced work hours will be ineligible to participate for the sanction period if the household is determined eligible for SNAP~~the Food Assistance Program~~. The individual will be required to comply with EF~~Employment First~~ following the sanction period unless the individual becomes exempt from work requirements.

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F. If the local office determines that the individual voluntarily quit his or her job or reduced his or her work hours without good cause while participating in SNAP~~the Food Assistance Program~~, the local office shall provide the household with a Notice of Adverse Action within ten (10) calendar days after the determination of a voluntary quit is made. The notice shall contain the particular act of noncompliance, the proposed period of disqualification, the action to be taken at the end of the disqualification and shall specify that the individual may be included in the household after the disqualification period if the individual meets other work requirements.

4.309 HOUSEHOLDS WITH SPECIAL CIRCUMSTANCES

The following sections explain the application of SNAP~~Food Assistance~~ criteria and certification procedures to the eligibility determinations for households with special circumstances pertaining to:

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4.309.1 Dining Facilities and Homeless Meal Providers

Households with special circumstances, such as a person with disabilities, PERSONS AGED 60 AND OLDER~~elderly~~, or center residents, may be authorized to use SNAP~~Food Assistance~~ benefits to buy food from authorized communal dining facilities, meals on wheels, drug or alcohol treatment and rehabilitation centers, and shelters for battered women and children.

Homeless households may also use SNAP~~Food Assistance~~ benefits to purchase prepared meals from approved restaurants. ~~Homeless~~ SNAP~~Food Assistance~~ households EXPERIENCING HOMELESSNESS may use food benefits for meals prepared for and served by an authorized provider (for example, soup kitchen or temporary shelter) that feeds ~~homeless~~ persons EXPERIENCING HOMELESSNESS.

4.309.3 Drug and Alcohol Treatment and Rehabilitation Centers

A. Residents of publicly operated community mental health centers or private non-profit organizations or institutions, operating a residential drug or alcohol treatment or rehabilitation program, are eligible to participate in SNAP~~the Food Assistance Program~~. Applications shall be made through an authorized representative who is employed by the drug or alcohol treatment or rehabilitation facility and designated by the facility for that purpose. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E).

B. The drug or alcohol treatment or rehabilitation center shall be approved by ~~the Colorado Department of Human Services (~~CDHS~~)~~, Office of Behavioral Health (OBH) before its residents are eligible for SNAP~~Food Assistance~~ participation. The OBH~~Office of Behavioral Health~~ will ensure that the center is providing treatment that can lead to the rehabilitation of drug or alcohol addiction.

Before the certification of residents can be accomplished, the local office shall verify that the center has been approved by FNS as a retailer, is certified by the OBH~~Office of Behavioral Health~~, and such proof may be provided in the form of a license or an approval letter issued to the center by that agency, or is funded under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x, et seq.).

C. Residents and their children residing in an approved drug or alcohol treatment and rehabilitation center shall voluntarily elect to participate in SNAP~~the Food Assistance Program~~. Residents shall have their eligibility determined as one-person households unless children are residing with them at the center. Children of the residents in a drug and alcohol treatment center who live with their parents in the treatment center will qualify for SNAP~~Food Assistance~~. Meals served to the children are eligible for purchase with SNAP BENEFITS~~Food Assistance~~. The local office shall certify residents of drug/alcohol treatment centers by using the same provisions that apply to other applicant households.

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E. Any applicant household containing a member who regularly participates in a drug or alcohol treatment program on a non-resident basis shall include this member when having its eligibility determined, complete the application process through the head of household or through an authorized representative, and shall meet all financial and non-financial criteria unless specifically exempt. Such households may use any part of their SNAP~~Food Assistance~~ benefits to purchase food prepared for or served to the individual during the ~~course of such~~ program, provided the program has been authorized by FNS for such purposes.

4.309.31 Responsibilities of the Center

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C. The treatment center shall also report when the resident leaves the treatment center. The treatment center shall return to the issuing office any benefits received after the household has left the center.

The treatment center shall provide the residents with their EBT card when the household leaves the treatment and rehabilitation program. Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The departing resident shall receive his/her full allotment if already issued and if no benefits have been spent on his/her behalf.

If benefits have been issued and any portion has been spent on his/her behalf and the resident leaves prior to the sixteenth (16th) of the month, the center shall provide the resident with one half of his/her monthly allotment; on or after the sixteenth (16th), and benefits have already been used, the resident shall not receive any benefits.

Under no circumstances shall the center pull benefits from an EBT card after the resident has left the facility. The drug or alcohol treatment center shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure.

The center shall provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to return the form to the local ~~Food Assistance~~ office within ten (10) days of any change the household is required to report.

D.The organization or institution shall be responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. ~~As an authorized representative, t~~The organization or institution shall be knowledgeable about household circumstances WHEN SERVING AS AN AR. THE ORGANIZATION OR INSTITUTION should carefully review those circumstances with residents prior to applying on their behalf.

E. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The certification office shall promptly notify the state DEPARTMENT~~office~~ when it has reason to believe that an organization or institution is misusing SNAP~~Food Assistance~~ benefits in its possession. However, no action shall be taken against the organization or institution prior to an FNS investigation. The certification office shall establish a claim for over-issuance of Food Assistance benefits held on behalf of resident clients if any over-issuances are discovered BECAUSE~~as a result~~ of an FNS investigation or hearing. If FNS disqualifies an organization or institution as an authorized treatment center, the certification office shall suspend its authorized representative status for the same period.

4.309.4 Residents of Group Living Arrangements

A. Group living arrangements are residential settings that are considered alternatives to institutional living. Institutional settings are not included in this provision. To be eligible as residents of a group living arrangement, the person must be a person with disabilities. In addition, the local office shall verify that the group living arrangement is a public or private nonprofit facility with no more than sixteen (16) residents,

and is certified as a group living arrangement by the Colorado Department of Public Health and Environment and the STATE DEPARTMENT~~Colorado Department of Human Services~~ under Section 1616(e) of the Social Security Act. FNS may also certify under standards determined by the USDA that are comparable to standards implemented BY~~BY~~ the state under 1616(e) of the Social Security Act (codified at 42 USC). Copies of the federal laws are available for inspection ~~during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository~~. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E).

B. Residents of group living arrangements may elect to participate in SNAP~~the Food Assistance Program~~.

Residents shall either apply and be certified through an authorized representative, who is employed and designated by the group living arrangement, or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement shall determine if any resident may apply for SNAP~~Food Assistance~~ on his/her own behalf; the determination shall be based on the resident's physical and mental capability to handle his/her own affairs.

1. If residents apply USING~~through the use of~~ the facility's authorized representative, ~~their~~ eligibility shall be determined as A one-person household~~s~~. The group living arrangement may either:

a) R~~r~~eceive and spend the allotment on food prepared by and/or served to the eligible resident, or

b) A~~a~~llow the eligible resident to use all or any portion of the allotment on his/her own behalf.

2. The group living facility employee designated to serve as an authorized representative shall be responsible for obtaining their own Electronic Benefit Transfer (EBT) card and Personal Identification Number (PIN) with which to access benefits from the resident's account while the resident remains a resident of the facility.

3. The resident's EBT card shall be stored in a secure area while the resident resides in the group living facility. The group living facility shall not have access to, or knowledge of, the PIN for the resident's own EBT card.

4~~2~~. If the residents apply on their own behalf, the applications shall be accepted for any individual applying as A one-person household or for any grouping of residents applying as a household. If residents are certified on their own behalf, the allotment may be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents, used by eligible residents to purchase and prepare food for their own consumption, and/or to purchase meals prepared and served by the group living arrangement.

C. Applications for residents of group living arrangements shall be processed using the same standards that apply to all other SNAP~~Food Assistance~~ households including that residents entitled to expedited service shall have benefits available for spending no later than seven (7) calendar days following the date the application was filed. Required verification shall be obtained prior to further benefits being issued.

D. The local office shall process changes in household circumstances and recertifications by using the same standards that apply to all other SNAP~~Food Assistance~~ households, and resident households shall be afforded the same rights all other SNAP~~Food Assistance~~ households enjoy, including the right to notices of adverse action, fair hearings, and entitlement to lost benefits.

4.309.41 Responsibilities of Group Living Arrangements

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C. When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the benefits on behalf of the residents (regardless of the method of application), shall provide residents with their EBT card. The household, not the group living arrangement, shall be allowed to receive his/her authorized issuance. Also, the departing household shall receive its full allotment if no benefits have been spent on behalf of that individual household. These procedures are applicable any time during the month.

However, if the benefits have already been issued and any portion spent on behalf of the individual and the household leaves the group living arrangement prior to the sixteenth (16th) of the month, the facility shall provide the resident with one half of his/her monthly allotment. If the household leaves on or after the sixteenth (16th) of the month and the benefits have already been issued and used, the household does not receive any benefits.

Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. Under no circumstances shall the group living arrangement pull benefits from an EBT card after the resident or group of residents have left the facility. The facility shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure.

The group living arrangement shall provide the household with a change report form as soon as it has knowledge OF the household plan~~s~~ to leave the facility and advise the household to return the form to the local ~~Food Assistance~~ office within ten (10) days of any change the household is required to report.

D. When acting as the authorized representative, a group living arrangement shall be responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. ~~As an authorized representative, t~~The facility shall be knowledgeable about household circumstances AS AN AUTHORIZED REPRESENTATIVE and should carefully review those circumstances with residents prior to applying on their behalf. The facility shall be strictly liable for all losses or misuse of benefits held on behalf of resident households and for all over-issuances that occur while the households are residents of the treatment center. However, the resident applying on his/her own behalf shall be responsible for over-issuance as would any other household.

E. The group living arrangement may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the group living arrangement services or if meals are prepared at a central location for delivery to the individual residents. If residents purchase and/or prepare food for individual consumption, as opposed to communal dining, the group living arrangement shall ensure that each resident's SNAP~~Food Assistance~~ benefits are used for meals intended for that resident. If the resident retains use of his/her own allotment, he/she may either use the benefits to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

4.309.42 Disqualification of the Group Living Arrangements

A group living arrangement facility authorized by FNS may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The local office shall promptly notify the STATE DEPARTMENT~~Colorado Department of Human Services, Division of Food and Energy Assistance~~, when it has reason to believe that a facility is misusing benefits. However, the local office shall take no action prior to FNS action against the facility. The local office shall establish a claim for over-issuances of SNAP~~Food Assistance~~ benefits held on behalf of resident clients if any over-issuances are discovered during an investigation or hearing procedure for redemption violations.

If the facility loses its authorization from FNS to accept SNAP~~Food Assistance~~ benefits, or is no longer certified by the Colorado Department of Public Health and Environment as a group living arrangement, residents using the facility as an authorized representative shall no longer be able to participate. The

residents are not entitled to a Notice of Adverse Action, but shall receive a written notice explaining the termination and when it shall become effective.

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4.310 GENERAL WORK REQUIREMENTS

As a condition of eligibility for SNAP~~Food Assistance benefits~~, each household member not determined exempt must comply with the following work requirements:

A. Register for work at the time of initial application and AT~~ate~~ every recertification by signing the application for assistance or RECERTIFICATION~~redetermination~~. The application must be signed by the member required to register, an authorized representative, or by another adult household member;

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4.310.2 Informing the Household of General Work Requirements

At the point of initial application and RECERTIFICATION~~redetermination~~, when an interview is required, SNAP~~Food Assistance~~ households must receive from the eligibility staff written notice and a verbal explanation of:

A. The SNAP~~Food Assistance~~ general work requirements;

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4.310.3 General Work Requirement Exemptions

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D. A student enrolled at least half-time, as defined by the educational facility, in any recognized school, training program, or institution of higher education;

1. A student who is enrolled in an institute of higher education must meet student eligibility requirements to receive SNAP~~Food Assistance~~.
2. Students who are eligible for SNAP~~Food Assistance~~ remain exempt from work requirements during normal periods of class attendance and school breaks.

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4.310.5 Voluntary Quit

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B. A level sanction will be imposed if voluntary quit occurred within sixty (60) calendar days prior to the date of application or after the date of application but prior to eligibility determination and the voluntary quit was without good cause.

1. Individuals who voluntary quit are ineligible to participate in SNAP~~the Food Assistance Program~~ and shall be treated as a disqualified member. If the disqualified member joins another household, the ABAWD disqualification period for that individual shall continue until the ABAWD disqualification period is completed.

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4.310.8 Level Sanction Periods

A. If the local office determines that an individual has voluntarily quit or failed to accept suitable employment without good cause, that individual shall be ineligible to participate in SNAP~~the Food Assistance Program~~ and shall be treated as a disqualified member. If the disqualified member joins another household, the disqualification period for that individual shall continue until the disqualification period is completed.

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C. If the level sanction disqualified individual is the sole member of the SNAP~~Food Assistance~~ household and then becomes exempt, the newly exempt individual can reapply for benefits. The newly exempt individual will be eligible based on the date of the application or, if in the case of reinstatement, the date exemption information was provided to the LOCAL~~county~~ office.

~~If the level sanction disqualified individual is in a Food Assistance household with other eligible members and then becomes exempt, the newly exempt individual will be eligible based on the date exemption information was provided to the county office.~~

D. IF THE LEVEL SANCTION DISQUALIFIED INDIVIDUAL IS IN A SNAP HOUSEHOLD WITH OTHER ELIGIBLE MEMBERS AND THEN BECOMES EXEMPT, THE NEWLY EXEMPT INDIVIDUAL WILL BE ELIGIBLE BASED ON THE DATE EXEMPTION INFORMATION WAS PROVIDED TO THE LOCAL OFFICE.

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4.311.1 ABAWD Exemptions

While ABAWDs can be exempt under general work requirement exemptions, these individuals could also meet one of the following ABAWD exemptions:

A. AGE EIGHTEEN (18) THROUGH THE AGE OF FORTY-NINE (49)~~Younger than eighteen (18) years of age or older than forty-nine (49) years of age~~. The month of the household member's birthday is not a countable month;
B. Exempt from the general work requirements;
C. Is residing in a SNAP~~Food Assistance~~ household where a household member is under age 18;
D. Pregnancy;
E. Exempt under a waiver approved by the USDA, FNS;
F. Exempt using Colorado defined state exemptions as identified in the current SNAP~~Food Assistance~~ Employment and Training State Plan.

4.311.2 Changes in ABAWD Exemption Status

ABAWDs are not required to report changes in their exemption status during a certification period. However, if the ABAWD loses their exemption status during a certification period, the months the ABAWD was not exempt will count toward their three countable months in a thirty-six (36) calendar month period. Any remaining months of benefits received during that certification period are not considered OVER-ISSUANCES~~overpayments~~ and claims will not be established.

4.311.3 ABAWD Time Limits

ABAWDs are not eligible to participate in SNAP~~Food Assistance~~ if they have received SNAP~~Food Assistance~~ benefits for more than three countable months during a thirty-six (36) month period.

However, ABAWDs may be eligible for up to three additional consecutive months after regaining eligibility In accordance with paragraph (C) of this section.

A. Countable months

Countable months are accrued when an ABAWD received SNAP~~Food Assistance~~ benefits for the full benefit month but did not:

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D. Regaining Eligibility

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4. If an individual regains eligibility but then fails to continue meeting these requirements, the individual shall remain eligible for a consecutive three-month period after the individual notifies the LOCAL OFFICE~~county department~~. The individual can only have this provision applied for a single three-month period in the thirty-six (36) calendar month period.

4.312 Employment First (EF)

In Colorado, the Employment and Training program is called EF. The purpose of the program is to assist members of households participating in SNAP~~the Food Assistance Program~~ in gaining skills, training, work, or experience that will increase their ability to obtain employment.

CDHS must submit an annual Employment and Training State Plan for approval by the USDA, Food and Nutrition Service. A copy of the CDHS Employment and Training plan is available for inspection ~~during normal working hours by contacting the SNAP Director, Food and Energy Assistance Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203~~.

The EF program is a voluntary work program for SNAP~~Food Assistance~~ applicants and recipients. Failure to participate with the EF program will not result in a work requirement disqualification.

4.312.1 County Administration Requirements for EF

LOCAL OFFICES~~A county department~~ choosing to administer an EF program shall submit a county plan as prescribed by CDHS and shall operate their EF program in alignment with the CDHS Employment and Training plan. Failure to adhere to the requirements as described in the CDHS Employment and Training plan will result in a Corrective Action Plan (CAP).

LOCAL OFFICES~~A county department~~ may enter into a contractual agreement for all or any part of the EF program service delivery. These contractual agreements shall be reviewed by CDHS for adherence to the program requirements before implementation.

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4.313 Colorado Workfare Program

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CDHS must submit an annual Section 20 Workfare State Plan for approval by the USDA, Food and Nutrition Service. A copy of the CDHS Section 20 Workfare plan is available for inspection ~~during normal working hours by contacting the SNAP Director, Food and Energy Assistance Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203~~.

4.313.1 County Administration Requirements for Workfare

LOCAL OFFICES~~A county department~~ choosing to administer a Colorado Workfare program shall submit a county plan as prescribed by CDHS and shall operate their Workfare program in alignment with the CDHS Section 20 Workfare plan. Failure to adhere to the requirements as described in the CDHS Section 20 Workfare plan will result in a Correct Action Plan (CAP).

4.400 FINANCIAL ELIGIBILITY CRITERIA

Income shall be considered prospectively for the issuance month based on the eligibility TECHNICIAN'S~~worker's~~ determination of the household's reasonably anticipated monthly income, and for households eligible under SE~~standard eligibility~~ as outlined in Section 4.206, the value of its resources is considered.

4.401 Income Eligibility Standards

A. Income eligibility is determined based on the composition of the household. A household shall meet the gross and net MONTHLY INCOME ELIGIBILITY STANDARDS AS OUTLINED IN THIS SECTION. SEE SECTION 4.401.1 AND 4.401.2 FOR THE GROSS AND NET PERCENTAGES OF THE FEDERAL POVERTY LEVELS~~MONTHLY income eligibility standards as outlined IN THIS SECTION. SEE SECTION 4.401.1 AND 4.401.2 FOR THE GROSS AND NET PERCENTAGES OF THE FEDERAL POVERTY LEVELS~~.

1. ECE~~Expanded categorically eligible~~ households must have gross income below two hundred percent (200%) of the federal poverty level.

2. BCE~~Basic categorically eligible~~ households shall be deemed as having met gross and net income limits.

3. Households which are not considered ECE OR BCE~~expanded or basic categorically eligible~~ and instead subject to SE~~standard eligibility~~ rules shall meet income eligibility standards as follows:

a. Households that do not include a member who is AGED 60 AND OLDER~~elderly~~ or a person with a disability shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal poverty level.
b. Households that include a member who is AGED 60 AND OLDER~~elderly~~ or a person with a disability shall have a net income at or below one hundred percent (100%) of the federal poverty level.

4. For household members who are persons that are AGED 60 AND OLDER~~elderly~~ and/or have a disability, who are unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act, or a non-disease related, severe, permanent disability, may be considered, together with his or her spouse if the spouse is living in the same home, a separate household from the others with whom the individual lives. The combined income of the others with whom the individual who is AGED 60 AND OLDER~~elderly~~ and a person with disabilities resides (excluding the income of the individual who is AGED 60 AND OLDER~~elderly~~ and a person with disabilities and his or her spouse) must not exceed one hundred sixty five percent (165%) of the poverty level. See Sections 4.401.1 and 4.401.2 for the gross and net income levels for 165% of the federal poverty level.

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4.402 HOUSEHOLD INCOME ELIGIBILITY

A. Determining Income
   1. Income eligibility shall be determined prospectively based on the eligibility TECHNICIAN'S~~worker's~~ anticipation of income at the time of application and when changes are made known to the local office.

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B. Variations in Date of Pay

1.Regular ongoing earned income that is received early or late by a household due to a holiday, a weekend, or pay dates being changed will have income COUNTED~~counted~~ based on the regular pay schedule instead of the actual date of pay.

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3. Household income shall mean all earned and unearned income received or anticipated to be received by household members from whatever source, unless specifically exempted for SNAP~~Food Assistance~~ eligibility and budgeting purposes, per Section 4.405. Income of household members, including the amount of the disqualified person's income attributed to the household, shall be counted as income in the month received or the month it becomes available, unless the income is averaged over the certification period.

***

4.402.1 Prospective Budgeting

A. Prospective budgeting is the process of computing a household's allotment based on anticipated income and circumstances during the issuance month. All SNAP~~Food Assistance~~ households and all situations require prospective budgeting determinations, including public assistance households under the Title IVA (TANF~~Temporary Assistance to Needy Families~~/Colorado Works) Program.

4.402.2 Averaging Income

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B. The types of households listed above shall have their self-employment income, contract income, or educational monies annualized or prorated, and added to other household income to determine monthly ~~Food Assistance~~ income FOR SNAP.

C. To average income prospectively, the eligibility TECHNICIAN~~worker~~ shall use the household's anticipation of income, considering fluctuations, to obtain a monthly average amount for the period of certification. The number of months used to arrive at the average income need not be the same as the number of months in the certification period, such as the known income from two (2) previous months may be averaged and projected for each month of a certification period that is longer than two (2) months. Refer to Section 4.403.11 for more information on computing self-employment income.

Fluctuating income that has been averaged may be adjusted if verification of a change in circumstances is received.

4.403 COUNTABLE EARNED INCOME

The following shall be considered as earned income~~.~~:-

A. Wages and Salaries

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2. Earned income includes government payments from Agricultural Stabilization and Conservation Service and wages of AmeriCorps Volunteers in Service to America (VISTA) workers. VISTA payments are excluded if the client was receiving SNAP~~Food Assistance~~ BENEFITS when he or she joined VISTA. If the client was not receiving SNAP BENEFITS~~Food Assistance~~ when he or she joined VISTA, the VISTA payments shall count as earned income. Temporary interruptions in SNAP~~Food Assistance~~ participation shall not alter the exclusion once an initial determination has been made (see Section 4.405.2, A, 3). Temporary interruptions shall be defined as a period of time where a household or individual missed a full month of benefits, excluding instances where the lapse in benefits is due to the local office not taking timely action in accordance with the processing standards outlined in Sections 4.604, 4.205, or 4.209.1.

3. Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. Advances on wages shall count as income in the month received, if reasonably anticipated. However, wages held by the employer as a general practice shall not be counted as income unless the household anticipates that it will receive income from such wages previously withheld by the employer.

When an advance on wages is subsequently repaid from current wages, only the ~~amount of~~ wages received is considered as income. The amount of repayment is disregarded, even if the wage-earner was not a SNAP~~Food Assistance~~ participant at the time of the advance.

***

E. Self-Employment

The method of ascertaining the self-employment income to be considered for SNAP~~Food Assistance~~ purposes is often difficult and the guidelines set forth in Sections 4.403.1–4.403.12 are meant to clarify and aid the process.

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2. Monies received from the sale of capital goods, services, and property connected to the self-employment enterprise. Proceeds of sales from capital goods or equipment are to be treated as income rather than as capital gains.

The term “capital gains”, as used by the Internal Revenue Service (IRS), describes the handling of the profit from the sale of capital assets such as, but not limited to, computers and other electronic devices, office furniture, vehicles, and equipment used in a self-employment enterprise; or securities, real estate, or other real property held as an investment for a set TIME period ~~of time~~. For SNAP~~Food Assistance~~ purposes, the total amount received from the sale of capital goods shall be counted as income to the household.

F. Owners of Limited Liability Corporations (LLC) and S-Corporations

For SNAP~~Food Assistance Program~~ purposes, owners of LLCs or S-Corporations are considered employees of the corporation and, therefore, cannot be considered self-employed. Because they are not considered self-employed, they are not entitled to the exclusion of allowable costs of producing self-employment income. The income from these types of corporations should be treated as regular earned income, not self-employment income.

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4.403.11 Determining Monthly Income from Self-Employment

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D. Anticipating Capital Gains and Other Self-Employment Income

When self-employment income is calculated on an anticipated basis, any capital gains that the household anticipates receiving in the next twelve (12) months, beginning with the date the application is filed, are added and divided by twelve (12). This amount is used in successive certification periods over the next twelve months unless a change occurs. A new average monthly amount must be calculated over this twelve month period if the anticipated amount of capital gains changes. The anticipated monthly amount of capital gains and the anticipated monthly self-employment income then are added and the anticipated cost of producing the income deducted. The cost is calculated by anticipating the monthly allowable costs of producing the self-employment income.

The monthly net self-employment income will be added to any other earned and unearned income received by the household to determine eligibility of self-employed SNAP~~Food Assistance~~ applicants.

For those households with self-employment income which is not annualized, the eligibility TECHNICIAN~~worker~~ shall anticipate income. Any anticipated proceeds from the sale of capital gains shall be used as income in the month the proceeds are anticipated to be received.

4.404 Countable Unearned Income

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I. Substantial Lottery or Gambling Winnings

Substantial lottery or gambling winnings will be counted as unearned income in the month received. If multiple individuals shared in the purchase of a ticket, hand, or similar bet, then only the portion of the winnings allocated to the member of the SNAP~~snap~~ household would be counted in the eligibility determination.

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4.405 Exempt Income

Income from certain sources will be excluded for SNAP~~Food Assistance~~ eligibility purposes under mandate of law. Only the following will not be considered as income:

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H. Vendor Payments

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7. Energy assistance payments, other than for the Low-Income Energy Assistance Program (LEAP) or a one-time payment under federal or state law for weatherization or to repair/replace an inoperative furnace or other heating or cooling device, that are made under a state or local program shall be counted as income. The exclusion will still apply if a down payment is made and is followed by a final payment upon completion of work. If a state law prohibits the household from receiving a cash payment under state or local general assistance (or comparable program), the assistance would be excluded. This applies to either an energy assistance payment or other type of payment.

Energy assistance payments for an expense paid on behalf of the household under a state law shall be considered an out-of-pocket expense incurred and paid by the household. Energy assistance payments made under Part A of Title IV of the Social Security Act (42 U.S.C. 601, et seq.) is included as income. The Act does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection ~~during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository~~.

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4.405.2 Income Excluded by Other Federal Statutes

The following government payments are received for a specific purpose and are excluded as income by federal law. Copies of the federal laws are available for inspection ~~during normal working hours or by~~

~~contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203~~.

A. General

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3. Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1972, as amended, (P.L. No. 93-113).

Payments under Title I (AmeriCorps Volunteers in the Service of America/VISTA - including University Year for Action and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving SNAP~~Food Assistances~~ or PA~~public assistance~~ at the time they joined the Title I Program, except that households which are receiving an income exclusion for a VISTA or other Title I Subsistence Allowance at the time of conversion to the Food Assistance Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in SNAP~~Food Assistance~~ participation shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving PA~~public assistance~~ or SNAP~~Food Assistance~~ at the time they joined VISTA shall have these volunteer payments included as earned income.

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5. P.L. No. 93-288, Section 312(d), the Disaster Relief Act of 1974, as amended by P.L. No. 100-707, Section 105(i), the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income for SNAP~~Food Assistance~~ purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations.

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6. Payments, allowances and earnings under the Workforce Innovation and Opportunity Act (WIOA) are excluded as income. Earnings paid for on-the-job training are still counted for SNAP~~the Food Assistance Program~~. On-the-job training payments for members under nineteen (19) years of age who are participating in WIOA Programs and are under the parental control of an adult member of the household shall be excluded as income. The exclusion shall apply regardless of school attendance and/or enrollment as outlined in Section 4.405, C. On-the-job training payments under the Summer Youth Employment and Training Program are excluded from income.

***

18. Payments made from the Agent Orange Settlement Fund (P.L. No. 101-201). All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from income retroactive to January 1, 1989.

The veteran with disabilities will receive yearly payments. Survivors of deceased veterans with disabilities will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company.

P.L. No. 101-239, 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excludes payments made from the Agent Orange settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) from income in determining SNAP eligibility or the amount of SNAP benefits ~~under the Food Assistance Program~~.

P.L. No. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service connected disabilities resulting from exposure to Agent Orange. These VA payments are not excluded by law.

19. P.L. No. 101-508, Section 5801, which amended Section 402(i) of the Social Security Act, 11/5/90. At-risk block grant child care payments made under section 5801 are excluded from being counted as income for SNAP~~Food Assistance~~ purposes and no deduction may be allowed for any expense covered by such payments.

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27. P.L. No. 103-322, Section 230202, 9/13/94, Amendments to Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) provides in part that, notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a federal program or a federally financed state or local program would otherwise pay:

a. Such crime victim compensation program shall not pay that compensation.
b. The other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this Program must be excluded from income for SNAP~~Food Assistance~~ purposes.

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B. American Indian or Alaska Native

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13. P.L. No. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income nor otherwise used to reduce or deny SNAP~~Food Assistance~~ benefits except for per capita shares in excess of two thousand dollars ($2,000). The first two thousand dollars ($2,000) of each payment is excluded.

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4.407 DEDUCTIONS AND EXCLUSIONS FROM INCOME

A. Allowable deductions are subtracted from total monthly gross income to determine the household's monthly net SNAP~~Food Assistance~~ income. The monthly income shall be rounded down to the lower dollar if it ends in one (1) through forty-nine (49) cents and rounded to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents before deductions are considered.

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4.407.2 Earned Income Deduction

A. A household with earned income shall receive a deduction of twenty percent (20%) of its gross nonexempt earned income, which is ~~been~~ rounded down to the lower dollar if it ends in the one (1) through forty-nine (49) cents and rounded up to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents. The twenty percent (20%) deduction shall also apply to prorated income earned by the disqualified member and attributed to the household.

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4.407.3 Excess Shelter Deduction

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B. A shelter deduction cap, as specified below, applies to households that do not contain A person who is AGED 60 AND OLDER~~elderly and/~~or a person with a disability as defined in Section 4.304.41. Those households containing a person who is AGED 60 AND OLDER~~elderly~~ and/or a person with a disability shall receive an excess shelter deduction for the monthly cost of shelter that exceeds fifty percent (50%) of the household's monthly income after all other applicable deductions.

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D. A household may claim both the costs of its actual residence and those for a home that is not occupied by the household because of employment or training away from home; or Illness; or abandonment caused by a natural disaster or casualty loss.

For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for SNAP~~Food Assistance~~ purposes; and the home must not be leased or rented during the absence of the household.

4.407.31 Four-Tiered Mandatory Standard Utility Allowance

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A. Heating and Cooling Utility Allowance (HCUA)

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2. A SNAP~~Food Assistance~~ household, which incurs or anticipates ~~a~~ heating or cooling costs on an irregular basis, may continue to receive the HCUA between billing periods.

4.407.6 Excess Medical Deduction

A household shall receive a deduction for total medical expenses MORE THAN~~ in excess of~~ thirty-five dollars ($35) per month, incurred by any household member(s) who is AGED 60 AND OLDER~~elderly~~ or a person with disabilities. Other household members who are not AGED 60 AND OLDER~~elderly~~ or a person with disabilities, including spouses and dependents, cannot claim costs of their medical treatment and services.

A. The following medical costs, less the cost of reimbursements from another source, are allowable:

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7. Reasonable transportation and lodging to obtain medical treatment or services. Mileage expenses shall be calculated based on the prevailing Internal Revenue Service (IRS) COMMERCIAL~~COMMERCIAL~~ mileage rate.

***

B. Non-allowable medical costs include, but are not limited to:

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6. Medical expenses carried forward from past billing periods unless one of the following conditions is met:

a. The amount is being carried forward pending reimbursement information; or,

b. The household has ARRANGEDmade arrangements to make monthly installments on the past due bills. The past due amount must be due to missed payments under a previous repayment agreement with the medical provider, and the payment plan is now being renegotiated with the provider. The negotiation of a payment plan with a collection agency will not be accepted as a renegotiated payment plan; or,

c. Households that become categorically eligible for SNAPfood assistance by reason of becoming a pure SSI household shall be entitled to excess medical expenses for the period for which they are authorized to receive SSI or from the date of the SNAPfood assistance application, whichever is later. Restored benefits shall be issued if appropriate; or,

d. Medical expenses that occur after the date an application is filed and reported at the subsequent application for redetermination or periodic report shall be considered if the medical expense has not previously been reported and allowed as a medical deduction. If at recertification the household provides previously unreported medical expenses that occurred prior to the last certification period that are past due, the LOCAL OFFICEcounty department shall review the medical expenses under provisions a through c of this subsection.

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4.407.61 Determining Monthly Medical Expenses

A. A household that contains a member who is eligible for a medical expense deduction is eligible for a deduction using either the Standard Medical Expense Deduction (SMED) or using actual medical expenses. Beginning October 1, 2016, the SMED is one hundred sixty five dollars ($165).

The SMEDsmed is used if the total verified medical expenses are greater than thirty five dollars ($35) and less than or equal to the SMEDsmed. The household may claim actual expenses if the total verified expenses, after deducting the first thirty five dollars (35), exceed the SMEDsmed.

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4.408 RESOURCE ELIGIBILITY STANDARDS

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D. As a result of the Food, Conservation and Energy Act of 2008, adjustments to the SNAPFood Assistance resource limit will be subject to change annually according to the Consumer Price Index. There are currently two (2) resource limits:

1. One established for households that do contain a member who is AGED 60 AND OLDERelderly and/or a person with a disability; and,
2. Another established for households that do not contain a member who is AGED 60 AND OLDERelderly and/or a person with a disability.

E. The resource limits are as follows:

Effective October 1, 2017, the resource limit for households that do contain a member who is AGED 60 AND OLDERelderly and/or a person with a disability is three thousand five hundred ($3,500). The resource limit for households that do not contain a member who is AGED 60 AND OLDERelderly and/or a person with a disability is two thousand two hundred fifty dollars ($2,250).

4.408.1 Determining the Value of Resources

The value of nonexempt household resources at the time the application is FILEDflied must be determined from applicant statements, documents, and/or from collateral contacts when household assessment is uncertain or questionable.

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***

B. Valuation of Non-Liquid Resources

Except for real property, non-exempt non-liquid resources shall have a fair market value as determined from the best source available (such as, but not limited to, blue book, local dealer, or equivalent verifiable Internet web site) less verified encumbrances. If warranted, the eligibility TECHNICIANworker should adjust the market value for poor or unusable condition of the property before assigning a resource value. The eligibility TECHNICIANworker shall annotate the case record to show source and computation used to determine resource value.

The value of real property, such as buildings, land, or vacation property, unless exempt as income producing may be obtained by using the actual value reported by a county assessor or, if not reported, the current assessed valuation, accomplished in accordance with state law, and dividing the value by the appropriate percentage rate of assessment for real property to derive fair market value and subtracting the amount the household currently owes on the property.

4.408.2 Transfer of Resources

At the time of application, households not eligible under expanded or basic categorical eligibility rules shall be asked to provide information regarding any resources which any household member, ineligible non-citizen, or disqualified person whose resources are being considered available to the household has transferred within the three (3) month period immediately preceding the date of application. Households that have transferred resources knowingly for the purpose of qualifying or attempting to qualify for SNAPFood Assistance benefits shall be disqualified from participation in the program for up to one (1) year from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three (3) month period prior to application, or if they are transferred knowingly after the household is determined eligible for benefits.

A. Eligibility for the program shall not be affected by the following transfers:

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4. Resources that are transferred for reasons other than qualifying or attempting to qualify for SNAPFood Assistance benefits, for example a parent placing funds into an educational trust fund.

B. In the event the local office establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for SNAPFood Assistance benefits, the household shall be sent a notice of denial explaining the reason for and length of disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and the length of disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action has expired, unless the household has requested a fair hearing and continued benefits.

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4.410 EXEMPT RESOURCES

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D. Household Goods, Personal Effects, and Retirement Accounts

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3. All tax DEFERREDpreferred education accounts are exempt resources. The two types of tax DEFERREDpreferred education savings accounts are:

G. Resources with No Significant Return

Resources that, as a practical matter, the household is unlikely to be able to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great, shall be considered inaccessible. A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. Verification of the value of a resource to be excluded shall not be required unless IT IS DETERMINEDthe Food Assistance worker determines that the information provided by the household is insufficient to permit a determination of the resource value or the worker believes that the information is questionable.

This provision regarding no significant return does not apply to negotiable financial instruments. A significant return or a significant amount of funds shall be any return/funds after estimated costs of sale or disposition and taking into account the ownership interest of the household. A significant return or a significant amount of funds is an amount that is estimated to be more than one thousand five hundred dollars ($1,500).

***

J. Government Payments

The following government payments are received for a specific purpose or services and shall be excluded as a resource for SNAPFood Assistance eligibility.

1. P.L. No. 89-642. Section 11b) of the Child Nutrition Act of 1966 excludes the value of assistance to children under this Act from resources for SNAPFood Assistance purposes.

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3. Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended: for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration, Section 312(d) of Disaster Relief Act of 1974.

The Disaster Relief Act of 1974. P.L. No 93-288 as amended by P.L. No. 100-707, Section 105(i). the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for SNAPFood Assistance purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations.

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12. A federal earned income tax credit received either as a lump sum or as payments under Section 3507 or the Internal Revenue code for the month of receipt and the following month for the individual and that individual's spouse (P.L. No. 101-508).

A federal, state, or local Earned Income Tax Credit (EITC) would be exempted for twelve (12) months from receipt for any household member if the individual receiving the EITC was participating in SNAP~~the Food Assistance Program~~ when the EITC was received and participation continues for twelve (12) months. Temporary non-participation due to administrative reasons, such as a delayed recertification, shall not affect the twelfth (12th) month participation requirement (P.L. No. 103-66, Mickey Leland Childhood Hunger Relief Act of 1993).

***

15. P.L. No. 103-322. Section 230202, 9/13/94. Amendments to Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) provide in part that, notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a federal program or a federally financed state or local program would otherwise pay:

a. Such crime victim compensation program shall not pay that compensation;

b. The other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this program must be excluded from income for SNAP~~Food Assistance~~ purposes.

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4.411.1 Treatment of Income and Resources of Disqualified and/or Sanctioned Members

A. Individual household members may be disqualified for being ineligible non-citizens, for failure or refusal to obtain or provide a ~~Social Security Number (~~SSN~~)~~, for IPV~~Intentional Program violation~~/fraud, for being a fleeing felon, for failing to comply with a work requirement, or for being a sanctioned ABAWD ~~(Able Bodied Adult Without Dependents)~~ who has received three (3) months of SNAP~~Food Assistance~~ benefits within a thirty-six (36) month period.

B. During the period IN WHICH~~of time~~ a household member is disqualified, the eligibility and benefit level of any remaining members shall be determined as follows:

1. Households containing members disqualified for IPV~~Intentional Program Violation~~ or fraud, or a work requirement sanction, or classified as a fleeing felon:

a. Income, Resources, and Deductible Expenses

The income and resources of the disqualified household member(s) shall be counted in their entirety. Resources shall only be considered if the household is required to meet the resource standard. The allowable earned income, standard, medical, dependent care, and shelter deductions shall be allowed in their entirety.

b. Eligibility and Benefit Level

The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified household member will not be included when determining the household size for comparison against any eligibility standard, THIS~~which~~ includes the gross income and net income eligibility limits or the resource eligibility limits.

2. Households containing members disqualified for being an ineligible non-citizen, for failure or refusal to obtain or provide aN ~~Social Security Number (~~SSN~~)~~, or sanctioned as an ~~able bodied adult without dependents (~~ABAWD~~)~~ who has received three (3) months of SNAP~~Food Assistance~~ benefits in a thirty-six (36) month period:

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4.411.2 Treatment of Income and Resources of Other Non-Household Members

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C. A person who is an ineligible student for SNAP~~Food Assistance~~ purposes shall be treated as a non-household member. The other members of a household containing the ineligible student may be certified. The income and resources of the ineligible student shall not be considered available to the other household members for determining the household's income resources and deductions nor shall the student be considered in determining the household's allotment.

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4.500 VERIFICATION AND DOCUMENTATION

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B. The case record shall consist of statements and documentation regarding the sources and results of verification used to determine a household's eligibility. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility TECHNICIAN'S~~worker's~~ determination. When ~~making a decision of~~ ineligibility IS DETERMINED, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record.

The case record shall also contain all correspondence pertaining to fair hearings and administrative disqualification hearings.

Information to retain in the case record for fair hearings shall include, at a minimum, the household's request for a fair hearing, the scheduling notice with the hearing date and time, all decisions pertaining to the fair hearing, and any exceptions filed by the LOCAL OFFICE~~county department~~ or the household.

***

4.501 Prudent Person Principle (PPP)

The rules contained herein are intended to be sufficiently flexible to allow the eligibility TECHNICIAN~~worker~~ to exercise reasonable judgment in executing his/her responsibilities WHEN DETERMINING SNAP ELIGIBILITY, ALSO KNOWN AS PPP.

~~In this regard, the prudent person principle may be applied. The term prudent person principle refers to reasonable judgments made by an individual in a given case.~~ In making an eligibility decision, the eligibility TECHNICIAN~~worker~~ should consider whether his/her judgment is reasonable, based on experience and knowledge of SNAP~~the program~~.

4.502 VERIFICATION REQUIREMENTS AT APPLICATION, RECERTIFICATION~~REDETERMINATION~~, AND PERIODIC REPORT

A. Verification Requirements at Application

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3.The household shall be given a reasonable opportunity to submit verification of certain expenses ~~in order~~ to receive expense deductions and exclusions.

If a deductible expense must be verified and obtaining verification may delay the household's certification, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction or exclusion for the claimed but unverified expense.

If the expense cannot be verified within thirty (30) calendar days of the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction or exclusion for the unverified expense. THESE EXPENSES ARE:

a. Allowable medical expenses less reimbursement;
b. Legally-obligated child support payments;
c. Dependent care expenses; and,
d. SHELTER EXPENSES, IF QUESTIONABLE AND VERIFICATION HAS BEEN REQUESTED.

4. For households eligible under basic or expanded categorical eligibility rules, verification of resources, gross and net income, SSN information, sponsored non-citizen information, and residency beyond that gathered by the PA~~public assistance~~ program that confers eligibility shall not be required unless these eligibility factors are not already collected and verified by the other program, are considered questionable, or are unavailable to SNAP~~the Food Assistance Program~~. The local office shall verify that each member receives benefits or services from the program that confers basic or expanded categorical eligibility.

5. For households subject to an asset test, the household's written declaration of resources MORE THAN~~in excess of~~ the resource limit is an acceptable form of verification. ~~Verification Requirements at Redetermination and Periodic Report~~

B. Verification Requirements at Recertification ~~and Periodic Report~~

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2. A change in total monthly ~~earned~~ income of FIFTY~~one hundred~~ dollars ($50~~100~~) or more for each member must be verified at redetermination. IF THE SOURCE OF INCOME HAS NOT CHANGED AND IF THE AMOUNT IS UNCHANGED OR HAS CHANGED BY FIFTY DOLLARS ($50) OR LESS, VERIFICATION IS NOT REQUIRED UNLESS THE INFORMATION IS UNCLEAR, QUESTIONABLE, OR OUTDATED.

3. At redetermination, all households shall verify the following information if the source has changed or the amount has changed by more than twenty-five dollars ($25) since the last time they were verified:

a. DEPENDENT CARE EXPENSES~~Changes in unearned income~~;
b. Allowable medical expenses;
c. Legally-obligated child support;
~~d. Dependent care expenses;~~
~~e. Verification of the above factors, is optional if information is unchanged or changes by twenty-five dollars ($25) or less.~~

4. A reported Social Security Number(s) not verified at initial certification and newly obtained Social Security Numbers shall be verified through the IEVS OR~~OR~~ SOLQ-I.

5. For households subject to an asset test, the household's written declaration of resources MORE THAN~~in excess of~~ the resource limit is an acceptable form of verification.

C. VERIFICATION REQUIREMENTS AT PERIODIC REPORT

1. THE HOUSEHOLD SHALL VERIFY THE FOLLOWING CHANGES IN CIRCUMSTANCES AT THE TIME OF PERIODIC REPORT:
    a. A CHANGE OF MORE THAN $100 IN THE AMOUNT OF UNEARNED INCOME.
    b. A CHANGE IN THE SOURCE OF INCOME, INCLUDING STARTING A JOB.
    c. ACQUISITION OF A LICENSED VEHICLE THAT IS NOT FULLY EXCLUDABLE, IF RESOURCE LIMITS APPLY.
    d. A CHANGE IN LIQUID RESOURCES, UNLESS EXCLUDED, IF RESOURCE LIMITS APPLY.
    e. CHANGES IN THE LEGAL OBLIGATION TO PAY CHILD SUPPORT.
    f. IF A MEMBER OF THE HOUSEHOLD WON SUBSTANTIAL LOTTERY OR GAMBLING WINNINGS.
    g. ALLOWABLE MEDICAL EXPENSES TO RECEIVE AN INCREASE IN THE ALLOWED EXPENSE OR ADD A MEDICAL EXPENSE.

2. PREVIOUSLY REPORTED MEDICAL AND SHELTER EXPENSES USED TO ESTABLISH THE 24-MONTH CERTIFICATION SHOULD CONTINUE THROUGH THE END OF 24-MONTH CERTIFICATION PERIOD UNLESS:

a. AN INCREASE IN MEDICAL EXPENSES IS VERIFIED, OR
b. AN INCREASE IN SHELTER EXPENSES IS REPORTED.

4.503 Case Documentation

The case record shall consist of statements and documentation regarding the sources and results of verification used to determine eligibility and ineligibility. Such statements shall be entered into a physical case file and/or the statewide automated system. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility TECHNICIAN'S~~worker's~~ determination. When ~~making a decision of~~ ineligibility IS DETERMINED, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record.

***

4.504 Sources of Verification

The local office shall accept any pertinent documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application, redetermination, PRF~~periodic report form~~, or REPORTED CHANGES~~change report form~~. If written verification cannot be obtained, the eligibility TECHNICIAN~~worker~~ shall substitute an acceptable collateral contact.

4.504.2 Collateral Contacts

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B. Confidentiality shall be maintained when talking with collateral contacts. The local office shall disclose only the information that is ~~absolutely~~ necessary to get information being sought. When talking with collateral contacts, the local office SHALL NOT SHARE~~shall avoid disclosing~~ that the INDIVIDUAL OR household has applied for SNAP~~Food Assistance~~.

C. If the household fails to provide a collateral contact or provides a contact that is unacceptable to the eligibility TECHNICIAN~~worker~~, the TECHNICIAN~~worker~~ may select a collateral contact that can provide information that is needed.

***

4.504.5 Colorado Income Eligibility Verification System (IEVS)

A. The Colorado Income and Eligibility Verification System (IEVS) provides for the exchange of information on SNAP~~Food Assistance Program~~ recipients with the Social Security Administration (SSA), Internal Revenue Service (IRS), and the Colorado Department of Labor and Employment (DOLE).

B. At initial certification and redetermination, all applicants for SNAP~~Food Assistance benefits~~ shall be notified through a written statement provided on or with the application form of the following information:

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4.504.6 Information Considered Verified Upon Receipt

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B. Information that is considered VUR~~verified upon receipt~~ shall be acted upon for ALL~~both simplified reporting households and non-simplified reporting~~ households. Information considered VUR~~verified upon receipt~~ shall be acted on at the time of application, recertification, periodic report, and during a household's certification period if the information causes a change in the SNAP~~Food Assistance~~ benefit amount. A household shall not be convicted of fraud for not reporting a change in the information it is not required to report.

***

D. The local office shall consider only the following information as verified upon receipt:

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5. Information that is reported and verified to a PA~~public assistance~~ program which results in a change to the PA benefit amount and that meets the SNAP~~Food Assistance regulations for~~ verification REQUIREMENTS.

***

10. Changes in household composition that are reported and verified and result in one or more members being removed from one SNAP~~Food Assistance~~ household and added to a new or existing SNAP~~Food Assistance~~ household.

Duplicate benefits shall not be issued for a particular individual when removing that individual from one SNAP~~Food Assistance~~ household and adding him/her to a new SNAP~~Food Assistance~~ household.

11. Changes in household composition that are reported and verified by child welfare agencies and result in a child being removed from one SNAP~~Food Assistance~~ household and added to a new or existing SNAP~~Food Assistance~~ household.

12. The disqualification of a household member who is determined to be a fleeing felon or a probation or parole violator.

4.504.61 Information Not Considered Verified Upon Receipt

A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's SNAP~~Food Assistance~~ benefits during the certification period.

B. The following sources of information shall not be considered as verified upon receipt:

1. Death information received from a source other than the Burial Assistance program.

2. Veterans Assistance (VA) benefit amounts obtained through the IEVS.

3. Wage data obtained through the IEVS and the DOLE.

4. IRS income and asset information obtained through the IEVS.

5. Information regarding railroad retirement benefits obtained through IEVS~~the ievs~~.

6. Information received from the Public Assistance Reporting and Information System (PARIS).

7. Prisoner information received during the certification period.

8. Information received from the National Database of New Hires (NDNH).

9. Social Security benefit amounts reported via an award letter given by the household.

10. IPV/disqualification data from another state as reported through the disqualified recipient database.

4.505 VERIFICATION OF NON-FINANCIAL INFORMATION

A. Some information received from sources other than the household are not considered verified.

Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's SNAP~~Food Assistance~~ benefits during the certification period.

***

4.505.1 Verification of Identity

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C. When obtaining an ~~Electronic Benefit Transfer (~~EBT~~)~~ card, a household shall not be required to provide verification beyond what was utilized to establish identity when determining SNAP~~Food Assistance~~ eligibility. This includes verification through a collateral contact.

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4.505.3 Verification of Residency

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B. If the eligibility TECHNICIAN~~worker~~ and applicant have made reasonable efforts to verify residency and it has proved impossible, the household may be certified, if otherwise eligible. If an individual's county residency cannot be verified, but the individual's Colorado residency is not questionable, then the individual shall be certified if otherwise eligible and not participating in another SNAP~~Food Assistance~~ household.

***

4.505.4 Verification of Household Composition

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C. A household or applicant that requests benefits for a child that is already receiving benefits in another household is responsible for verifying that they provide the child with a majority of his or her meals prior to receiving benefits for that child. When determining majority of meals for shared living arrangements, acceptable documentation includes, but is not limited to~~:~~ custody arrangements, school enrollment forms, dependent care forms, a statement from each household, or any other document that can reasonably be used to determine meals.

One household's written or verbal statement regarding its provision of MOST OF~~the majority~~ of the meals shall not be the only verification used when the statement results in removing a child from one SNAP~~Food Assistance~~ household and placing the child in another SNAP~~Food Assistance~~ household. A calendar completed by the household showing how many meals it provides a child shall be considered a written statement from the household. If both households that are requesting assistance for a child each provide a verbal or written statement regarding how many meals each provideS, then both households' statements shall be used as verification to determine who provides MOST~~the majority~~ of the child's meals.

***

4.505.51 Verification of Questionable Citizenship

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B. Application of the above criteria by the eligibility TECHNICIAN~~worker~~ must not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or American Indians shall not be targeted for special verification. The eligibility TECHNICIAN~~worker~~ shall not rely on a surname, accent or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the eligibility TECHNICIAN~~worker~~ rely on a lack of English speaking, reading or, writing ability as grounds to question a claim to citizenship.

***

4.505.6 Verification of Non-citizen Status

A. All applicants for SNAP~~Food Assistance benefits~~ shall be notified on the application form that the non-citizen status of any household member will be subject to verification by the U.S. Citizenship and Immigration Service (USCIS) through the submission of information from the application to the USCIS. The information received from the USCIS may affect the household's eligibility and level of benefits. The application shall contain a statement signed by an adult representative from each household which attests, under penalty of perjury, to citizenship or non-citizen status of each member.

***

C.

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2. If the proper USCIS documentation is not available, the non-citizen may state the reason and submit other conclusive verification. The local office shall accept other forms of documentation or corroboration from the USCIS that the non-citizen is classified pursuant to Section 207, Section 208, or Section 243(h) of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act, which is codified throughout Title 8 of the United States Code. The federal references do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection ~~during normal working hours by contacting: Director, Food Assistance Programs Division,~~

~~Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository~~.

***

4.505.61 Verification of SSA Forty Work Quarters

The SSA~~Social Security Administration's~~ Quarters of Coverage History System (QCHS) is available for purposes of verifying whether a lawful permanent resident has earned or can receive credit for forty (40) qualifying quarters. If the individual does not have documentation, he/she cannot participate until verification of forty (40) quarters of work is received from either the ~~Social Security Administration (~~SSA~~)~~ or the individual.

If the SSA~~Social Security Administration~~ determines that its existing records do not verify that an individual claiming forty (40) credits or quarters in fact has the forty (40) credits or quarters and the individual believes the SSA~~Social Security Administration~~ records are not correct, the SSA~~Social Security Administration~~ will work with the individual to determine whether the additional credits or quarters can be established. The individual should be advised that he/she has the option of working with the SSA~~Social Security Administration~~ and that if he or she exercises this option and obtains a statement from SSA indicating that the number of credits or quarters is under review, he/she can continue to receive SNAP BENEFITS~~Food Assistance~~ for up to six (6) additional months from the date of the original determination of insufficient quarters.

A. No such qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to a non-citizen if the non-citizen, parent of the non-citizen, or spouse of such non-citizen ~~actually~~ received any federal means-tested public benefit during the period for which such qualifying quarter of coverage is so credited.

B. The local office must evaluate quarters of coverage and receipt of federal means-tested public benefits on a calendar year basis. The local office must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the non-citizen (or the parent(s) or spouse of the non-citizen) received federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the noncitizen in that calendar year. However, if the non-citizen earns the fortieth (40th) quarter of coverage prior to applying for SNAP~~Food Assistance~~ or any other federal means-tested public benefit in that same quarter, the local office must allow that quarter toward the forty (40) qualifying quarters total.

***

4.505.7 Verification of Non-citizen Sponsorship

A. The local office shall verify the following information at the time of initial application and recertification:

1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if living with the sponsor) at the time of the non-citizen's application for SNAP~~Food Assistance~~.

***

4.505.8 Verification of Disqualified Member Data

At the time of application and when adding a new member to a SNAP~~Food Assistance~~ household, the office shall verify data with the national IPV/disqualification database for all household members ageD eighteen (18) or older to determine if any members have an active ~~intentional Program violation (~~IPV~~)~~/ disqualification from another state which requires a portion, or the entirety of, the disqualification period to

be served in Colorado. Application processing shall not be delayed while awaiting verification from another state.

The local office shall ensure that:

***

C. States shall be given twenty (20) calendar days to respond to a request for verification. If verification cannot be provided by the other state, then the disqualification shall not be acted upon. Local offices shall be given twenty (20) calendar days to respond to another state's request of obtaining verification of a Colorado IPV. If the LOCAL OFFICE~~county department~~ cannot provide verification, then steps shall be taken to remove the IPV from the national database.

D. Once independent verification is received, adverse action shall be granted prior to benefits being reduced, suspended, denied, or terminated; and,

E. The disqualified individual shall be provided an opportunity to appeal any adverse action.

If ~~the local office issues~~ benefits ARE ISSUED BY THE LOCAL OFFICE to an individual while awaiting verification of an IPV disqualification, the benefits issued while awaiting such verification may be claimed back if it is determined that the individual was disqualified from the program at the time the benefits were issued.

4.506 VERIFICATION OF INCOME

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A. Responsibility

1. Applicants are primarily responsible for furnishing income verification documents, a collateral contact, or the authorization needed to secure sufficient information to allow written or verbal verification by the eligibility TECHNICIAN~~worker~~. For ~~public assistance (~~PA~~)~~ recipients, the PA case record will normally be used as the source of verification.

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4. In some instances, however, all attempts to verify income may be unsuccessful because the person or organization has failed to cooperate with the household. A cooperating applicant shall not be denied solely because a third party refuses to provide verification. The eligibility TECHNICIAN~~worker~~ shall, in consultation with the applicant or other sources, arrive at a figure to be used for certification purposes and annotate the household's case record with information used to make an eligibility determination.

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C. Self-Employment

Self-employment verification may consist of tax documents, self-employment ledgers maintained by the household, receipts, or other documents used for verifying and documenting the household's self-employment income and expenses. If, at the time of initial certification, a household is recently self-employed or does not have adequate documentation of the household's self-employment income and expenses, the eligibility TECHNICIAN~~worker~~ shall use the best information available to determine the household's monthly income. The household shall be encouraged to keep records of income and expenses for subsequent certifications. ~~No specific verification shall be required and the d~~Documentation provided by the household shall be accepted unless questionable. NO SPECIFIC VERIFICATION SHALL BE REQUIRED.

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F. Cases of No Reported Income

1. ~~In addition to verifying reported income, the eligibility worker may have occasion to explore the possibility of unreported income. Prior to determining the eligibility of households who report no income or income so low as to place them at the maximum benefit level without consideration of deductible expenses, the eligibility worker must, through in-depth interviewing techniques, determine how the household maintains its existence and meets ongoing maintenance expenses. Collateral contact with a person or persons knowing the household's circumstances is recommended.~~ The existence of resources, UNPAID BILLS, AND/OR CREDIT might be an explanation of how the household exists WITH NO INCOME OR INCOME SO LOW AS TO PLACE THEM AT THE MAXIMUM BENEFIT LEVEL WITHOUT CONSIDERATION OF DEDUCTIBLE EXPENSES. THE APPLICANT'S STATEMENT OF NO INCOME IS ACCEPTABLE, UNLESS OTHERWISE QUESTIONABLE~~at the level of income reported~~.
2. ~~When exploring the possibility of unreported income or how the household is meeting its expenses, the local office shall not initiate a request for verification of such information, but shall explore how the household is meeting its needs through an interview. If, at the time of recertification, the local office needs to explore the possibility of unreported income or how the household is meeting its needs, the household shall be contacted by telephone to resolve the discrepancy. If the household cannot be contacted, then the interview process outlined in Section 4.204 can be initiated.~~

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4.601 General Requirements for Reporting Changes

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B. Households shall be required to report the increase in income no later than ten (10) calendar days from the end of the calendar month in which the change occurred. ~~The local office has up to ten (10) calendar days to act on the information from the date the change is considered reported.~~

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4.603 HOUSEHOLD RESPONSIBILITY TO REPORT CHANGES

A. Applicant households shall report all changes related to their SNAP~~Food Assistance~~ eligibility and benefits at the certification interview, including any changes that occurred between the date an application is submitted and the date of the interview. If a change is reported in an initial month and the application has not yet been processed, the local office shall act on the most current information.

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4.604 ACTION ON REPORTED CHANGES

Changes shall be acted on in accordance with the following guidelines:

A. General Requirements

Changes to a household's circumstances shall be acted on prospectively and processed within ten (10) calendar days from the date the change is ~~considered to be~~ reported. Changes reported by households shall be documented in the SNAP~~Food Assistance~~ case record to indicate the change and the date that the change was reported. If the reported change causes a change to the household's allotment, a notice of action form shall be issued to inform the household of a new basis of issuance and/or a supplemental allotment. If a supplemental allotment is to be issued, the amount of the supplemental allotment shall be the difference between the allotment the household is eligible to receive, due to the reported change, and the allotment the household ~~actually~~ received for the current month. The household's total monthly

allotment shall be increased for all subsequent months of the certification period that are affected by the change.

***

C. Changes Resulting ~~I~~in an Increase

1. The county local office shall act on any change reported by the household that will increase benefits. The increased allotment shall be made no later than the first allotment issued ten (10) or more calendar days after the change is ~~considered to be~~ reported. Any increase in benefits resulting from a change shall take effect the month following the month the change is considered reported. Therefore, if such a change is reported after the twentieth (20th) of a month, and it is not possible to adjust the following month's allotment before the household's next normal issuance day, a supplemental allotment (in addition to the previously authorized monthly allotment) must be issued within ten (10) calendar days from the date the change was ~~considered to be~~ reported. A supplemental allotment shall not be issued for the month in which the change occurred.

2. Changes that result in increased SNAP~~Food Assistance~~ benefits for a household must be verified by the household within ten (10) calendar days from the date the change is reported. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. Changes that result in increased SNAP~~Food Assistance~~ benefits for a household must be verified prior to adjusting the household's allotment.

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G. Changes in Household Composition

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2. Individuals Disqualified During the Certification Period

When an individual is disqualified during the household's certification period, the LOCAL~~Food Assistance certification~~ office shall determine the eligibility or ineligibility of the remaining household members based on information contained in the case record. If information in the case record is insufficient, additional information shall be obtained as needed.

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4.604.1 Verification of Reported Changes

BEFORE ACTION IS TAKEN ON REPORTED CHANGES AND TO DETERMINE THE EFFECT ON BENEFITS, ADDITIONAL VERIFICATION IS REQUIRED IN THE FOLLOWING INSTANCES:~~Changes that affect an allotment may require additional verification prior to taking action.~~

A. Unclear Information

1. If the local ~~county~~ office receives information about changes in a household's circumstances but cannot determine if or how the change will affect the household's benefits and the unclear information is:

a. Fewer than sixty (60) days old relative to the current month of participation; and

b. Was required to have been reported per simplified reporting rules; or

c. Appears to present significantly conflicting information about the household's circumstances from that used by the agency at the time of certification, including changes to the household's categorical eligibility tier, then;

The local office shall send a verification request notice requesting the household to provide the specific information or verification within the ten (10) calendar days plus one (1) additional calendar day for mailing ~~time period~~. Households participating in the Address Confidentiality Program (ACP) shall receive five (5) additional calendar days for mailing time. The local office shall ASSIST THE CLIENT ~~offer assistance~~ in obtaining the verification if the household cannot obtain the information.

If the household fails or refuses to provide the verification or to request assistance with obtaining the verification within the ten (10) calendar days plus one (1) additional calendar day for mailing timeframe, or five (5) additional calendar days mailing time for ACP households, the process for closing the case shall be initiated. The Notice of Action Form shall advise the household that a change occurred that could not be acted upon, that the case is being closed, and that the household must provide the needed verification if it wishes to continue participation in the program. The household may be required to reapply if the household takes the required action after a break in benefits of more than thirty (30) calendar days.

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3. Changes which result in increased SNAP~~Food Assistance~~ benefits for a household shall be verified prior to adjusting the household's allotment. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained.

B. Computer Matches Not Considered Verified Upon Receipt

When information is received from a Prisoner Verification System indicating an individual is currently being held in a federal, state, or local detention or correctional institution for more than thirty (30) days or information is received from a Deceased Matching System indicating a household member has recently died, a notice of match shall be sent to the affected household prior to taking action to adjust or terminate the household's benefits.

The notice of match shall explain what information is needed to challenge the match and the consequences of failing to respond. The notice shall provide the household with ten (10) calendar days plus one (1) additional calendar day for mailing time to respond. Households participating in the ~~Address Confidentiality Program (~~ACP~~)~~ shall be provided five (5) additional calendar days for mailing time.

If the household substantiates the match, fails to respond to the notice, or fails to provide sufficient verification to challenge the match results, the agency shall remove the subject individual from the SNAP~~Food Assistance~~ household and adjust benefits accordingly following the procedures outlined in Section 4.604.

If the household provides sufficient verification that the match is invalid, no further action shall be taken to remove the subject individual or adjust the household's benefits. The case record shall be documented accordingly.

4.605 FAILURE TO REPORT CHANGES

If SNAP~~Food Assistance~~ benefits are over-issued because a household fails to timely report changes as required, a claim shall be established and a notice of overpayment and a repayment agreement will be mailed. If the discovery is made within the certification period, the household must be given advance notice of adverse action if its benefits are to be reduced.

4.606 ~~HANDLING PUBLIC ASSISTANCE (~~PA~~)~~ HOUSEHOLD CHANGES

A. Households that receive PA~~public assistance~~ benefits which report a change in circumstances to the PA~~public assistance~~ worker shall be considered to have reported the change for SNAP~~Food Assistance~~ purposes. Information that is reported and verified to a ~~public assistance (~~PA~~)~~ program which results in a change to the PA benefit amount and that meets the SNAP~~Food Assistance~~ rules for verification shall be considered VUR~~verified upon receipt~~. The date the change is considered reported and verified is the date the PA~~public assistance~~ program processes the change and authorizes the new PA benefit amount. When acting on information considered VUR~~verified upon receipt~~, advance notice of adverse action is required, except as noted in Section 4.608.1.

B. When there is a change in a PA~~public assistance~~ case and the county has sufficient information to make the corresponding SNAP~~Food Assistance~~ adjustment, the county shall follow the guidelines listed below.

1. If the change in household circumstances requires a reduction or termination of both PA~~public assistance~~ and SNAP~~Food Assistance~~, the following action will be required:
   1. Send NOA~~Notices of Adverse Action~~ for both programs simultaneously with both notices bearing the same effective date.
   2. If a household requests a fair hearing any time prior to the effective date of the Notice of Adverse Action, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the Notice of Adverse Action, unless the household specifically waives continuation of benefits. Continued benefits shall not be issued for a period beyond the end of the current certification period.
   3. If the household appeals only a PA adverse action and is granted interim relief, SNAP~~Food Assistance~~ benefits authorized prior to the adverse action shall continue or be restored. However, the household must reapply if the SNAP~~Food Assistance~~ certification period expires before the hearing process is completed.
   4. If the household does not appeal the adverse action to decrease the PA~~public assistance~~ or SNAP~~Food Assistance~~ benefits within the adverse action period, the changes shall be made in accordance with timeframes outlined in Section 4.603.
2. If the change requires a reduction or termination of PA BENEFITS~~public assistance~~ and/or increases in SNAP~~Food Assistance~~, the following action will be required:
   1. A PA~~public assistance~~ Notice of Adverse Action shall be issued to the household and SNAP~~Food Assistance~~ benefits shall not be increased until the adverse action period expires. If the household does not appeal, the increase shall be effective in accordance with Section 4.604. The time limit for taking the action to increase SNAP~~Food Assistance~~ benefits shall be calculated from the date the PA Notice of Adverse Action expires. The Notice of Adverse Action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP).
   2. If the household requests a PA state appeal and is granted interim relief, the household is entitled only to SNAP~~Food Assistance~~ benefits that were authorized immediately prior to the PA adverse action and action must be taken to correct the current basis of issuance. A SNAP~~Food Assistance~~ claim must be made against the household if there was an overissuance for the period pending the appeal decision.
3. When there is a change in a PA case which results in a termination of PA but there is insufficient information to determine SNAP~~Food Assistance~~ eligibility, the county shall follow the guidelines listed below:
   1. The PA Advance Notice of Adverse Action and a verification request notice are issued simultaneously. The PA~~public assistance~~ notice makes the action effective on the last day of the month the notice is sent (or the last day of the following month, as appropriate, to allow for the required advance notice period). The routine extension on SNAP~~Food Assistance~~ notices allows the household time to reapply for benefits at the appropriate local office.

      The verification request notice shall advise the household of the information that needs to be verified for the household to continue to receive SNAP~~Food Assistance~~ benefits. The ELIGIBILITY TECHNICIAN~~worker~~ shall not take any further action until the PA Notice of Adverse Action period expires or until the household requests a fair hearing. If the household does not appeal the PA

action and request a continuation of benefits, the agency may resume action on the reported change.

Depending on the response or non-response to the verification request, the ELIGIBILITY TECHNICIAN ~~worker~~ shall adjust the household's benefits if the verification of the household circumstances IS~~are~~ received, or issue a Notice of Adverse Action to close the household's case if the household does not respond or refuses to provide information.

b. Households requesting a SNAP~~Food Assistance~~ appeal may be entitled to continued benefits.

c. If the household requests only a PA~~public assistance~~ state appeal and is granted interim relief, SNAP~~Food Assistance~~ benefits authorized immediately prior to the adverse action will continue or be restored.

4. If the situation does not require a PA Notice of Adverse Action, the county local office shall ACT~~take action~~ based on the normal change reporting processing time frames and provide proper noticing as described in this section.

C. Local offices shall ensure that there is no increase in SNAP~~Food Assistance~~ benefits to households as the result of a penalty being imposed for an ~~intentional program violation (~~IPV~~)~~ or failure to comply with program requirements for a federal, state, or local means-tested program that distributes publicly funded benefits.

The local office shall calculate the SNAP~~Food Assistance~~ allotment using the benefit amount that would be issued by that program if no penalty had been imposed to reduce the benefit amount. A situation where benefits of the other program are being frozen at the current level shall not constitute a penalty subject to these provisions. Changes in household circumstances that are not related to the penalty and result in an increase in SNAP~~Food Assistance~~ benefits shall also not be affected by these provisions.

4.607 MASS CHANGES

There are certain changes that occur which are not caused by the household and which affect a mass portion of the SNAP~~Food Assistance~~ caseload simultaneously. Such adjustments go into effect for all households at a specific point in time, and the local office will have full prior knowledge of the change. Such changes are generally initiated BECAUSE~~as a result~~ of a change in state or federal regulations. When such changes occur, the local office shall be responsible for making the appropriate adjustments in the household's eligibility or allotment as directed by the State Department and noticing the client as outlined below:

A. Federal adjustments to eligibility standards, allotments, and deductions; state adjustments to the Standard Utility Allowance; and any federal reduction, cancellation, or suspension of SNAP~~Food Assistance Program~~ benefits.

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B. Mass changes in public assistance grants, such as state-only OAP~~Old Age Pension~~ and AND~~Aid to the Needy Disabled~~; and Cost of Living Adjustments (COLA) and increases in federal RSDI, SSI benefits (Title XVI), and SSA (Title II).

These mass changes shall require a Notice of Adverse Action when SNAP~~food assistance~~ benefits are decreased or terminated. Such notice for these mass changes shall be provided to the household as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance Notice of Adverse Action, per Section 4.608. Mass changes shall be processed prospectively for all households.

1. At a minimum, affected households shall be informed of:

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e. The household's right to receive a continuation of benefits if the following criteria are met:

1. The household has not specifically waived its right to a continuation of benefits;
2. The household requests a fair and the request for a hearing is based upon improper computation of SNAPFood Assistance eligibility or benefits, or upon misapplication or misinterpretation of state rules, or federal law or regulation.

2. Processing Mass Changes in Public Assistance (PA)

PAPublic assistance grant cost-of-living increases and SSA/SSI cost-of-living increases are treated as mass changes in SNAPthe Food Assistance Program. Mass changes shall be processed prospectively for all households. SNAPFood assistance benefits shall be RECALCULATEDrecomputed and the change shall be effective in the same month as the change in the PA grant. If the local office has at least thirty (30) calendar days' advance knowledge of the amount of the PApublic assistance adjustment, the SNAPFood Assistance benefits shall be RECALCULATEDrecomputed and the change shall be effective in the same month as the change in the PA grant. In cases where the local office does not have thirty (30) calendar days' advance notice, the SNAPFood Assistance change shall be made effective no later than the month following the month in which the PA grant was changed.

4.608 ADVANCE NOTICE OF ADVERSE ACTION

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D. The participant household may also, prior to the effective date of the Notice of Adverse Action, either before or after the conference, appeal the proposed action. Households that timely request a hearing may be entitled to continued benefits. The eligibility TECHNICIANworker shall explain to the household that a demand will be made for the amount of any benefits determined by the hearing officer to have been over-issued.

4.608.1 Changes Not Requiring Advance Notice of Adverse Action

Advance Notice of Adverse Action may be given, but is not required in the following situations:

A. The STATE DEPARTMENTFood Assistance Program Division initiates mass changes outlined in Section 4.607, paragraph A. Such changes must be publicized in advance. Announcements may be handed out or mailed to affected participant households.

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F. The household applied for public assistance (PA) and SNAPFood Assistance jointly and has been receiving SNAPFood Assistance benefits pending the approval of the PA grant and was notified at the time of certification that SNAPFood Assistance benefits would be reduced upon approval of the PA grant.

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J. Converting a household from cash and/or SNAPFood Assistance repayment for claims to allotment reduction BECAUSEas a result of a failure to make agreed-on repayments.

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L. A change that is reported at redetermination for a household certified for six (6) months, or at periodic report for a household certified for twenty-four (24) months, which results in a decrease to the household's SNAPFood Assistance allotment.

4.609 TRANSITIONAL FOOD ASSISTANCE (TFA)

4.609.1 GENERAL ELIGIBILITY GUIDELINES [Rev. eff. 2/1/16]

A. Households that receive SNAP~~Food Assistance~~ and CW~~Colorado Works~~ basic cash assistance that become ineligible for continued receipt of CW~~Colorado Works~~ basic cash assistance BECAUSE~~as a result~~ of changes in household income are eligible to receive ~~Transitional Food Assistance (~~TFA~~)~~, as provided for within this section. CW~~Colorado works~~ diversion payments are not considered basic cash assistance. CW~~Colorado works~~ basic cash assistance is defined in Section 3.601 of the Code of Colorado Regulations (9 CCR 2503-6).

B. Households that are eligible to receive TFA~~Transitional Food Assistance~~ will have the SNAP~~Food Assistance~~ benefit amount continued for five (5) months. The household's SNAP~~Food Assistance~~ allotment will be continued in an amount based on what the household received prior to when the household's income made them ineligible for CW~~Colorado Works~~ basic cash assistance. Only the following four (4) changes will be acted upon when determining the SNAP~~Food Assistance~~ allotment that is to be continued.

1. The loss of the CW~~Colorado Works~~ cash grant;
2. Changes in household composition that result in a household member leaving and applying for SNAP~~Food Assistance~~ in another household;
3. Updates to the SNAP~~Food Assistance~~ eligibility standards that change each October 1 BECAUSE~~as a result~~ of the annual cost-of-living adjustments (see Section 4.607); and,
4. Imposing an IPV~~intentional program violation~~ disqualification.

C. When the SNAP~~Food Assistance~~ benefit amount is continued, the household's existing certification period shall end, and the household shall be assigned a new five (5) month certification period. The recertification requirements that would normally apply when the household's certification period ends must be postponed until the end of the five (5) month transitional certification period.

D. Households who are denied or not eligible for TFA~~Transitional Food Assistance~~ must have continued eligibility and benefit level determined in accordance with Section 4.604.

E. The following households are not eligible to receive TFA~~Transitional Food Assistance~~:

1. Households leaving the CW~~Colorado Works~~ program due to a CW~~Colorado Works~~ sanction; or,
2. Households that are ineligible to receive SNAP~~Food Assistance~~ because all individuals in the household meet one of the following criteria:
    1. Disqualified for IPV~~intentional program violation~~;

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f. Disqualified for receiving SNAP~~Food Assistance~~ benefits in more than one household in the same month;

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h. ABAWDS~~Able-bodied adults without dependents~~ who fail to comply with the requirements of Section 4.310.

4.609.4 HOUSEHOLDS WHO RETURN TO COLORADO WORKS (CW) DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]

If a household receiving TFA~~Transitional Food Assistance~~ returns to CW~~Colorado Works~~ during the transitional period, the local office shall complete the recertification process for SNAP~~Food Assistance~~ to determine the household's continued eligibility and benefit amount. If the household remains eligible for SNAP~~Food Assistance~~, the household shall be assigned a new certification period.

4.609.5 HOUSEHOLDS WHO REAPPLY FOR SNAP~~FOOD ASSISTANCE~~ DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]

A. At any time during the transitional period, the household may APPLY~~submit an application~~ for recertification to determine if the household is eligible for a higher SNAP~~Food Assistance~~ allotment. In determining if the household is eligible for a higher allotment, all changes in household circumstances shall be acted upon.

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4.609.6 TRANSITIONAL NOTICE REQUIREMENTS [Rev. eff. 2/1/16]

When a household is approved for TFA~~Transitional Food Assistance~~, the household shall be notified of the following information:

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C. A statement that if the household returns to CW~~Colorado Works~~ during its TFA~~transitional benefit~~ period, the household must undergo the recertification process to determine the household's continued eligibility and NEW SNAP~~Food Assistance~~ allotment ~~for Food Assistance~~; and,

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4.610 REINSTATEMENT OF BENEFITS

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If eligible for reinstatement, the local office will prorate SNAP~~food assistance~~ benefits from the date the household took all required action(s) to reestablish eligibility.

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4.700 SNAP~~FOOD ASSISTANCE~~ BENEFIT ISSUANCE

~~The Colorado Electronic Benefits Transfer System (~~CO/EBTS~~)~~ will allow electronic debiting of benefits onto an ~~Electronic Benefit Transfer (~~EBT~~)~~ card for certified eligible households. Every household must be informed of the issuance accommodations that are available.

Local offices must provide an adequate number of issuance locations and hours of operation to allow all eligible households to receive their ~~Electronic Benefit Transfer (~~EBT~~)~~ cards.

As SNAP~~the Food Assistance Program~~ is a national program, ~~food~~ benefits issued to eligible households may be used for the purchase of eligible food in every state.

4.701 PROVIDING BENEFITS TO PARTICIPANTS

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B. Those households COMPOSED~~comprised~~ of persons who are AGED 60 AND OLDER~~elderly~~ or persons with a disability who have difficulty reaching issuance offices and households which do not reside in a permanent dwelling or have a fixed mailing address, and those in remote, rural areas shall be given assistance in obtaining their EBT card. LOCAL OFFICES~~Food assistance offices~~ shall assist these households by arranging for the mail issuance of EBT cards to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

C. The eligibility TECHNICIAN~~worker~~ shall be sufficiently familiar with issuance operations to answer any questions the household may have about when, where, and how to access one's benefits from the EBT card.

4.701.2 EBT Cards

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D. LOCAL OFFICES~~Food assistance offices~~ shall limit issuance of EBT cards to the time of initial certification, with replacements made only in instances when the EBT card is lost, mutilated, destroyed, or if there are changes in the person authorized to obtain benefits, or when the office determines that a new EBT card is needed. Whenever possible, the office shall collect the EBT card that it is replacing. The issuance unit must be notified of a replacement EBT card to assure that only the most recently issued EBT card is used for benefit issuance.

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4.702.1 Eligibility for Restoration of Lost Benefits

A. To be eligible for restored benefits, the household must have had its SNAP~~Food Assistance~~ benefits wrongfully delayed, denied, or terminated. Delay shall mean that an eligibility determination was not accomplished within processing timeframe standards.
B. A restoration of benefits is warranted when a household has received fewer benefits than it was eligible to receive due to:

1. An error by the local office;
2. A court decision overturning or reversing a disqualification for IPV~~intentional program violation~~; or

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4.702.4 Errors by the ~~Social Security Administration (~~SSA~~)~~ Office

The local office shall restore to the household any benefits lost as the result of an error by the local office or by the SSA~~Social Security Administration~~ through joint processing.

Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and SNAP~~Food Assistance~~, but the local office was not notified on a timely basis of the applicant's release.

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4.705 WHEN AN INCREASE TO SNAP~~FOOD ASSISTANCE~~ BENEFITS SHOULD NOT BE ISSUED

A. Local offices shall ensure that there is no increase in SNAP~~Food Assistance~~ benefits to households as the result of a penalty being imposed for an ~~intentional Program violation (~~IPV~~)~~ or for failure to comply with work requirements or for failure to comply with another program requirement for a federal, state, or local means-tested program that distributes publicly funded benefits.
B. To determine the SNAP~~Food Assistance~~ allotment when there is such a decrease, the local office shall calculate the ~~Food Assistance~~ allotment using the benefit amount which would be issued by that program if no penalty had been imposed to reduce the benefit amount. A situation where benefits of the other program are being frozen at the current level shall not constitute a penalty subject to these provisions. Changes in household circumstances that are not related to the penalty and result in an increase in SNAP~~Food Assistance~~ benefits shall also not be affected by these provisions.

4.706 REPLACEMENT ISSUANCES TO HOUSEHOLDS DUE TO MISFORTUNE

A. A household may request a replacement issuance if food purchased with program benefits was destroyed in a household misfortune, such as, but not limited to, fire or flood. Replacement issuances

shall be provided in the amount of the loss to the household, not to exceed one month's allotment, unless the issuance includes restored benefits that shall be replaced up to their full value. To qualify for a replacement, the household shall report the destruction to the local office within ten (10) calendar days of the incident.

The household shall sign and return a statement or an Affidavit for Food Destroyed in Misfortune to the local office within ten (10) calendar days of the date of the report, or benefits shall not be replaced. If the tenth (10th) day falls on a weekend or holiday, and the statement or Affidavit for Food Destroyed in Misfortune is received the day after the weekend or holiday, the local office shall consider the statement or affidavit timely received.

The statement or affidavit shall:

1. Attest to the destruction of the food purchased with the household's SNAP~~Food Assistance~~ benefits;

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B. Upon receiving a request for replacement of SNAP~~Food Assistance~~ benefits for food reported as destroyed in an individual household misfortune, the local office shall:

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3. Document in the case record the date and reason that a replacement has been provided.

This provision shall apply in cases of an individual household misfortune, such as a fire, as well as in natural disasters affecting more than one (1) household. No limit on the number of replacements shall be placed on food purchased with SNAP~~Food Assistance~~ benefits that were subsequently destroyed in a household misfortune.

4.706.1 Disaster and Replacement Allotments

Where USDA/FNS has issued a disaster declaration of individual assistance, individuals in a household who are eligible for emergency SNAP~~Food Assistance~~ benefits shall not receive both the disaster allotment and a replacement allotment.

4.706.2 Replacement of EBT Cards Lost in the Mail or Stolen Prior to Receipt by the Household

LOCAL~~Food assistance~~ offices shall comply with the following procedures in replacing EBT cards reported lost in the mail or stolen from the mail prior to receipt by the household.

A. Determine if the EBT card was ~~actually~~ mailed~~,~~ if sufficient time has elapsed for delivery or if the card was returned in the mail back to the local office.

B. Issue a replacement EBT card and new PIN.

C. Take other action, such as correcting the address on the master issuance file by updating the households mailing and/or home address within the automated system.

4.706.3 Request for Replacement Issuances after Receipt of EBT Card

Households cannot receive a replacement allotment of SNAP~~Food Assistance~~ benefits that have been reported as stolen and used from the EBT card by someone without the household's knowledge and consent. An EBT C~~C~~ard received by a household and subsequently mutilated or found to be improperly manufactured shall be replaced.

4.706.4 Authorized Number of Replacement Issuances

No limit on the number of replacements shall be placed on the replacement of benefits if the food purchased with SNAP~~Food Assistance~~ benefits was destroyed in a household misfortune.

The local office shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

When a local office intends to deny or delay a replacement of SNAP~~Food Assistance~~ benefits for any reason, the local office shall notify the household of the delay or denial through use of a Notice of Action form. The household shall be informed of its right to a county dispute resolution conference or state-level fair hearing to contest the denial or delay of a replacement issuance. Replacement shall not be made while the denial or delay is being appealed.

Replacement issuances shall be provided to households within ten (10) calendar days after report of loss (fifteen days if issuance was by certified or registered mail) or within two (2) working days of receiving the signed household statement, whichever date is later.

When a request for replacement is made late in an issuance month, the replacement will be issued in a month AFTER~~subsequent to~~ the month in which the original allotment was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement.

4.707 SNAP~~FOOD ASSISTANCE~~ ISSUANCE AND ACCOUNTABILITY

A. LOCAL OFFICES~~Food assistance offices~~ shall establish issuance and accountability systems to comply with these rules and to ensure that only certified eligible households receive benefits, EBT cards are accepted, stored, and protected after delivery to receiving points, benefits are timely distributed in the correct amounts, and that benefit issuance and reconciliation are properly conducted and accurately reported.
B. Electronic benefit issuance shall be handled through CDHS~~the Colorado Department of Human Services, Food Assistance Programs Division~~, and at designated contractor sites through the Colorado Electronic Benefit Transfer System (CO/EBTS).
C. LOCAL~~Food assistance~~ offices shall assure a separation of certification functions from issuance functions and thereby provide for internal controls and prevention of fraud. Certification functions include determining eligibility for a household and ensuring that the eligibility is current and accurate. Eligibility shall be updated and maintained in the automated system. It shall be the responsibility of the certification unit to complete all necessary actions in the automated system to authorize the issuance of benefits. Data entry of case information may be completed by either the certification unit or a separate data entry unit, but not by the issuance unit.
D. Issuance offices are responsible for the timely and accurate issuance of SNAP~~Food Assistance~~ benefits to eligible participant households. An approved accountability and benefit issuance delivery system shall be established to ensure that eligibility information is data entered, that the automated system has an issuance available, and only certified households receive benefits.

4.707.1 Security Procedures

The electronic benefit issuance area shall be physically separated, such as, but not limited to, the cage, counter, and railing, from both participants and other employees of the office who are not responsible for benefit issuance and accountability. Persons not specifically responsible for benefit issuance accountability shall also be barred from the electronic benefit card storage area.

LOCAL~~Food assistance~~ offices, including contract issuers, shall take all precautions necessary to avoid acceptance, transfer, negotiation, or use of counterfeit food benefits and to avoid any unauthorized use, transfer, acquisition, alteration or possession of benefits. ~~Electronic Benefit Transfer (~~EBT~~)~~ cards shall be safeguarded from theft, embezzlement, loss, damage, or destruction.

Issuance supervisors shall give each cashier a daily supply of blank EBT~~Electronic Benefit Transfer~~ cards from the bulk card inventory. On high volume issuance days, the cashier's supply may need to be replenished during issuance hours from an office vault. Such a vault containing bulk card inventory shall remain locked unless opened to withdraw cards. Keys and lock combinations shall be controlled and

restricted to as few individuals as possible. Combinations and locks should be changed whenever an individual who has received them leaves the employ of the office.

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4.707.2 Security Program and Types of Prevention of Theft

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In addition to a security officer, each office shall distribute written instructions to all employees concerning appropriate behavior in the event of a robbery attempt and procedures for reporting the theft to law authorities and the STATE DEPARTMENT~~Food Assistance Programs Division~~.

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4.707.21 Reporting a Robbery or Burglary

The local law enforcement agency shall be notified immediately by one of the persons who have been designated to carry out the reporting of a robbery or burglary. The STATE DEPARTMENT~~Food Assistance Programs Division~~ shall also be notified immediately and will be responsible for informing USDA/FNS.

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4.707.3 EBT Requisition

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Arrangements have been made for local issuance offices with sufficient issuance volume to receive shipments of EBT cards directly from USDA/FNS. Offices with low issuance volume will receive EBT card shipments from the STATE DEPARTMENT~~Food Assistance Programs Division~~ storage vault by fully insured registered mail.

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Those offices which receive their EBT card supply from the STATE DEPARTMENT~~Food Assistance Programs Division~~ storage vault shall requisition EBT cards in accordance with the instructions submitted from the STATE DEPARTMENT~~Food Assistance Programs Division~~. The instructions will advise of procedures for ordering from the contractual provider.

4.707.4 Designated Personnel and Receiving Locations

A. LOCAL~~Food assistance~~ offices ordering EBT cards shall designate at least two persons who are authorized to receive EBT cards. The STATE DEPARTMENT~~Food Assistance Programs Division~~ shall be notified by letter of the following:

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C. Receipt of EBT Cards from USDA, FNS~~Food and Nutrition Service~~

When a shipment of EBT cards is received from USDA/FNS, an original and three copies of Form FNS 261 (Advice of Shipment) are mailed to the consignee. If the shipment is in order, the receiving agent shall complete Form FNS 261. If the shipment is not in order, immediately notify the STATE DEPARTMENT~~Food Assistance Programs Division~~. The receiving agent will then be instructed to annotate Form FNS 261, describing the EBT card discrepancy or damaged condition of the EBT cards Form FNS 261 must be signed, dated and submitted in the normal manner.

D. Receipt of EBT Cards from the State DEPARTMENT~~Office~~

When a shipment is received from the STATE DEPARTMENT~~Food Assistance Programs Division~~, Form FNS 300 (Advice of Transfer) is mailed to the consignee in the original and three copies. If the shipment is in order, the original and all copies of Form FNS-300 are signed and dated by the receiving agent. If the shipment is not in order, immediately notify the STATE DEPARTMENT~~Food Assistance Programs Division~~.

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4.707.5 Inventory Records

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B. Improperly Manufactured or Mutilated EBT Cards in Shipment

If EBT cards are improperly manufactured or mutilated, Form FNS-471 shall be completed. The EBT cards are cancelled immediately and destroyed at the end of the month in accordance with Section 4.708.5.

If one or more boxes of EBT cards were improperly manufactured, local offices shall contact the STATE DEPARTMENT~~Food Assistance Programs Division. The Division~~ WHO will contact USDA/FNS on the instructions for disposition of the destructible EBT cards. EBT cards must be destroyed within thirty (30) calendar days from the close of the month in which the EBT cards were received. For disposition of mutilated EBT cards returned by participants, refer to Section 4.708.5.

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4.707.6 Benefit Issuance Locations and Storage Facilities

A. Issuance locations shall be established by every local office to accomplish the issuance of EBT cards to certified SNAP~~Food Assistance~~ households.
B. The STATE DEPARTMENT~~Food Assistance Program in the Food and Energy Assistance Division~~ shall be notified of all issuance locations and EBT card shipment receiving points created, changed, or terminated at least thirty (30) calendar days prior to THE effective date of action.
C. Whenever an issuance office or bulk storage point is terminated, the STATE DEPARTMENT~~Food Assistance Programs Division~~ will complete a closeout accountability audit within thirty (30) calendar days of the termination. The findings of the audit shall be forwarded to USDA/FNS immediately. The STATE DEPARTMENT~~Food Assistance Programs Division~~ shall perform an actual count of EBT cards on hand and transfer the inventory to another issuance office or bulk storage point preferably within the same project area. The actual inventory and transfer shall be properly documented and reported on Form FNS250.
D. At least thirty (30) calendar days prior to closure of an issuance location, SNAP~~Food Assistance Program~~ participants shall be notified of the impending closure. Notification shall include alternative issuance locations and information concerning available public transportation. A notice of closure shall also be prominently displayed in the issuance office. All necessary action shall be taken to maintain participant service without interruption.
E. The transfer of EBT cards between project areas is allowed only in emergency situations and only when authorized by the STATE DEPARTMENT~~Food Assistance Programs Division~~. The transferring office initiates Form FNS-300, retains copy 4 and forwards all other parts to the receiving office with EBT card shipment. On verification of shipment, Form FNS-300 is dated and signed by the receiving office and copy 3 is returned to the transferring office. The counties involved in “transferring out” and “transferring in " must properly document the transaction on Form FNS-250 submitted at the end of the month.

4.707.7 Monitoring of EBT Card Issuers

The STATE DEPARTMENT~~Food Assistance Programs Division~~ shall conduct an onsite review of each EBT card issuer and bulk storage point at least once every three (3) years. All offices or units of an EBT card issuer are subject to this review requirement. The STATE DEPARTMENT~~Food Assistance Programs Division~~ shall base each review on the specific activities performed by each EBT card issuer or bulk storage point. A physical inventory of EBT cards shall be taken at each location, and count compared with perpetual inventory records and the monthly reports of the EBT card issuer or bulk storage point. This review may be conducted at branch sites as well as the main offices of each issuer and bulk storage point that operates in more than one office.

4.707.8 Division of Issuance Responsibilities

~~Over-the-counter~~ OVER THE COUNTER and mail issuance responsibilities shall be divided between a cashier and another issuance employee.

A. It is not always feasible for the duties of the cashier to be performed by separate employees because of a low issuance volume at an issuance location. Therefore, any county that can justify deviation from the requirement, and is willing to assume the additional risk, may obtain permission for one-person issuance through written request to the STATE DEPARTMENT~~Food Assistance Programs Division~~ (refer to Section 4.707).

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4.707.84 Control of Issuance Documents

LOCAL~~Food assistance~~ offices shall control all issuance documents that establish household eligibility while the documents are transferred and processed within the local office. The LOCAL office shall use numbers, batching, inventory control togs, or similar controls from the point of initial receipt through the issuance and reconciliation process. All Notices of Action that initiate or terminate the Master Issuance file and blank EBT cards shall have access limited to authorized personnel.

4.707.9 Issuance Methods

The issuance office may mail EBT cards to all eligible households or establish OVER THE COUNTER ~~over-the-counter~~ issuance with optional mail issuance at the request of the household. Certified households must be issueD EBT cards by the end of the month~~,~~ except when benefits are suspended, cancelled, or reduced.

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4.707.91 Mail Issuance

A. Exclusive Mail Issuance

LOCAL~~Food assistance~~ offices which rely exclusively on mail issuance shall ensure that participants receive allotments on a timely basis and eligible households, either destitute of income or with no income, receive expedited issuance in accordance with Sections 4.205 and 4.701.

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E. SNAP~~Food Assistance~~ Mail Issuance Report

Form FNS-259 reports shall be submitted by local offices for each unit using a mail issuance system. LOCAL~~Food assistance~~ offices shall submit Form FNS-259 reports so that they are received by the fifteenth (15th) day following the end of each month.

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4.708.1 EBT Card Responsibility and Liability

LOCAL~~County~~ offices shall be liable to USDA/FNS for the face value of EBT card loss that occurS BECAUSE ~~as a result~~ of thefts, embezzlements, AND cashier error, unless the investigation was reported directly to USDA/FNS prior to the loss and unexplained causes. The LOCAL~~county~~ offices shall not be liable for the value of EBT cards issued for those duplicate issuances in the correct amount that are the result of authorized replacement issuances.

4.708.2 Inventory Reporting to THE STATE DEPARTMENT~~Food Assistance Programs Division~~

Form FNS-250 (EBT Card Accountability Report) shall be executed monthly by EBT card issuers and bulk storage points~~,~~. THE FNS-250~~and~~ shall be signed by the EBT card issuer or appropriate official, certifying that the information is true and correct to the best of that person's knowledge and belief.

FNS-250 is an automated report available through automated system and needs to be data entered by the 15th of the month. Supporting documentation to Form FNS-250 (EBT Card Accountability Report) shall be submitted to the STATE DEPARTMENT~~Food Assistance Programs Division~~ which will verify the monthly report. Documentation shall consist of documents supporting EBT card shipments (FNS-261), EBT card transfers (FNS-300), and destruction of EBT cards (FNS-135 and FNS-471).

4.708.3 State Monthly EBT Card Accountability

The STATE DEPARTMENT~~Food Assistance Programs Division~~ shall establish an accounting system to review Form FNS-250 completed by all LOCAL~~county~~ offices and determine the propriety and reasonableness of EBT card inventories, issuance activities and reconciliation records. All records of EBT card requisition, EBT card receipt, returned mail EBT card issuances, replacements of EBT cards lost in the mail or improperly manufactured or mutilated as well as the supporting remarks and documentation for monthly over-issuance and under-issuance shall be used ~~by the Division~~ to assure the accuracy of monthly reports.

4.708.4 Issuance Reconciliation Reporting

Form FNS-46 (Issuance Reconciliation Report) shall be submitted by each local office operating an issuance system. The report shall be prepared at the level where the actual reconciliation of the record for issuance and master file occurs.

LOCAL~~Food assistance~~ offices shall identify and report the number and value of all issuances that do not reconcile with the record-for-issuance and master issuance file.

In addition to the above requirement, local offices will continue to reconcile inventory levels against issuances each month on Form FNS-250 (SNAP~~Food Assistance~~ Accountability Report) and attach Form FNS259 (SNAP~~Food Assistance~~ Mail Issuance Report) for reconciliation.

4.708.5 Destruction of Unusable EBT Cards Returned by Households

Unusable EBT cards shall be destroyed by the LOCAL~~county~~ office provided that the destruction is accomplished by burning, shredding, or tearing and two (2) persons witness the EBT card destruction.

Form FNS-471 (EBT Card and Destruction Report) shall be completed and signed by the required witnesses and mailed to the STATE DEPARTMENT~~Food Assistance Programs Division~~.

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LOCAL~~County~~ offices must report the destruction of improperly manufactured or mutilated EBT cards on Form FNS-471 (EBT Card and Destruction Report) and submit it with Form FNS-250 for the appropriate month. For EBT cards received from recipients, the original copy of Form FNS-135 must be attached to a copy of Form FNS-471 and retained in the office for future review and audit purposes. The destruction of

EBT cards received from claims collections that are the result of payment of household claims must be reported on Form FNS-471.

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4.708.6 Undeliverable or Returned EBT Cards

LOCAL~~County~~ offices shall exercise the following security and controls for EBT cards that are undeliverable or returned during the valid issuance period. Forms FNS-471 and FNS-135 shall be completed by the office as appropriate.

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4.708.8 State EBT Card Issuance and Participation Reporting

The STATE DEPARTMENT~~Food Assistance Programs Division~~ shall make estimations with data from the automated system ON B~~B~~enefit I~~I~~ssuance and P~~P~~articipation E~~E~~stimates.

4.709 COLORADO ELECTRONIC BENEFIT TRANSFER SYSTEM AND PROCESSING

All issuance systems shall maintain a composite of data for all certified households and provide complete information on participating households for review sampling purposes, statistical summary, and reporting requirements. The automated system is a direct-access system that allows online issuance access to the Master Issuance File. The automated system provides for online issuance system.

Colorado Electronic Benefit Transfer System (CO/EBTS) will provide access USING~~through the use of~~ a plastic debit card to recipients of SNAP~~Food Assistance~~ and PA~~public assistance~~ programs. The overall rules for CO/EBTS are in the Special Projects rule manual, Section 12.100, et seq. (12 CCR 2512-2).

Eligibility determinations in the automated system will be processed nightly to make SNAP~~Food Assistance~~ benefits available the following day for initial certification. Ongoing cases will have benefits posted during a ten (10) calendar day cycle with the ~~Social Security Number (~~SSN~~)~~ as the basis. The ending number of the SSN will indicate the date for the posting of benefits. An SSN ending with one (1) will be posted on the first day of the month, two (2) on the second day of the month, etc. AN SSN ending with zero (0) will be posted on the tenth (10th) day of the month.

4.709.1 Card/PIN Issuance Accountability

A. LOCAL OFFICES~~The county department of social/human services~~ will establish procedures for issuance of CO/EBTS debit cards and Personal Identification Numbers (PINs). The household will be issued a debit card within seven (7) calendar days from the date of application for expedited cases and within thirty (30) calendar days for non-expedited cases.

B. LOCAL OFFICES~~The county department of social/human services~~ shall maintain debit cards on site at its primary location and satellite offices. The EBTS contractor will provide counties with an initial supply of sequentially numbered cards with pre-embossed primary account numbers. Local offices must reorder cards to ALWAYS ensure an adequate supply ~~at all times~~. The cards will be secured and accounted for through appropriate inventory and distribution forms.

C. The household PIN will be issued through encryption devices supplied by the STATE DEPARTMENT~~Colorado Department of Human Services, Food Assistance Programs Division~~.

4.709.2 EBT Card Replacement

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B. LOCAL OFFICES~~County departments of social/human services~~ may have replacement cards over the counter or through a transmission to the CO/EBTS contractor requesting mail issuance. LOCAL OFFICES~~County departments~~ shall not charge a fee if the replacement is issued by mail or the original card is inoperable due to no fault of the cardholder. LOCAL OFFICES~~County~~

~~departments~~ shall not charge a fee if the client is being recertified, and if, during the period of non-participation, the client has destroyed, lost, or damaged the original card.

C. LOCAL OFFICES~~County departments~~ shall not collect replacement fees by debiting a recipient's SNAP~~Food Assistance~~ account.

4.800 CLAIMS, APPEAL PROCESS, AND FRAUD

Pursuant to Section 15(d) of the Food Stamp Act, benefits are an obligation of the United States within the meaning of 18 United States Code (USC) 8. The provisions of Title 18 of the United States Code, "Crimes and Criminal Procedure, Relative to Counterfeiting, Misuse and Alteration of Obligations of the United States" are applicable to SNAP~~Food Assistance~~ benefits. Copies of the U.S. Code are available for ~~public~~ inspection ~~by contacting the Food Assistance Director during regular business hours at the Colorado Department of Human Services, Food Assistance Program, 1575 Sherman Street, Denver, Colorado 80203; or at a state publications depository library~~. No later editions or amendments are incorporated.

Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of SNAP~~food assistance~~ benefits may subject an individual, partnership, corporation, or other legal entity to prosecution.

4.801 CLAIMS AGAINST HOUSEHOLDS

A claim shall be established when a household is over- issued benefits. An over-issuance means the amount by which SNAP~~Food Assistance~~ benefits issued to a household exceeds the amount the household was eligible to receive.

4.801.1 Classification of Claims

Claims shall be classified as follows:

A. "Agency Error Claims" - A claim shall be handled as an agency error claim if the over-issuance is caused by an error on the part of the local office. Instances that may result in an agency error claim include, but are not limited to, the following:

1. The local office failed to take prompt action on a change reported by the household;
2. The local office incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;
3. The local office continued to provide a household SNAP~~Food Assistance~~ benefits after its certification period expired without a redetermination of eligibility.
4. The local office failed to provide a household a reduced level of SNAP~~Food Assistance~~ benefits when its PA~~public assistance~~ grant changed.

B. "Inadvertent Household Error Claims" - A claim shall be handled as an inadvertent household error claim if the over-issuance was caused by a misunderstanding or unintentional error on the part of the household. Instances that may result in an inadvertent household error claim include, but are not limited to, the following:

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4. The household was receiving SNAP~~Food Assistance~~ solely because of basic categorical eligibility and the household was subsequently determined ineligible for CW~~Colorado Works~~ or ~~Supplemental Security Income (~~SSI~~)~~ during the time that the benefits were being received. The claim must be based on a change in net income and/or household size.

5. The SSA~~Social Security Administration~~ failed to take action that resulted in the household's basic categorical eligibility and improper receipt of SSI. The claim must be based on change in net income and/or household size.

C. "IPV~~Intentional Program Violation~~/Fraud Claims" - A claim shall be handled as an IPV~~intentional program violation~~/fraud claim only if:

1. An administrative disqualification hearing official or a court of appropriate jurisdiction has found a household member has committed AN IPV~~intentional program violation~~ or fraud; or,
2. A signed waiver of IPV~~intentional program violation~~ is received; or
3. A signed disqualification consent agreement has been obtained.

Prior to a waiver or consent agreement being signed or the determination of IPV~~intentional program violation~~/fraud, the claim against the household shall be handled as an inadvertent household error claim.

4.801.2 Establishing Claims Against Households

A. Establishing a claim

1. The local office shall establish claims in accordance with the thresholds outlined below.

a. For participating households, the LOCAL OFFICE~~county department~~ shall not establish a claim for overpayment due to Administrative Error (AE) or Inadvertent Household Error (IHE), except in the following circumstances:

1. When the amount of the claim is greater than $200; or
2. When the OVER-ISSUANCE~~overpayment~~ is identified through a federal or state level quality control review; or,
3. When the IHE claim is being pursued as an ~~intentional program violation (~~IPV~~)~~, except that if the IHE claim does not result in an IPV, collection shall not be pursued.

b. For households not participating in SNAP~~the Food Assistance program~~, the LOCAL OFFICE~~county department~~ shall not establish a claim for OVER-ISSUANCES~~overpayment~~ except in the following circumstances:

1. When the amount of the AE claim is greater than $400; or
2. When the amount of the claim is due to an IHE and is greater than $200; or
3. When the OVER-ISSUANCE~~overpayment~~ is identified through a federal or state level quality control review.

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3. Claims shall be established for benefits that are trafficked. The trafficking of benefits means:

a. The buying, selling, stealing, or otherwise affecting an exchange of SNAP~~Food Assistance~~ benefits issued and accessed via EBT~~Electronic Benefit Transfer~~ cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or,

b. The exchange of SNAP~~Food Assistance~~ benefits or EBT cards for firearms, ammunition, explosives, or controlled substances; or,

c. A SNAP~~Food Assistance~~ participant, including the participant's designated authorized representative, who knowingly transfers SNAP~~Food Assistance~~ benefitS to another who does not, or does not intend to, use the SNAP~~Food Assistance~~ benefits for the SNAP~~Food Assistance~~ household for whom the ~~Food Assistance~~ benefits were intended; or,

d. The reselling of food that was purchased with SNAP~~Food Assistance~~ benefits for cash; or,

e. Obtaining a cash deposit when returning water or other containers that were purchased with SNAP~~Food Assistance~~ benefits. Purchasing water containers is an eligible food item that can be paid for with SNAP~~Food Assistance~~ benefits; however, when the container is returned, the deposit should be returned to the client's EBT card and not given to the client in cash; or,

f. Attempting to buy, sell, steal or otherwise affect an exchange of SNAP~~Food Assistance~~ benefits and accessed via ~~Electronic Benefit Transfer (~~EBT~~)~~ cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

4. Claims shall be established against the following individuals:

a. All adult household members ageD eighteen (18) years of age or older at the time the over-issuance occurred, even if one or more of the adult household members are participating in another SNAP~~Food Assistance~~ household at the time the claim is established;
b. A person connected to the household, such as an authorized representative, who ~~actually~~ traffics or otherwise causes an over-issuance to occur.

B. Timeframe to Establish a Claim

Local offices shall establish all claims before the last day of the quarter following the quarter in which the OVER-ISSUANCE~~overpayment~~ or trafficking incident was discovered.

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4.801.3 Calculating the Amount of a Claim

A. Compromising Claims

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Claims should be compromised if the household demonstrates need, such as the inability to repay the claim within three (3) years, or if the household proves that financial, physical, or mental hardship would exist if forced to pay the full amount of the original claim. Some circumstances include, but are not limited to medical hardships, high shelter costs, loan payments, and other extraordinary expenses. A compromise based on hardship may be applied to a SNAP~~Food Assistance~~ case IF~~whether or not~~ the household is OR IS NOT still receiving SNAP~~Food Assistance~~ benefits.

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C. Agency Error and Inadvertent Household Error Claims

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2. The claim must also be offset against restored benefits owed to:

a. Any household that contains a member who was an adult member of the original household;
b. Any household that contains an authorized representative that caused the OVER-ISSUANCE~~overpayment~~ or trafficking.
c. In no circumstance may the local office collect more than the amount of the claim.

3. For households eligible under BCE~~basic categorical eligibility~~, a claim shall only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

If a household receives both ~~Temporary Assistance for Needy Families (~~TANF~~)~~ and SNAP~~Food Assistance~~ and mis-reports information to TANF in accordance with the TANF reporting requirements, and the mis-report of information to TANF resulted in the household being over paid TANF or ineligible for TANF, any resulting SNAP~~Food Assistance~~ claim should be based on the actual TANF issued.

4. The correct allotment shall be calculated using the same methods applied to an actual certification. The twenty percent (20%) earned income deduction shall not be applied to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim; therefore, any portion of the claim that is due to earned income being reported in an untimely manner will be calculated without allowing the twenty percent (20%) earned income deduction. The actual circumstances of the household shall be used to calculate the

claim. In instances when a claim is caused by the household's failure to report information as required, the amount of the claim is based on the allotment difference from what the household ~~actually~~ received compared to what the household would have received if the household would have reported the information as required. For example, if a simplified reporting household did not report income at initial application as required, the income used to calculate the OVER-ISSUANCE~~overpayment~~ would be the income that the household ~~actually~~ received in the month of application, as this would have been used to determine the household's ongoing monthly amount. Actual income received each subsequent month is not required to calculate each month of the claim, as any fluctuation in monthly income that was received by the household after the initial month of application was not required to be reported by the household. If the household failed to report a change in household circumstances that would have resulted in an increase in benefits during the ~~time~~ period of the claim, the local office shall act on the change in information as of the date the change was reported to the local office.

5. When a household certified below 130% FPL fails to report an increase in household income over 130% FPL. The local office shall establish the claim for each month in which an over-issuance of SNAP~~Food Assistance~~ has occurred.

a. In cases involving household failure to report an increase in income within the required timeframes, the first (1st) month affected by the household's failure to report shall be the first (1st) month in which the change would have been effective had it been timely reported. However, in no event shall the determination of the first (1st) month in which the change would have been effective be any later than two (2) months from the month in which the change occurred. For purposes of calculating the claim, the local office shall assume that the change would have been reported properly and timely acted upon by the local office.

b. If the household timely reported an increase in income but the local office failed to act on the change within the required timeframes, the first (1st) month affected by the local office's failure to act shall be the first (1st) month the office would have made the change effective had it acted timely. If a Notice of Adverse Action WERE~~was~~ required, the local office shall assume, for the purpose of calculating the claim, that the Notice of Adverse Action period would have expired without the household requesting a fair hearing.

D. IPV Claims

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2. For each month that a household received an over-issuance due to an act of IPV~~intentional program violation~~/fraud, the local office shall determine the correct amount of SNAP~~Food Assistance~~ benefits, if any, the household was entitled to receive. If the household member is determined to have intentionally failed to report a change in its household's circumstances, the claim shall be established for each month in which the failure to report would have affected the household's SNAP~~Food Assistance~~ allotment.

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4.801.4 Collecting Payments on Claims

A. Claim Liability

1. Liable Individuals

All adult household members ageD eighteen (18) years or older at the time the overissuance occurred, sponsors, or other persons, such as an authorized representative who actually trafficked or otherwise caused an OVER-ISSUANCE~~overpayment~~ or trafficking to occur, that are connected with the household shall be jointly and severally liable for the value of any over-issuance of benefits to the household.

2. Initiating Collection Action

a. Local offices shall initiate collection action against ~~any and~~ all of the adult members or persons connected to the household at the time an over-issuance occurred. Under no circumstances shall the office collect more than the amount of the claim.

b. The local office may pursue collection action against any household that has a member that was connected to the household that received or created an over- issuance.

c. The local office shall initiate collection action for an unpaid or partially paid IPV claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. Collection action shall be initiated unless the household has already repaid the over-issuance BECAUSE~~as a result~~ of an inadvertent household error demand letter or the local office has documentation that shows the household cannot be located.

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D. Negotiating Payment Plans

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1. Establishing a Payment Plan

The local office shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment or through allotment reduction. Payments shall be accepted in regular installments. The household may use SNAP~~Food Assistance~~ benefits as full or partial payment of any installment. The local office shall ensure that the negotiated amount of any payment schedule to be repaid each month through installment payments is not less than the amount that could be recovered through an allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the local office and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changes enough to warrant such action.

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E. Determining Delinquency

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2. Claims shall not be considered delinquent under the following circumstances:
a. If another SNAP~~Food Assistance~~ claim for the same household is currently being paid, either through an installment agreement or an allotment reduction, and the local office expects to begin collection on the claim once the prior claim(s) is settled;

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F. Joint Collections Received for a Combination SNAP~~Food Assistance~~ and PA~~Public Assistance~~ Claim

An unspecified joint collection is when funds are received in response to correspondence or a referral that contained both the SNAP~~Food Assistance~~ and other program claims, and the debtor does not specify to which program to apply the payment. The local office shall ensure that unspecified joint collections are pro-rated among the programs involved. When an unspecified joint collection is received for a combined public assistance and SNAP~~Food Assistance~~ claim, each program shall receive its pro-rated share of the amount collected.

4.801.41 Methods of Collecting Payment on Claims

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B. SNAP~~Food Assistance~~ Allotment Reduction

1. The local office shall collect payments for claims from households currently participating in the Program by reducing the household's SNAP~~Food Assistance~~ allotment. For claims where there is a court-ordered judgment for repayment, allotment reduction shall not occur.

   Prior to reduction, the local office shall inform the household of:

a. The appropriate formula for determining the amount of SNAP~~Food Assistance~~ to be recovered each month; and,
b. The amount of SNAP~~Food Assistance~~ the local office expects will be recovered each month; and,

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3. The amount of SNAP~~Food Assistance~~ to be recovered each month through allotment reduction shall be determined as follows:

a. For AE claims and IHE claims, the amount of SNAP~~Food Assistance~~ to be recovered each month from a household shall either be ten percent (10%) of the household's monthly allotment or ten dollars ($10) each month, whichever is greater.
b. For IPV claims, the amount of SNAP~~Food Assistance~~ benefit reduction shall either be twenty percent (20%) of the household's monthly allotment or twenty dollars ($20) per month, whichever is greater.

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C. Benefits F~~f~~rom an EBT Account

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3. When a local office pursues payment on a claim by applying SNAP~~Food Assistance~~ benefits from the household’s stale EBT account, prior written notice shall be given to the household of the existing stale EBT account that may be applied to an outstanding claim. The county shall notify the household that the benefits will be applied to the claim unless the household objects to this offset. The household must be given ten (10) calendar days to object before the benefits can be applied as a payment to the claim. A stale EBT account means an account that has benefits but has not been accessed for at least three (3) consecutive calendar months.

D. Offset Against Taxpayer's State Income Tax Refund

1. The state DEPARTMENT and LOCAL OFFICE~~county departments~~ may recover OVER-ISSUANCES~~overpayments~~ of PA~~public assistance~~ benefits through the offset (intercept) of a taxpayer's state income tax refund. Rent rebates are subject to the offset procedure. This method may be used to recover OVER-ISSUANCES~~overpayments~~ that have been:

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2. Pre-Offset Notice

Prior to certifying the taxpayer's name and other information to the Department of Revenue, the STATE DEPARTMENT~~Colorado Department of Human Services~~ shall notify the taxpayer in writing at his or her last known address that the state intends to use the tax refund offset to

recover the OVER-ISSUANCE~~overpayment~~. The pre-offset notice shall include the name of the local office claiming the OVER-ISSUANCE~~overpayment~~, a reference to SNAP~~Food Assistance~~ as the source of the OVER-ISSUANCE~~overpayment~~, and the current balance owed.

3. Household Objection to Pre-Offset Notice

The taxpayer is entitled to object to the offset by filing a request for a local-level conference or state-level hearing within thirty (30) calendar days from the date that the state department mails its pre-offset notice to the taxpayer. At the hearing on the offset, the LOCAL OFFICE~~county department~~ or ALJ~~Administrative Law Judge~~ shall not consider whether an OVER-ISSUANCE~~overpayment~~ has occurred, but may consider, if raised by the taxpayer in his or her request for a hearing, whether:

a. The taxpayer was properly notified of the OVER-ISSUANCE~~overpayment~~;
b. The taxpayer is the person who owes the OVER-ISSUANCE~~overpayment~~;
c. The amount of the OVER-ISSUANCE~~overpayment~~ has been paid or is incorrect;
d. The debt created by the OVER-ISSUANCE~~overpayment~~ has been discharged through bankruptcy;

***

E. Federal Treasury Offset Program (TOP)

The Treasury Offset Program, including the Federal Salary Offset Program (FSOP), is a mandatory government-wide delinquent debt matching and payment offset system in which ~~the~~ Colorado SNAP~~Food Assistance Program~~ participates.

The Treasury Offset Program allows collection of delinquent debts by intercepting any allowable payment from the federal government. Federal payments eligible for offset include federal income tax refunds, federal employee salary, federal retirement payments (including military), contractor or vendor payments, and federal benefits such as Social Security and railroad retirement.

1. Claims Submitted for Offset

a. A delinquent claim may be submitted to the USDA, Food and Nutrition Service (FNS) for the Treasury Offset Program (TOP). ~~In order t~~To submit a claim to the Federal TOP~~Treasury Offset Program~~, the claim must be determined to be past due and legally enforceable. To determine that a claim is past due and legally enforceable, it must be determined that notification and collection attempts have taken place.

b. For purposes of the Federal ~~Treasury Offset Program (~~TOP~~)~~, a delinquent claim is one which is past due more than one hundred twenty (120) calendar days, as set forth in the United States Code regarding delinquent claims.

c. A claim is not considered delinquent if a fair hearing is pending concerning the claim; or the claim has either been discharged by bankruptcy or is subject to the automatic stay of the bankruptcy; or the claim is not considered delinquent as described within Section 4.801.4, E, 2.

***

2. Processing Fee

TOP, including the Federal Salary Offset Program (FSOP), is authorized to apply a processing fee each time a successful offset for collection occurs. Federal payroll offices participating in the TOP process may add another separate processing fee. The delinquent SNAP~~Food Assistance~~ debtor is responsible for the fee each time it is applied. A TOP offset taken in error and later refunded will have the processing fee refunded, except for partially refunded offsets.

3. Notifying a Household of the Treasury Offset Program

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b. The individual has been notified about the claim and prior collection efforts have been made. The claim is past due and legally enforceable. All adults are liable for the OVER-ISSUANCE~~overpayment~~ of SNAP~~Food Assistance~~ if they were household members when the SNAP~~Food Assistance~~ benefits were over-issued. False statements concerning such liability may subject individuals to legal action (see Section 4.801.4, A); and,

***

6. In some circumstances, the married individual may want to contact IRS before filing his/her income tax return. This is true if the individual is filing a joint return and his or her spouse is not responsible for the SNAP~~Food Assistance~~ claim, and has income and withholding and/or estimated federal income tax payments. In such cases, the spouse may receive his or her portion of any joint return based on procedures prescribed by the IRS.

***

8. The OOA~~Office of Appeals~~ within the CDHS~~Colorado Department of Human Services~~ will review the proposed offset. The Office of Appeals shall find that the claim is past due and legally enforceable unless the household can provide documentation to show:

   a. The claim is not delinquent or was already paid, and the individual provides proof of payment.

   b. The individual is not the person that is liable for the claim.

   c. A bankruptcy action prohibits collection of the claim because the automatic stay under Section 362 of the Bankruptcy Code is in effect with respect to the individual or his or her spouse, or that the claim was discharged by a bankruptcy proceeding.

   d. There is some other reason that the claim is not delinquent or is not legally enforceable.

9. The decision by the OOA~~Office of Appeals~~ will be issued by means of written findings regarding the review. The written findings shall include notice to the individual who requested the review regarding the following:

   a. If the OOA~~Office of Appeals~~ determines that the claim is past due and legally enforceable:

      1) The individual shall be notified that the claim will continue to be referred for the offset; and,

      2) The individual is entitled to have the Food and Nutrition Service (FNS) review the OOA~~Office of Appeal's~~ decision. FNS must receive a request to do so within thirty (30) calendar days after the date of the state agency's notice of review decision. A request for FNS review shall include the individual's SSN. The notice shall also provide the address of the regional office including the phrase “Tax Offset Review” in the address.

   b. If the OOA~~Office of Appeals~~ determines that the claim is not past due or legally enforceable, it shall notify the individual and the local office that the claim will not be referred for the offset.

c. While the OOA~~Office of Appeals~~ or FNS is conducting a review of the debt, the debt is not eligible for the referral to TOP.

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4.801.5 Claims Discharged Through Bankruptcy

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B. Local offices shall act on behalf of, and as an agent of, FNS in any bankruptcy proceedings against bankrupt households owing SNAP~~Food Assistance~~ claims. Local offices shall possess any rights, priorities, liens, and privileges and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, local offices shall have the power and authority to file objections to discharge proof of claims, exceptions to discharge, petition for revocation of discharge, and any other documents, motions, or objections which FNS might have filed.

***

4.801.6 Interstate Claims Collection

In cases where a household moves out of the state, the local office that last handled the case involving a claim may initiate or continue collection action against the household for any over-issuance that occurred while the household was under that local office's jurisdiction. Counties may transfer a claim to another state or Colorado county ~~department~~ if the other state or Colorado county ~~department~~ accepts the transfer.

Counties are not obligated to accept the transfer of a claim from another state or Colorado county ~~department~~, but have the option of accepting the claim and pursuing collection on that claim. Counties that accept the transfer of a claim shall pursue collection activities and retain appropriate incentives for the collection.

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4.801.8 Submission of Claim Payment Activity to USDA, FNS

The FS-209 Report (Status of Claims against Households) is an automated report and is run quarterly. The report is utilized to reflect all claims activities during a quarter and reflects all the payments made during the quarter. SNAP~~Food Assistance~~ benefits received as a claim payment shall be recorded in the automated system and any corrections that need to be made to payments are made through the automated system.

***

4.802.1 Time Period for Requesting an Appeal

A. A household shall be allowed to request a local-level dispute resolution conference or state-level fair hearing on the following:

1. Any action by the local office that occurred in the previous ninety (90) calendar days.
2. A loss of benefits that occurred in the previous ninety (90) calendar days. Such SNAP~~Food Assistance~~ action shall include a denial of a request for restoration of benefits lost more than ninety (90) calendar days but less than a year prior to the request.

***

4.802.2 Continuation of Benefits Pending Final Agency Decision

A. Eligibility for Continuation of Benefits

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3. When benefits are reduced or terminated as a result of a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that SNAP~~Food Assistance~~ eligibility or benefits were improperly computed or that federal regulations or state rules were misapplied or misinterpreted by the local office.

***

4.802.21 Households Disputing Restoration of Lost Benefits

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C. To be eligible for restored benefits, the household shall have had its SNAP~~Food Assistance~~ benefits wrongfully delayed, denied, or terminated. The term denial shall include the situation where, through certification office error, the net income was larger than required under proper determination, and because of this improperly set net income, the household was unable to get the proper allotment. Delay shall mean that eligibility determination was not accomplished within the prescribed time limits set forth in Section 4.205.2.

4.802.3 Rights During an Appeal

A. A household is entitled to the following:

1. Be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or s/he may represent her/himself at the conference.
2. Adequate opportunity to examine the case file and all documents and records used by the local office in making its decision and all documents and records that are to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

   The contents of the case file including the application form and documents of verification used by the local office to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge; or the nature or status of pending criminal prosecutions; or confidential informants; or privileged communications between the LOCAL OFFICE~~county department~~ and its attorney is protected from disclosure.

***

4.802.5 Local-Level Dispute Resolution Conferences

A. ~~The local office, prior to taking action to deny, terminate, reduce, or recover Food Assistance benefits, shall, at a minimum, provide the household an opportunity for a dispute resolution conference.~~ BEFORE TAKING ACTION TO DENY, TERMINATE, REDUCE, OR RECOVER SNAP BENEFITS, THE LOCAL OFFICE SHALL PROVIDE THE HOUSEHOLD AN OPPORTUNITY FOR A DRC. The individual may choose to bypass the dispute resolution process and appeal directly to the office of administrative courts for a state-level fair hearing.

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D. The local office may consolidate the SNAP~~Food Assistance~~ conference with disputes regarding other assistance payments programs, the Colorado Works Program, or disputes concerning Medicaid eligibility, if the facts are similar and consolidation will facilitate resolution of all disputes.

4.802.51 Management of Local-Level Dispute Resolution Conference

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C. Location

The local dispute resolution conference shall be held in the LOCAL OFFICE~~county department~~ or agency where the proposed decision is pending and before a person who was not directly involved in the initial determination of the action in question. The local-level conference may be conducted either in person or by telephone. If a telephonic conference is requested, it shall be agreed upon by the applicant or participant. In the event the household does not speak English or is visually or hearing impaired, an interpreter or translator shall be provided by the local office.

***

E. Joint Dispute Resolution Processes

Two (2) or more LOCAL OFFICES~~county departments~~ may establish a joint dispute resolution process. If two or more counties establish a joint process, the location of the conference need not be held in the county or agency taking the action, but the conference location shall be convenient to the applicant or participant.

F. Notice of Dispute Resolution Conference Decision

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2. At the conclusion of the conference, the person presiding shall reduce to writing the agreement entered into by the parties. Such agreement shall be signed by the parties and/or their representatives and shall be binding upon the parties. A copy of the written decision shall immediately be provided to the applicant or participant and/or his or her representative. The local office shall also forward a copy of the decision to the STATE DEPARTMENT~~Colorado Department of Human Services, Food Assistance Program~~, within five (5) working days of the hearing, regardless of whether or not the client was in agreement with the outcome.

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4.802.63 State-Level Hearing Decisions

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G. Acting on Decisions

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2. The state DEPARTMENT or LOCAL OFFICE~~county department~~ shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The ACTING department/OFFICE shall comply with the decision, even if reconsideration is requested, unless the effective date of the agency decision is postponed by order of the Office of Appeals or a reviewing court.

3. If IF IT IS RULED~~the State Department~~ rules that the household had its SNAP~~Food Assistance~~ benefits wrongfully delayed, denied or terminated, the local office shall provide retroactive benefits. If IT IS DECIDED~~the State Department~~ decides that benefits were over-issued BEFORE~~previous to~~ and during the pendency of the determination of final agency action, a claim for over-issued benefits will be prepared.

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4.803 IPV~~INTENTIONAL PROGRAM VIOLATIONS~~ AND FRAUD [Rev. eff. 1/1/16]

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E. The local office shall inform the household in writing of disqualification penalties for IPV~~intentional program violation~~ each time it applies for Program benefits. The penalty warning will appear in clear, boldface lettering on the SNAP~~Food Assistance~~ application forms and shall serve as notification to the household.

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4.803.2 Determination of an IPV~~Intentional Program Violation~~/Fraud [Rev. eff. 1/1/16]

***

B. For purposes of determining, through administrative disqualification hearings, whether or not a person has committed an IPV~~intentional program violation~~, the determination shall be based upon whether the person intentionally:

1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or,
2. Committed any act that constitutes a violation of the Food and Nutrition Act of 2008, as amended, these SNAP~~Food Assistance Program~~ rules, Federal SNAP~~Food Assistance Program~~ regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP~~Food Assistance~~ benefits, authorization cards or reusable documents as part of an automated benefit delivery system access device.

***

F. Disqualification periods shall be imposed based on the following:

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3. Court Decisions

If an individual is determined through a court to be disqualified for an IPV/fraud, but the date for initiating the disqualification period is not specified, the LOCAL OFFICE~~county department~~ shall initiate the disqualification period for currently eligible individuals within forty five (45) calendar days of the date the disqualification was ordered. Any other court imposed disqualification shall begin within forty five (45) calendar days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

***

4.803.3 Time Period and Types of Disqualifications [Rev. eff. 1/1/16]

A. IPV~~Intentional Program Violations~~

Individuals who have waived a hearing for IPV~~intentional program violation~~ or who have been found to have committed an IPV~~intentional program violation~~ through a local-level or state administrative IPV~~intentional program violation~~ decision shall be ineligible to participate in SNAP~~the Food Assistance Program~~ for twelve (12) months for the first (1st) IPV~~intentional~~

~~program violation~~; twenty-four (24) months for the second (2nd) IPV~~intentional program violation~~; and permanently for the third (3rd) IPV~~intentional program violation~~/fraud.

B. Receiving Duplicate Benefits

Individuals who misrepresent their identity or residency to receive duplicate benefits shall be ineligible to participate in SNAP~~the Food Assistance Program~~ for a period of ten (10) years. Receiving duplicate benefits is considered an attempt to receive or the receipt of more than one original allotment of benefits during a calendar month. A permanent disqualification for a third (3rd) offense would override the disqualification period for duplicate benefits.

C. Trafficking Benefits

1. The penalties for trafficking SNAP~~Food Assistance~~ benefits are outlined in Section 26-2-306(2), C.R.S.
2. An individual convicted through a court of law of trafficking in SNAP~~Food Assistance~~ of five hundred dollars ($500) or more will be disqualified permanently.

D. An individual found guilty of purchasing controlled substances, as defined in Section 18-18-102 (5), C.R.S., with SNAP~~Food Assistance~~ benefits will be disqualified for twenty-four (24) months on the first (1st) conviction by a court of law and permanently disqualified on a second (2nd) conviction by a court of law. The disqualification periods shall apply also to individuals with a felony conviction entered on or after July 1, 1997, for possession, use, or distribution of controlled substance only if the conviction is directly related to the misuse of SNAP~~Food Assistance~~ benefits. An individual shall not be ineligible due to a drug conviction unless misuse of SNAP~~Food Assistance~~ benefits is part of the court findings.

E. An individual found guilty of trading or purchasing firearms, ammunition, or explosives with SNAP~~Food Assistance~~ benefits will be permanently disqualified on the first (1st) conviction by a court of law. An individual will be disqualified for controlled substances and firearms, if the court finds that the individual has engaged in the activity, even in the cases of deferred adjudication.

4.803.4 Pursuing Disqualifications for IPV/Fraud [Rev. eff. 1/1/16]

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C. If the local office determines that there is evidence to substantiate that a person has committed AN IPV~~intentional program violation~~, the local office shall, prior to initiating an administrative disqualification hearing, allow that person the opportunity to waive his or her right to an administrative disqualification hearing or, for cases referred to a court of appropriate jurisdiction, to sign a disqualification consent agreement for plea bargained cases or cases of deferred adjudication. However, prior to providing the request for waiver, there shall be a review of the evidence against the household member by a staff member who was not involved in the investigation of the household and who has a thorough enough understanding of SNAP~~Food Assistance~~ policy to ensure that policy is being correctly applied and that the evidence meets the “clear and convincing” criteria (see Section 4.803.2, C) necessary to warrant the pursuit of an IPV~~intentional program violation~~.

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4.803.43 Notifying a Household of an IPV Administrative Disqualification Hearing [Rev. eff. 1/1/16]

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B. The notice shall be mailed Certified Mail, Return Receipt Requested, or by first class mail or the notice may be served on the individual by any other reliable method, such as personal delivery by a SNAP~~Food Assistance~~ worker or other employee, affidavit of service, Federal Express, etc. If no proof of receipt is obtained, a statement of non-receipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall contain at a minimum:

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6. A warning that the disqualification penalties for fraud under SNAP~~the Food Assistance Program~~ that could be imposed and a statement of which penalty the hearing officer believes is applicable to the case scheduled for hearing. The disqualification penalties for fraud are as follows:

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c.

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2) Permanently upon the second occasion of such violation.

Copies of ~~the~~ Section 102 of the Controlled Substances Act (21 U.S.C. 802), as amended, ARE~~is~~ available for inspection ~~during normal business hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository library~~. No further amendments or editions are incorporated.

***

10. For LOCAL OFFICES~~county departments~~ conducting local-level ADH, the notice shall inform the client that he/she may request to have a state-level ADH rather than a local-level ADH.

4.803.45 Administrative Disqualification Hearing Procedures

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D. A local-level hearing officer shall meet the ninety (90) calendar day timeframe, issue the decision to the client, and forward a copy to the STATE DEPARTMENT~~Colorado Department of Human Services, Food Assistance Division~~.

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4.803.5 Local-Level IPV Hearings [Rev. eff. 1/1/16]

A. Local-Level Hearing Official

1. The individual who acts as a local-level hearing officer for the local office shall meet the following requirements:
   1. He/she shall be an impartial individual who does not have a personal stake or involvement in the case;
   2. He/she cannot have been directly involved in the initial determination of the action which is being contested and was not the immediate supervisor of the eligibility TECHNICIAN~~worker~~ who initiated the IPV~~intentional program violation~~ action;

***

B. Notice of Local-Level Hearing Decision

1. If the local-level administrative disqualification hearing finds the household member did not commit an IPV~~intentional program violation~~, the local-level hearing officer shall provide a written notice that informs the household, the local office, and the State DEPARTMENT~~Food Assistance Programs Division~~ of the decision.

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5. A copy of the local-level hearing decision shall be forwarded to the State DEPARTMENT~~Food Assistance Programs Division~~ for review at the same time the decision is mailed to the client.

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4.803.6 State-Level Administrative Disqualification Hearing

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B. Final Decisions

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3. The state DEPARTMENT or LOCAL OFFICE~~county department~~ shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The department shall comply with the decision even if reconsideration is requested, unless the effective date of the agency decision is postponed by order of the Office of Appeals or a reviewing court.

***

4.803.7 Notification of Final Administrative Disqualification Hearing Decision [Rev. eff. 1/1/16]

Once the local-level hearing decision or a final state-level decision has been made, written notice, prior to disqualification, will be provided to the household member, to the local office, and to the STATE DEPARTMENT~~state Food Assistance office~~ containing:

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4.804 COURT ACTION

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C. A summary or copy of a referral for prosecution shall, together with the date of the referral, be forwarded to the State DEPARTMENT~~Food Assistance Division~~.

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4.804.1 Disqualification Consent Agreement [Rev. eff. 1/1/16]

A. Criteria for Consent Agreement

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6. A warning that the disqualification penalties for fraud under SNAP~~the Food Assistance Program~~ that could be imposed and a statement of which penalty the hearing office believes is applicable to the case scheduled for the hearing.

***

4.901 ADMINISTRATION OF SNAP~~THE FOOD ASSISTANCE PROGRAM~~

A. SNAP~~The Food Assistance Program~~ shall be administered in every county of the State in accordance with the Colorado Human Services Code and these rules.
B. The program shall be administered by the LOCAL OFFICES~~county departments of social/human services~~ unless the State Department enters into a written agreement with a particular county to have a State-administered program in that county. As a condition for receiving grant-in-aid from the State for

PA~~public assistance~~ and welfare activities, each county must bear the proportion of the total administrative and program costs for all assistance payments and social services activities as required by Section 26-1-122, C.R.S.

C. LOCAL OFFICES~~County departments of social/human services~~ shall comply with all requirements concerning security and case processing for the automated system.

D. Counties shall receive approval from the STATE DEPARTMENT~~Colorado Department of Human Services, Food Assistance Programs Division~~, prior to using any county-developed forms in the administration of the Program.

4.901.1 Compliance with State Department

If a county does not comply with the rules of the State Department that govern the administration of the program, which require the establishment of SNAP~~a Food Assistance Program~~ in each county and the payment of the county's share of the cost of the program, the State Department may do one or more of the following:

A. Utilize the remedies described in Section 26-1-109(4) (a-e), C.R.S.

B. Recover all or part of the county share of the cost of SNAP~~the Food Assistance Program~~ by reducing any other grant-in-aid to the county for PA~~public assistance~~ or welfare purposes by a corresponding amount.

C. If the county does not comply, judicial enforcement of the order may be pursued under Section 24-4-106(3) C.R.S.

D. Take any other appropriate action to enforce compliance with the rules governing SNAP~~the Food Assistance Program~~.

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4.902.1 County SNAP~~Food Assistance~~ Office

Local offices shall ensure that adequate locations and hours of operation exist to meet the needs of SNAP~~Food Assistance~~ applicants and participants in their areas. Each location shall have ample availability for parking and shall be accessible to persons with disabilities. Hours of operation shall be sufficient to ensure the timely processing of applications and issuance of ~~Electronic Benefits Transfer (~~EBT~~)~~ cards according to existing guidelines. Counties must establish procedures for the operation of the local office that best serve households within that county. The county shall establish procedures to assist households with special needs including, but not limited to, households containing persons who are AGED 60 AND OLDER~~elderly~~ or persons with disabilities, households in rural areas with low-income members, homeless households, households containing adult members who are not proficient in English, and households containing working persons.

A household must apply for SNAP~~the Food Assistance Program~~ in its county of residence. A county that receives an application that belongs to another county may secure the application date, process the application to completion, issue the household an EBT card, and then transfer the case to the correct county once the final eligibility decision is made. If a household is determined eligible for participation, it may request and be designated to receive food benefits from an issuance office that is more accessible. It is possible for an issuance unit in one LOCAL~~county~~ office to determine eligibility, authorize food benefits and issue EBT cards to an eligible household that resides in another county in Colorado.

Counties may also transfer certification and/or EBT card issuance duties for those households only receiving SNAP~~Food Assistance~~ that live closer to the local office in a neighboring county than the county of residence.

4.902.2 Phone Directory Listings

A. Each local office telephone number available to the public shall be listed under each of the following two alphabetical listings:

1. SNAP~~Food assistance~~ certification and issuance office, street address, phone number. If there are separate certification and issuance offices in the county,

they may be listed in this manner: LOCALCounty office (certification only) or (issuance only), street address, phone number.

2. (Name of the county) Department of Human/Social Services, LOCALcounty office (certification only) or (issuance only), street address, phone number.

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C. The listings above are not to restrict any other listings that may be provided within the telephone directory, but only to standardize the availability of SNAPthe Food Assistance Program to the public.

4.902.3 Certification Personnel and Facilities Requirements

A. County employees assigned to certify households for participation in SNAPthe Food Assistance Program shall be employed in accordance with the current standards for a merit system personnel administration that is guided by a set of six broad merit principles outlined in the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728), as amended. The principles cover recruiting, compensation, training, retention, equal employment opportunity and guidance on political activity. Only such qualified employees shall conduct the interview of applicant households and determine household eligibility or ineligibility and the level of benefits. Copies of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728), as amended, AREis available for inspection during normal working hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository library. No further amendments or editions are incorporated.

B. Every LOCAL OFFICEcounty department must utilize an appropriate amount of the staff allocated to ITthat county department and utilize effective and efficient practices in administering SNAPits Food Assistance Program. Facilities must, within available state legislative appropriations and federal and required county matching funds, be of adequate size and layout to assure the privacy necessary to allow workers to conduct confidential interviews and perform other office duties efficiently and effectively. Any persons or organizations who are parties to a strike or lockout shall not be permitted to interview or certify households or to secure verification required of such households. However, such individuals may be used as a source of verification for information provided by applicant households if, under normal circumstances, they could be expected to be the best verification source. An eligibility worker who is the spouse of a striker is not considered party to a strike, but shall not certify his or her own household.

4.902.31 Bilingual Staff, Interpreter, and Translator Requirements

A. LOCAL OFFICESCounty departments determined by the State Department to have a significant population of non-English speaking households or households with adult members not fluent in English, shall provide sufficient bilingual staff and/or translators for the timely processing of applications. County staff shall be trained and familiar with these procedures.

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4.902.32 Restrictions on Staff

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C. Any persons or organizations who are parties to a strike or lockout shall not be permitted to interview or certify households or to secure verification required of such households. However, such individuals may be used as a source of verification for information provided by applicant households if, under normal circumstances, they could be expected to be the best verification source. An eligibility TECHNICIANworker who is the spouse of a striker is not considered party to a strike, but shall not certify his or her own household.

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4.902.4 Supervisory Responsibilities

Supervisory personnel shall review a random sample of current SNAP~~Food Assistance~~ determinations (certifications, denials, and terminations) to determine the correctness of eligibility determinations accomplished. A record of the cases reviewed must be kept for management evaluation/audit purposes. The county must be able to demonstrate to the satisfaction of the State DEPARTMENT~~Food Assistance Program~~ that the frequency and scope of the reviews are adequate ~~enough~~ to ensure the integrity of both the program and recipients. Additionally, the county must demonstrate a consistent process for tracking error trends, correcting case records timely, and providing eligibility technicians an opportunity to improve their program knowledge.

***

4.903.1 Information Available to the Public

A. Federal regulations, federal procedures embodied in Food and Nutrition Service (FNS) notices and policy memos, the SNAP~~Food Assistance~~ rules, and State Plans of Operation (including specific planning documents such as corrective action plans) shall be available upon request for examination by members of the public during office hours at the State DEPARTMENT~~office~~. Copies of materials are available to recipient organizations, action centers, and other individuals for a minimal printing charge.
B. The SNAP~~Food Assistance~~ rules shall be available for examination upon request at each local office within each county. They are also available online through the Secretary of State's official publication of State Agency rules in the Code of Colorado Regulations, accessible at: https://www.sos.state.co.us/CCR/Welcome.do.

4.903.2 Reporting Lawsuits

FNS regulations require prompt notification from the State Department of any lawsuits involving the administration of SNAP~~the Food Assistance Program~~.

As all countIES~~y Food Assistance Program~~s are administered under the supervision of the State Department, it is mandatory that all legal proceedings involving SNAP~~the Food Assistance Program~~ be brought to the attention of the State DEPARTMENT~~Office~~ immediately for notification to the United States Department of Agriculture, Food and Nutrition Service (USDA, FNS).

4.903.3 Management Evaluations

The STATE DEPARTMENT~~Colorado Department of Human Services~~ is responsible for the supervising of the administration of SNAP~~the Food Assistance Program~~. To ensure compliance with program requirements, the State DEPARTMENT~~Office~~ is responsible for conducting Management Evaluation (ME) reviews to measure compliance with the provisions of these rules. The objectives of the ME review system are to:

***

4.903.31 Frequency of Reviews

The State DEPARTMENT~~Office~~ shall conduct an ME review of all SNAP~~Food Assistance Program~~ operations:

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The State DEPARTMENT~~Office~~ may conduct Management Evaluation reviews on an alternative schedule with the written approval of the USDA, FNS. The State DEPARTMENT~~Office~~ may also perform reviews of specific LOCAL~~county~~ offices or program elements. The USDA, FNS or the State DEPARTMENT~~Office~~, may identify the need of a special review, or the LOCAL OFFICE~~county department~~ may request a special review.

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The State DEPARTMENT~~Office~~ will complete the Management Evaluation report for all counties that are reviewed~~. The Colorado Department of Human Services, Food Assistance Program,~~AND will be responsible for monitoring the county responses to any finding.

The county shall be responsible for submitting any factual corrections to the management evaluation review within twenty (20) state working days, and shall submit a final plan to correct all other cited deficiencies within twenty (20) state working days of receiving the review. The response shall include specific actions, persons responsible for implementation, and date for completion. When the review identifies ongoing problems in critical areas, the county response shall also include a method for monitoring implementation of the plan and reporting progress to the State Office on at least a quarterly basis.

4.903.32 Compliance Action for Management Evaluation Reviews

The State DEPARTMENT~~Office~~ is the designated entity responsible for ensuring that corrective action is taken at the state and/or county level on the deficiencies found by the Management Evaluation (ME) Reviews.

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4.903.4 Quality Assurance Reviews

Quality assurance reviews are conducted during the annual federal quality assurance review period, which is the twelve (12) month period from October 1 of each calendar year through September 30 of the following calendar year. A statistically random sample of households is selected from two (2) different categories: households that were participating in SNAP~~the Food Assistance Program~~ (active cases) and households for which participation was suspended, denied, or terminated (negative cases).

A. Quality Assurance reviews are federally mandated to provide:

1. A systematic method of measuring the validity of the SNAP~~Food Assistance Program~~ caseload;

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B. Reviews are conducted on:

1. Active cases to determine if the household is eligible and, if eligible, whether the household is receiving the correct SNAP~~Food Assistance~~ benefits.
2. Negative cases to determine if households that were suspended, denied, or terminated were, in fact, not eligible to participate in SNAP~~the Food Assistance Program~~ and that the household received an accurate, timely notice. For initial applications, the notice shall be considered timely if the household is notified of the negative action within the application processing timeframes outlined in Section 4.205.2. For recertification applications, the notice shall be considered timely if the household is notified of the negative action in accordance with the processing timeframes outlined in Section 4.209.1. When notifying a household of a change in its benefits, the notice shall be considered timely if the household is notified of the negative action in accordance with the timeframes outlined in Section 4.608.

C. Definitions

1. An “active case” means a household that was certified prior to or during the sample month and issued SNAP~~Food Assistance Program~~ benefits for the sample month. The review of an active case includes: a household case record review, a field investigation, an error analysis, and the reporting of review findings.
2. A “negative case” means a household which was denied certification to receive SNAP~~Food Assistance Program~~ benefits in the sample month or which had its participation in SNAP~~the Food Assistance Program~~ suspended, denied, or terminated effective for the sample month. The review of a negative case includes:

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4.903.42 Refusal to Cooperate with Quality Assurance Review

Households selected for review are required to cooperate with federal and state Quality Assurance review processes.

Households that refuse to cooperate in a Quality Assurance review shall be declared ineligible for SNAP~~Food Assistance Program~~ benefits. The State Quality Assurance reviewer shall notify the local office of the household's refusal to cooperate in the review process, including EVERYONE~~each individual~~ who refused, on the State-prescribed Quality Assurance reporting form(s), and the local office shall document the refusal to cooperate in the statewide automated system.

A. Within ten (10) calendar days from the date of receipt of Quality Assurance's notification of the household's refusal to cooperate, the local office shall take action to disqualify or terminate the entire household from participation in SNAP~~the Food Assistance Program~~ and each household member who refused to cooperate shall be entered into the automated system to initiate a period of ineligibility. The period of ineligibility is as follows:

***

4.903.43 Quality Assurance Findings and Required Responses

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B. When the review findings document that an error resulted in ineligibility over-issuance, under-issuance, or an incorrect negative action, the local office shall respond to the review findings by completing the State-prescribed form documenting the corrective action taken or rebutting the amount or finding of error. The response shall be forwarded to the State DEPARTMENT~~Food Assistance Program Division~~ within ten (10) calendar days from receipt of the Quality Assurance review finding notification.

C. Upon receiving the local office's response to the Quality Assurance review findings, the State DEPARTMENT~~Office~~ shall review the action taken by the local office and either concur with the Quality Assurance findings; concur with the local office rebuttal; or concur/disagree with the corrective action taken by the local office.

***

~~**4.904 FEDERAL ADMINISTRATION AND RESPONSIBILITIES**~~

~~**4.904.1 Federal Sanctions**~~

~~If FNS determines that there has been negligence or fraud involved in the certification of applicant households on the part of the state or local office, the State agency shall, on demand, following exhaustion of its appellate rights, pay to FNS, a sum equal to the amount of benefits issued as a result of such negligence or fraud. FNS claims against state agencies may be a result of financial losses involved in the acceptance, storage, and issuance of benefits, charges of negligence, and disallowance of federal funds for state agency failure of operation. The provisions for determining and establishing a claim against state agencies or the disallowance of federal funds are outlined within Section 3 of Title 7, Part 276, Chapter II, Sub-chapter C, Code of Federal Regulations, as of February 5, 2014; no later amendments or editions of this section are incorporated. Copies of these federal laws are available from the Colorado Department of Human Services, Food Assistance Program, 1575 Sherman Street, Denver, Colorado 80203. If county administration has resulted in the FNS finding of negligence or fraud, a claim for the amount of loss will subsequently be made against the responsible Food Assistance agency.~~

~~**4.904.2 Civil Rights Reviews Retailer Authorization**~~

The FNS field office located in the Denver area conducts statewide civil rights reviews of local offices. Both state and local offices shall ensure that all staff responsible for the administration, issuance, review, and eligibility determination of the Food Assistance Program are knowledgeable about civil rights procedures and able to assist program recipients with the filing of civil rights complaints. These procedures must be reviewed with staff annually.

4.904.3 Retailer Authorization

The Food and Nutrition Service (FNS) field office is responsible for authorizing retailers to accept Food Assistance benefits and enforcing retailer compliance of Program rules.

Retailers must be authorized by USDA, FNS to be eligible to accept Food Assistance benefits for eligible food purchases.

All FNS-authorized retailers must comply with USDA, FNS regulations regarding acceptance and deposit of Food Assistance benefits.

4.904.4 Program Reduction, Suspension, or Cancellation

The Food and Nutrition Act of 2008 directs the Secretary of Agriculture to reduce, suspend, or cancel Food Assistance benefits if it is necessary to keep Program spending within the limits set by Congress. Upon notification from FNS, the State office shall instruct local offices to reduce, suspend, or cancel Food Assistance benefits for one or more months. Local offices shall take immediate action in accordance with the following procedures:

A. Reduction of Benefits

If the State office instructs the local offices to reduce monthly Food Assistance allotments, the State shall notify the local offices of the date the reduction is to take effect. If an allotment reduction is necessary, allotments shall be reduced for each household size by the same percentage. If a benefit reduction is necessary, all households shall be guaranteed a minimum allotment allowed for one- and two-person households, unless the reduction is ninety percent (90%) or more. Revised issuance tables reflecting the percentage of reduction shall be provided to all local offices.

B. Suspension and Cancellation

If the State Office instructs the county local offices to suspend or cancel Food Assistance Program benefits, the county local offices shall be informed of the date that the suspension or cancellation shall take effect. Upon receipt of this date, the counties shall take immediate action to affect the suspension or cancellation. This action shall include notification of certification and issuance personnel, as well as eligible households. In the event that cancellation or suspension of benefits is necessary, the provision for the minimum benefit level shall be disregarded and all households shall have their benefits suspended or cancelled.

If allotments are cancelled or suspended, local offices shall record the monthly allotment the household was entitled to receive prior to cancellation or suspension.

4.904.41 Affected Allotments

Whenever suspension or cancellation of allotments is ordered for a particular month, it shall affect all households. If a reduction is ordered, reduced benefits shall be calculated for all households for the designated month. However, all one- or two-person households shall be guaranteed a minimum allotment, as outlined in Section 4.207.3, unless the reduction is ninety percent (90%) or more.

Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month would not be reduced, suspended, or cancelled, even though they are issued during a month in which cancellation, suspension, or reduction is in effect.

~~4.904.42 Notification to Households~~

~~Reduction, cancellation, or suspension shall be considered a mass change and shall not require advance notice of adverse action; however, the household shall be notified by announcements through the news media or a general notice may be handed out or mailed to affected participant households.~~

~~4.904.43 Restoration of Cancelled or Reduced Benefits~~

~~Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not entitled to the restoration of the lost benefits at a later date unless surplus funds are remaining after the reduction or cancellation. These surplus funds may be restored to affected households if a directive is issued by the Secretary of Agriculture. In the event of the issuance of a directive to issue restored benefits, the local office must work promptly to issue them.~~

~~In any event, the local office shall have issuance services to serve households receiving restored or retroactive benefits for a prior, unaffected month.~~

~~4.904.44 Effects of Reduction, Suspension, and Cancellation on the Certification of Eligible Households~~

~~In the event that cancellation, suspension, or reduction is ordered by the State, the following shall apply:~~

~~A. Determinations of eligibility of applicant households shall not be affected.~~

~~B. Local offices shall continue to accept and process applications in accordance with standard certification procedures.~~

~~C. If a reduction of program benefits is in effect, and an applicant is found to be eligible, the amount of benefits will be determined by using the revised issuance tables, and shall be recorded in accordance with provisions in Section 4.904.4. If reduction or suspension of program benefits is in effect, and a household is found to be eligible for expedited service application processing, the application will be processed in accordance with procedures in Section 4.205.1. If a cancellation of program benefits is in effect, households shall receive expedited service; however, the deadlines for completing the processing shall be the end of the month of application or five (5) calendar days, whichever date is later.~~

~~E. If an applicant household is found to be eligible for benefits while a suspension or cancellation is in effect, no benefits shall be issued to the applicant household. However allotment levels shall be calculated and recorded accordance with Section 4.904.4.~~

~~F. Reduction, suspension or cancellation of allotments shall have no effect on certification periods assigned to households prior to the reduction, suspension, or cancellation of the program.~~

~~G. Participating households whose certification periods expire during a month in which allotments have been reduced, suspended, or cancelled shall be recertified in accordance with normal procedures.~~

~~H. Households found eligible to participate during a month in which allotments have been reduced, suspended, or cancelled shall have certification periods assigned in accordance with Section 4.208.1.~~

~~4.904.45 Fair Hearings When Program Reductions, Suspensions, or Cancellations Occur~~

~~Any household that had its allotment reduced, suspended, or cancelled as a result of implementation of the procedures for reduction, suspension, or cancellation may request a fair hearing if it disagrees with the action; however, the household does not have a right to continuation of benefits. A household may receive retroactive benefits if it is determined that its benefits were reduced by more than the amount the local offices were directed to reduce benefits.~~

~~The Colorado Department of Human Services, Office of Appeals, may deny fair hearings to those households that are disputing the fact that a statewide reduction, cancellation, or suspension was ordered. The Office of Appeals is not required to hold a fair hearing unless the request is based on a~~

household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied.

4.9045 OUTREACH

Outreach activities performed by state and local personnel shall be ineligible for federal matching funds. Although activities to recruit participation in SNAPthe Food Assistance Program are prohibited, all local offices shall perform program informational activities. Program informational activities are those activities that convey information about SNAPthe Food Assistance Program, including household rights and responsibilities to applicant and participant households through means such as publications, telephone hotlines and face-to-face contacts.

***

4.9056 D-SNAP

***

In such Presidentially-declared disasters, emergency SNAPFood Assistance allotments can be authorized by the USDA, FNS. In Colorado, the Governor can accept such federal assistance on behalf of the state if he/she determines and declares a major disaster. When authorized by the Governor and FNS, the STATE DEPARTMENTColorado Department of Human Services may authorize those counties, within which all or part of the disaster area lies, to distribute emergency SNAPFood Assistance allotments in those areas.

The state shall provide special certification material and forms designed for certification of disaster victims. Certification shall be done for households that are victims of a disaster that disrupts commercial channels of food distribution; if such households are in need of temporary SNAPFood Assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of those households.

Notice of Proposed Rulemaking

Tracking number

2021-00784

Department

500,1008,2500 - Department of Human Services

Agency

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-2

Rule title

REFERRAL AND ASSESSMENT

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's Response to COVID-19. Anticipated to be held entirely online.

Subjects and issues involved

To bring rule in alignment with Federal legislation; Comprehensive Addiction and Recovery Act (CARA)(P.L. 114-198) - 2016 and the Child Abuse Prevention Treatment Act (CAPTA) Program instruction, ACYF-CB-PI-17-02-2017.NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Please check here for any updates on location/connection: https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107(5)(I-II), C.R.S.; 26-1-109(2)(a), C.R.S.; 42 U.S.C.A. § 290ee-9(a); 42 U.S.C.A. § 5106a(4)

Contact information

Name

Suzy Morris

Title

Susbtance Exposed Newborn Specialist,

Telephone

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Email

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Title of Proposed Rule:	**Plan of Safe Care Practice Guidance**	
CDHS Tracking #:	**21-03-16-01**	
Office, Division, & Program: OCYF, DCW, Plan of Safe Care	Rule Author: Susan Morris	Phone: 720- 527-8196
		E-mail: susan.morris@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a.___ [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

x	AG Initial Review		x	Initial Board Reading			AG 2nd Review		x	Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
	Amended Rules
7	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	January 7, 2022

What date is being requested for this rule to be effective?	March 30, 2022
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates: 1st Board January 7, 2022 2nd Board February 4, 2022 Effective Date March 30, 2022

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

To bring rule in alignment with Federal legislation; Comprehensive Addiction and Recovery Act (CARA)(P.L. 114-198) - 2016 and the Child Abuse Prevention Treatment Act (CAPTA) Program instruction, ACYF-CB-PI-17-02-2017.

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

X	to comply with state/federal law and/or
	to preserve public health, safety and welfare

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107(5)(I-II), C.R.S. (2020)	State Board to promulgate rules regarding (I) program scope and content and (II) requirements, obligations, and rights of clients and recipients.
26-1-109(2)(a), C.R.S. (2020)	State department rules to coordinate with federal programs.

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

Code	Description
42 U.S.C.A. § 290ee-9(a)	United States Secretary of Health and Human Services may make grants to entities that focus on addiction and substance use disorders and specialize in family and patient services
42 U.S.C.A. § 5106a(4)	Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA) Secretary shall make grants to states that enhance the child protective system by developing, improving, and implementing risk and safety assessment tools, including differential response

Does the rule incorporate material by reference?		Yes		X	No
Does this rule repeat language found in statute?		Yes		X	No
If yes, please explain.					

REGULATORY ANALYSIS

Title of Proposed Rule:	Plan of Safe Care Practice Guidance	
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1. List of groups impacted by this rule.

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

Mothers who deliver babies who are substance exposed at the time of birth and their children will benefit from more collaborative care across systems. County caseworkers will be required to complete this document.

2. Describe the qualitative and quantitative impact.

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

It will address the needs of infants who are identified as affected by substance abuse, experience withdrawal symptoms, or have fetal alcohol spectrum disorders (FASD) and stipulates the development of a Plan of Safe Care for the infant and their family/caregiver to ensure the safety and well-being of infants following the release from a health care provider when a report is received through the Colorado Child Welfare Hotline reporting system.

3. Fiscal Impact

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

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

The Department will partner with the Child Welfare Training System (CWTS) to incorporate the new practices into current training and provide updates to counties. Subsequently, there will be no new fiscal impact to the CCWIS system.

County Fiscal Impact

Increase in awareness for child welfare staff, and potential for an increase in the number of Substance Exposed Newborn referrals and assessments.

Federal Fiscal Impact

Provide for more comprehensive compliance with Child Abuse Prevention and Treatment Act (CAPTA). Compliance ensures Colorado will continue to receive the full federal funding allotment.

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

N/A

4. Data Description

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

Colorado is currently required to provide this data to federal partners through the annual CAPTA report which is an appendix of the Annual Program and Services Review (APSR). Colorado provides the number of Plans of Safe Care completed along with other supportive data.

5. Alternatives to this Rule-making

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

There are no alternatives due to federal funding requirements to implement a clear Plan of Safe Care process for child welfare. These rules operationalize those implementation requirements.

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OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
7.000.2	New definition	No previous language	A PLAN OF SAFE CARE IS A COLLABORATIVE PROCESS TO CREATE A DOCUMENTED PLAN FOR THE HEALTH, SAFETY, AND WELL-BEING OF AN INFANT REPORTED WITH PRENATAL SUBSTANCE EXPOSURE, FOLLOWING THE INFANT'S RELEASE FROM THE CARE OF A HEALTHCARE PROVIDER, AND ADDRESSES THE HEALTH, SUPPORT, AND SUBSTANCE USE TREATMENT NEEDS OF THE AFFECTED FAMILY OR CAREGIVER(S) ACCORDING TO THE REQUIREMENTS OUTLINED IN SECTION 7.107.5 (12 CCR 2509-	Comprehensive Addiction and Recovery Act (CARA) Child Abuse Prevention Treatment Act (CAPTA)	No comment

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			2).		
7.100	New rule	No previous language	7.103 Receipt of Referral Alleging Intrafamilial Or Third Party Abuse And/Or Neglect And/Or A Youth In Conflict– Information To Be Gathered A. Upon receipt of a report alleging intrafamilial or third party abuse and/or neglect, and/or a youth in conflict, the county departments or the Hotline County Connection Center shall gather and document the following information, when available. 5. Narrative describing the presenting problems and specific allegations of the abuse and/or neglect, including but not limited to: e. WHEN SUBSTANCE EXPOSED NEWBORN IS THE REFERRAL REASON, THE COUNTY DEPARTMENTS OR THE HOTLINE	Comprehensive Addiction and Recovery Act (CARA) Child Abuse Prevention Treatment Act (CAPTA)	No comment

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			COUNTY CONNECTION CENTER SHALL ASK THE COLORADO PLAN OF SAFE CARE ENHANCED QUESTIONS.		
7.100	New rule	No Previous Language	7.104.1 Intrafamilial Abuse And/Or Neglect Assessment C. The assessment shall include; 14. WHEN ASSESSING ALLEGATIONS OF SUBSTANCE EXPOSED NEWBORNS, THE COUNTY DEPARTMENT SHALL DEVELOP AND DOCUMENT A COLORADO PLAN OF SAFE CARE ACCORDING TO THE REQUIREMENTS OUTLINED IN SECTION 7.107.5 (12 CCR 2509-2).	Comprehensive Addiction and Recovery Act (CARA) Child Abuse Prevention Treatment Act (CAPTA)	Questions: What is the hospital's responsibility to complete a Colorado Plan of Safe Care? If the hospitals complete a Plan of Safe Care is Child Welfare still required to complete a Colorado Plan of Safe Care? Answers to these questions are addressed in Section 7.107.51
7.100	New Rule	No Previous language	7.104.131 Timing [Eff. 3/1/18] D. THE COLORADO PLAN OF SAFE CARE SHALL BE APPROVED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM AND	Comprehensive Addiction and Recovery Act (CARA) Child Abuse Prevention Treatment Act (CAPTA)	No Comments

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			APPROVED BY A SUPERVISOR WITHIN SIXTY (60) CALENDAR DAYS FROM THE DATE THE REFERRAL WAS RECEIVED.		
7.100	New rule	No previous language	7.104.14 Documentation Required During Assessment K. THE COLORADO PLAN OF SAFE CARE SHALL BE COMPLETED WITH THE PARENT/CAREGIVER(S), DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM, AND APPROVED BY THE SUPERVISOR WITHIN SIXTY (60) CALENDAR DAYS FROM THE DATE THE REFERRAL WAS RECEIVED.	Comprehensive Addiction and Recovery Act (CARA) Child Abuse Prevention Treatment Act (CAPTA)	No Comments
7.100	New rule	No previous language	7.107.5 COLORADO PLAN OF SAFE CARE PARAMETERS FOR USE THE COLORADO PLAN OF SAFE CARE SHALL BE COMPLETED:	Comprehensive Addiction and Recovery Act (CARA) Child Abuse Prevention Treatment Act (CAPTA)	B. It was recommended to remove “youth” as this would not apply to youth. THE COLORADO PLAN OF SAFE CARE SHALL BE COMPLETED BASED ON THE INFORMATION AVAILABLE AND BASED ON THE INTERVIEW OR OBSERVATION OF THE ALLEGED VICTIM

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			A. ANY TIME A REFERRAL IS ACCEPTED FOR ASSESSMENT AND THE CHILD MEETS THE DEFINITION OF SUBSTANCE EXPOSED NEWBORN AS DESCRIBED IN 19-1-103, C.R.S AND 19-3-102, C.R.S. B. THE COLORADO PLAN OF SAFE CARE SHALL BE COMPLETED BASED ON THE INFORMATION AVAILABLE AND BASED ON THE INTERVIEW OR OBSERVATION OF THE ALLEGED VICTIM CHILD(REN) AND IN COLLABORATION WITH PARENTS, CAREGIVERS, MEDICAL PROVIDERS, AND OTHERS WHO MAY BE A PART OF THE PLAN. C. A COLORADO PLAN OF SAFE CARE SHALL BE DOCUMENTED IN THE STATE AUTOMATED CASE		CHILD(REN)/~~YOUTH~~ AND IN COLLABORATION WITH PARENTS, CAREGIVERS, MEDICAL PROVIDERS, AND OTHERS WHO MAY BE A PART OF THE PLAN.

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			MANAGEMENT SYSTEM AND APPROVED WITHIN SIXTY (60) CALENDAR DAYS FROM THE DATE THE REFERRAL WAS RECEIVED.		
7.100	New Rule	No previous language	7.107.51 ACTIONS THAT RESPOND TO WHEN TO COMPLETE A COLORADO PLAN OF SAFE CARE THE ACTION REQUIRED SHALL BE DETERMINED AND BASED ON AN ASSESSMENT THAT CONTAINS AN ALLEGATION OF SUBSTANCE EXPOSED NEWBORN AS FOLLOWS: A. IF A COLORADO PLAN OF SAFE CARE HAS NOT BEEN CREATED, BY A MEDICAL TREATMENT OR COMMUNITY	Comprehensive Addiction and Recovery Act (CARA) Child Abuse Prevention Treatment Act (CAPTA)	B. Correct spelling errors: “treatment” and “community”

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			PROVIDER THE CASEWORKER SHALL CREATE A COLORADO PLAN OF SAFE CARE, AND/OR; B. WHEN A COLORADO PLAN OF SAFE CARE HAS BEEN DEVELOPED BY A MEDICAL, TREATMENT OR COMMUNITY PROVIDER, THE CASEWORKER SHALL UPDATE THE COLORADO PLAN OF SAFE CARE TO REFLECT THE CURRENT CIRCUMSTANCES.		

STAKEHOLDER COMMENT SUMMARY

Development

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

Members of the Child Protection Task Group, County Child Welfare staff (large, mid and rural counties), Division of Child Welfare (Intake, Youth, Permanency, Child Protection and Prevention team members), Medical Provider, Community Stakeholders, Individuals with lived experience, Community Stakeholders in attendance in three Listening Sessions, SubPAC, CDPHE.

This Rule-Making Package

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

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Elephant Circle, Colorado Perinatal Care Quality Collaborative, Colorado CASA, Members of the Child Protection Task Force, County Child Welfare staff, Division of Child Welfare, Community Stakeholders, Office of Respondent Parent Counsel, Office of Child Representative, Child Protection Ombudsman, County Attorney's, Family Advisory Board-Substance Exposed Newborn Steering Committee.

Other State Agencies

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

[ ] Yes [X] No

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

Sub-PAC

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

[X] Yes [ ] No

Name of Sub-PAC	child Welfare SubPAC		
Date presented	Nov 4, 2021		
What issues were raised?	Correct two spelling errors and to remove "youth" from language as this rule does not apply to youth.		
Vote Count	*For*	*Against*	*Abstain*
	Unanimous		
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[X] Yes [ ] No

Date presented	Dec 2, 2021		
What issues were raised?	None		
Vote Count	*For*	*Against*	*Abstain*

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If not presented, explain why.	

Other Comments
Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

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

What is the functionality of th Colorado Plan of Safe Care in Trails and have there been statewide trainings provided to Child Welfare staff? Currently, there are five questions in hotline that are prompted when the referral reason is Substance Exposed Newborn (SEN). The Colorado Plan of Safe Care is being built into the assessment and it is unknown when this will go live. However, there is a Colorado Plan of Safe Care, a series of 7 questions, in Trails that all counties have access to. Three trainings were offered to counties in January 2021 on how to access the Colorado Plan of Safe Care in Trails. Additional training will be provided prior to the effective date of this rule and a recorded training will be made available on the Child Welfare Training System (CWTS).

Will the hotline caller be responsible for completing the Plan of Safe Care? Rule does address this and states that only case workers will be responsible for all screened in Substance Exposed Newborn (SEN) referrals. New rule addresses this in section 7.107.5 COLORADO PLAN OF SAFE CARE PARAMETERS FOR USE

Title of Proposed Rule:	Plan of Safe Care Practice Guidance	
CDHS Tracking #:	21-03-16-01	
Office, Division, & Program: OCYF, DCW, Plan of Safe Care	Rule Author: Susan Morris	Phone: 720- 527-8196
		E-mail: susan.morris@state.co.us

Will case workers have to complete a Colorado Plan of Safe Care if the hospitals complete one? New rule address this in section 7.107.51 ACTIONS THAT RESPOND TO WHEN TO COMPLETE A COLORADO PLAN OF SAFE CARE

[**PUBLISHER'S NOTE NOT FOR PUBLICATION**: The entirety of numbered rule 7.000.2 and 7.100 is not reproduced below, but instead only those additions are included, along with the preceding and subsequent section of rule for the purposes of clarifying alphabetical insertion of the new definitions. Asterisks are used below to indicate where a break between sections where edits are proposed occurs.

(12 CCR 2509-1, 12 CCR 2509-2)

12 CCR 2509-1 *7.000.2-A Definitions*

PLAN OF SAFE CARE

A PLAN OF SAFE CARE IS A COLLABORATIVE PROCESS TO CREATE A DOCUMENTED PLAN FOR THE HEALTH, SAFETY, AND WELL-BEING OF AN INFANT REPORTED WITH PRENATAL SUBSTANCE EXPOSURE, FOLLOWING THE INFANT'S RELEASE FROM THE CARE OF A HEALTHCARE PROVIDER, AND ADDRESS THE HEALTH, SUPPORT, AND SUBSTANCE USE TREATMENT NEEDS OF THE AFFECTED FAMILY OR CAREGIVER(S) ACCORDING TO THE REQUIREMENTS OUTLINED IN SECTION 7.107.5 (12 CCR 2509-2).

12 CCR 2509-2 7.100 Referral and Assessment

7.103 Receipt of Referral Alleging Intrafamilial Or Third Party Abuse And/Or Neglect And/Or A Youth In Conflict–Information To Be Gathered

Title of Proposed Rule:	Plan of Safe Care Practice Guidance	
CDHS Tracking #:	21-03-16-01	
Office, Division, & Program: OCYF, DCW, Plan of Safe Care	Rule Author: Susan Morris	Phone: 720- 527-8196
		E-mail: susan.morris@state.co.us

A. Upon receipt of a report alleging intrafamilial or third party abuse and/or neglect, and/or a youth in conflict, the county departments or the Hotline County Connection Center shall gather and document the following information, when available.

5. Narrative describing the presenting problems and specific allegations of the abuse and/or neglect, including but not limited to:

e. WHEN SUBSTANCE EXPOSED NEWBORN IS A REFERRAL REASON, THE COUNTY DEPARTMENTS OR THE HOTLINE COUNTY CONNECTION CENTER SHALL ASK THE COLORADO PLAN OF SAFE CARE ENHANCED QUESTIONS.

7.104.1 Intrafamilial Abuse And/Or Neglect Assessment

C. The assessment shall include;

14. WHEN ASSESSING ALLEGATIONS OF SUBSTANCE EXPOSED NEWBORNS, THE COUNTY DEPARTMENT SHALL DEVELOP AND DOCUMENT A COLORADO PLAN OF SAFE CARE ACCORDING TO THE REQUIREMENTS OUTLINED IN SECTION 7.107.5 (12 CCR 2509-2).

7.104.131 Timing [Eff. 3/1/18]

D. THE COLORADO PLAN OF SAFE CARE SHALL BE APPROVED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM AND APPROVED BY A SUPERVISOR WITHIN SIXTY (60) CALENDAR DAYS

FROM THE DATE THE REFERRAL WAS RECEIVED.

7.104.14 Documentation Required During Assessment

K. THE COLORADO PLAN OF SAFE CARE SHALL BE COMPLETED WITH THE PARENT/CAREGIVER(S), DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM, AND APPROVED BY THE SUPERVISOR WITHIN SIXTY (60) CALENDAR DAYS FROM THE DATE THE REFERRAL WAS RECEIVED.

7.107.5 COLORADO PLAN OF SAFE CARE PARAMETERS FOR USE

THE COLORADO PLAN OF SAFE CARE SHALL BE COMPLETED:

A. ANY TIME A REFERRAL IS ACCEPTED FOR ASSESSMENT AND THE CHILD MEETS THE DEFINITION OF SUBSTANCE EXPOSED NEWBORN AS DESCRIBED IN 19-1-103, C.R.S AND 19-3-102, C.R.S.

B. THE COLORADO PLAN OF SAFE CARE SHALL BE COMPLETED BASED ON THE INFORMATION AVAILABLE AND BASED ON THE INTERVIEW OR OBSERVATION OF THE ALLEGED VICTIM CHILD(REN) AND IN COLLABORATION WITH PARENTS, CAREGIVERS, MEDICAL PROVIDERS, AND OTHERS WHO MAY BE A PART OF THE PLAN.

Title of Proposed Rule:	Plan of Safe Care Practice Guidance	
CDHS Tracking #:	21-03-16-01	
Office, Division, & Program: OCYF, DCW, Plan of Safe Care	Rule Author: Susan Morris	Phone: 720- 527-8196
		E-mail: susan.morris@state.co.us

C. A COLORADO PLAN OF SAFE CARE SHALL BE DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM AND APPROVED WITHIN SIXTY (60) CALENDAR DAYS FROM THE DATE THE REFERRAL WAS RECEIVED.

7.107.51 ACTIONS THAT RESPOND TO WHEN TO COMPLETE A COLORADO PLAN OF SAFE CARE

THE ACTION REQUIRED SHALL BE DETERMINED AND BASED ON AN ASSESSMENT THAT CONTAINS AN ALLEGATION OF SUBSTANCE EXPOSED NEWBORN AS FOLLOWS:

A. IF A COLORADO PLAN OF SAFE CARE HAS NOT BEEN CREATED BY A MEDICAL, TREATMENT OR COMMUNITY PROVIDER, THE CASEWORKER SHALL CREATE A COLORADO PLAN OF SAFE CARE, AND/OR;

B. WHEN A COLORADO PLAN OF SAFE CARE HAS BEEN DEVELOPED BY A MEDICAL, TREATMENT OR COMMUNITY PROVIDER, THE CASEWORKER SHALL UPDATE THE COLORADO PLAN OF SAFE CARE TO REFLECT THE CURRENT CIRCUMSTANCES.

Title of Proposed Rule:	**Plan of Safe Care Practice Guidance**	
CDHS Tracking #:	**21-03-16-01**	
Office, Division, & Program: OCYF, DCW, Plan of Safe Care	Rule Author: Susan Morris	Phone: 720- 527-8196
		E-mail: susan.morris@state.co.us

Notice of Proposed Rulemaking

Tracking number

2021-00786

Department

500,1008,2500 - Department of Human Services

Agency

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-7

Rule title

COUNTY RESPONSIBILITIES, STAFF TRAINING AND QUALIFICATIONS, CLIENT RIGHTS, CONFIDENTIALITY

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's Response to COVID-19. Anticipated to be held entirely online

Subjects and issues involved

These rules will implement HB 21-1094, which was signed into law on 6/25/2021 and requires the State Board of Human Services to promulgate rules for implementation. HB 21-1094 establishes the Foster Youth in Transition Program, a youth-driven and developmentally appropriate approach to extended foster care. This program further establishes a pathway for eligible youth to reenter foster care between the ages of 18 and 21. HB 21-1094s extensive reforms require significant revision to the Colorado Code of Regulations, 12 CCR 2509 (Volume 7). These rules will ensure consistent statewide implementation and support counties in understanding what they are required to provide to youth who request services through the program. NOTE: Due to the ongoing COVID-19
situation, it is anticipated that this meeting will take place entirely online. Please
check here for any updates on location/connection: https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S.; 26-1-109, C.R.S.; 26-1-111, C.R.S.

Contact information

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Title

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Title of Proposed Rule: **Extended Foster Care & Re-Entry (12 CCR 2509-7)**
CDHS Tracking #: **21-07-22-01**

Office, Division, & Program: Rule Author: Trevor Williams
Phone: 303-866-4539
E-Mail: trevor.williams@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [ ] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review [X] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
15	Amended Rules
2	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December 2021

What date is being requested for this rule to be effective?	March 2021
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board _____ 2nd Board _____ Effective Date _____

Title of Proposed Rule:	**Extended Foster Care & Re-Entry (12 CCR 2509-7)**	
CDHS Tracking #:	**21-07-22-01**	
Office, Division, & Program:	Rule Author: Trevor Williams	Phone: 303-866-4539 E-Mail: trevor.williams@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

These rules will implement HB 21-1094, which was signed into law on 6/25/2021 and requires the State Board of Human Services to promulgate rules for implementation. HB 21-1094 establishes the Foster Youth in Transition Program, a youth-driven and developmentally appropriate approach to extended foster care. This program further establishes a pathway for eligible youth to reenter foster care between the ages of 18 and 21. HB 21-1094's extensive reforms require significant revision to the Colorado Code of Regulations, 12 CCR 2509 (Volume 7). These rules will ensure consistent statewide implementation and support counties in understanding what they are required to provide to youth who request services through the program.

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

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

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

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

Code	Description
19-7-315, C.R.S. (2021)	The state department shall promulgate rules for the implementation of this part 3, including but not limited to rules concerning eligibility determinations, administrative appeals of eligibility determinations, enrollment into the transition program, emancipation transition plans and roadmaps to success, and expedited procedures for securing temporary shelter for youth who are currently homeless or at imminent risk of homelessness.

Does the rule incorporate material by reference?	[ ]	Yes	[X]	No
Does this rule repeat language found in statute?	[X]	Yes	[ ]	No

If yes, please explain.

Some requirements of HB 21-1094 are specific and organizing the requirements into Volume 7 while maintaining the language from statute ensures the highest level of support to counties and fidelity to the law.

Title of Proposed Rule:	**Extended Foster Care & Re-Entry (12 CCR 2509-7)**	
CDHS Tracking #:	**21-07-22-01**	
Office, Division, & Program:	Rule Author: Trevor Williams	Phone: 303-866-4539 E-Mail: trevor.williams@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

Current and former foster youth will experience the greatest benefit from these rules. Groups that will experience additional work requirements as a result of these rules include county departments. The Office of the Child's Representative and judicial partners are both impacted by HB 21-1094, but they are not directly impacted by these rules.

2. Describe the qualitative and quantitative impact.

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

The Division of Child Welfare estimates that approximately 59 youth per year will choose to reenter foster care as a result of HB 21-1094, which is implemented in part by these rules. These youth will constitute the new population served through the Foster Youth in Transition Program. However, the broader population of foster youth who reach the age of 18 while in care will also experience the benefits of these rules. Prior to HB 21-1094, there was little differentiation in statute or rule between minor children under age 18 and youth 18 to 21 who stayed in foster care, and as a result most youth exit and experience a cliff effect near their 18th birthdays. HB 21-1094 and these rules support the distinct developmental needs of emerging adults. Youth in foster care are not given the right to make informed choices while enjoying the types of support that a typical Colorado family provides to their own children transitioning to adulthood. By implementing HB 21-1094, these rules create the structure for a developmentally appropriate extended foster care system that respects the needs of 18- to 21-year-olds, while providing that crucial support.

Implementation of HB 21-1094 includes a workload impact for county departments, however this will be offset by an increase to the child welfare block appropriated through the general fund.

3. Fiscal Impact

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

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

There are no fiscal impacts directly resulting from these rules. Some changes to the Trails system will be required; however, those costs will be covered by existing federal funds. The Office of the Child's Representative will have a small fiscal impact from the legislation, not the rules, which is funded through an appropriation to their office for implementation of HB 21-1094.

County Fiscal Impact

There are no fiscal impacts directly resulting from these rules. The legislation, however, does create a fiscal impact to counties. Those costs will be covered by an appropriation made to the Child Welfare block for implementation of HB 21-1094.

Federal Fiscal Impact

Revisions to these rules ensure Colorado has the structure to draw down federal funds to which the state is entitled for serving this population. Because these rules comply with requirements set forth in Title IV-E of the Social Security Act, the Division of Child Welfare anticipates that the majority of youth participating in the Foster Youth in Transition Program will be eligible for Federal IV-E financial participation.

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

No impact to other providers, local governments, or other agencies is anticipated.

4. Data Description

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

Colorado's foster care system, as it has traditionally existed, is leading to negative outcomes for many youth who have made the transition from foster care to adulthood. The National Youth in Transition Database Survey, a longitudinal study of youth involved with child welfare, has shown that at least 36% of former foster youth in Colorado have experienced homelessness, 21% have been incarcerated, and 29% become parents by age 21. National data shows it is likely the true rate of early parenthood is much higher. The Midwest Study of Adult Functioning of Former Foster Youth demonstrates that developmentally appropriate extended foster care is key to improving these outcomes. A growing body of evidence demonstrates that providing youth the opportunity to reenter a developmentally appropriate foster care system during that transition, if needed, also improves outcomes for these youth. HB 21-1094 was developed using this information, as well as feedback provided by youth advocates and runaway and homeless youth providers.

5. Alternatives to this Rule-making

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

There is no alternative because HB 21-1094 requires that rules be promulgated for implementation of the law.

Title of Proposed Rule: **Extended Foster Care & Re-Entry (12 CCR 2509-7)**
CDHS Tracking #: **21-07-22-01**

Office, Division, & Program: Rule Author: Trevor Williams
Phone: 303-866-4539
E-Mail: trevor.williams@state.co.us

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.601.7	Change to implement statute	Title IV-E of the Social Security Act provides federal matching funds to help pay for the cost of foster care for eligible children. It also pays for training and administrative costs associated with the delivery of services to Title IV-E eligible children.	Title IV-E of the Social Security Act provides federal matching funds to help pay for the cost of foster care for eligible children. It also pays for training and administrative costs associated with the delivery of services to Title IV-E eligible children/YOUTH.	This change implements HB 21-1094.	HB 21-1094 Task Group
7.601.7(A)(3)(c)	Change to implement statute	With respect to the court order/petition, the date that is used is the date of the court order or the date a petition is filed for custody of the child which eventually leads to a court ordered removal of the child from the home.	With respect to the court order/petition, the date that is used is the date of the court order or the date a petition is filed for custody/AUTHORITY FOR CARE AND PLACEMENT of the child/YOUTH which eventually leads to a court ordered removal of the child from the home.	This change implements HB 21-1094.	HB 21-1094 Task Group
7.601.7(B)(1)	Change to implement statute	B. Title IV-E Eligibility Criteria for a Child - Initial Determination 1. The child was removed from his/her parent(s) or other specified relative either by: a. A voluntary placement agreement entered into by the child's parent or legal guardian; or, b. Order of the court.	B. Title IV-E Eligibility Criteria for a Child/YOUTH - Initial Determination 1. The child was removed from his/her parent(s) or other specified relative either by: a. A voluntary placement agreement entered into by the child's parent or legal guardian; or, b. A VOLUNTARY SERVICES AGREEMENT ENTERED INTO BY A YOUTH WHO IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM AS DESCRIBED IN 12 CCR 2509-3; 7.203.4 ET SEQ. ~~b~~c. Order of the court.	Defines a voluntary services agreement for the purposes of the Foster Youth in Transition Program and is derived from the statutory definition.	HB 21-1094 Task Group
7.601.7(B)(4)	Change to implement statute	The county is granted legal custody of the child or the child is in out-of-home care under a voluntary placement agreement.	The county is granted legal custody/AUTHORITY FOR PLACEMENT AND CARE of the child/YOUTH or the child/YOUTH is in out-of-home care under a	This change implements HB 21-1094.	HB 21-1094 Task Group

			voluntary placement agreement/VOLUNTARY SERVICES AGREEMENT.		
7.601.7(B)(5)	Change to implement statute	The child must have lived with a parent or other specified relative from whom the child is removed through a voluntary placement agreement or court-ordered custody with the county department in the month, or within the six (6) months preceding the month, in which the voluntary placement agreement was signed or court proceedings were initiated to remove the child.	The child must have lived with a parent or other specified relative from whom the child is removed through a voluntary placement agreement or court-ordered custody with the county department in the month, or within the six (6) months preceding the month, in which the voluntary placement agreement was signed or court proceedings were initiated to remove the child OR THE CHILD HAS ENTERED INTO A VOLUNTARY SERVICES AGREEMENT PURSUANT TO 19-7-306, C.R.S.	This change implements HB 21-1094.	HB 21-1094 Task Group
7.601.7(C)	Change to implement statute	Title IV-E Eligibility Criteria of a Provider For the placement costs of a Title IV-E eligible child to be claimable through Title IV-E funding the provider must be a Title IV-E eligible provider. An out-of-home provider must be fully licensed or fully certified to be a Title IV-E eligible provider. Placement costs of Title IV-E eligible children placed with provisionally licensed or provisionally certified out-of-home care providers will not be claimable through Title IV-E foster care as they are not fully licensed or fully certified providers. Administrative costs for an otherwise Title IV-E eligible child who is placed in less than fully licensed or fully certified out-of-home care placements are not claimable through Title IV-E funding, except when the child is placed with a relative and the relative is pursuing full foster care certification. Administrative costs can be claimed for up to six months while the child	Title IV-E Eligibility Criteria of a Provider For the placement costs of a Title IV-E eligible child/YOUTH to be claimable through Title IV-E funding the provider must be a Title IV-E eligible provider. An out-of-home provider must be fully licensed or fully certified to be a Title IV-E eligible provider. Placement costs of Title IV-E eligible children/YOUTH placed with provisionally licensed or provisionally certified out-of-home care providers will not be claimable through Title IV-E foster care as they are not fully licensed or fully certified providers. Administrative costs for an otherwise Title IV-E eligible child who is placed in less than fully licensed or fully certified out-of-home care placements are not claimable through Title IV-E funding, except when the child/YOUTH is placed with a relative and the relative is pursuing full foster care certification. Administrative costs can be claimed for up to	This change implements HB 21-1094.	HB 21-1094 Task Group

		remains in placement with a provisionally certified relative provider. Administrative costs are not claimable through Title IV-E funding for children who are placed in facilities that are not Title IV-E eligible facilities, such as a detention placement, except for the calendar month in which a child moves from a facility that is not eligible for Title IV-E funding to a Title IV-E claimable out-of-home care facility.	six months while the child/YOUTH remains in placement with a provisionally certified relative provider. Administrative costs are not claimable through Title IV-E funding for children/YOUTH who are placed in facilities that are not Title IV-E eligible facilities, such as a detention placement, except for the calendar month in which a child moves from a facility that is not eligible for Title IV-E claimable out-of-home care facility. PLACEMENT COSTS OF TITLE IV-E ELIGIBLE YOUTH WHO ARE RESIDING IN A SUPERVISED INDEPENDENT LIVING PLACEMENT AS DESCRIBED IN 12 CCR 2509-04; 7.305.2(D) AND HAVE REACHED THE AGE OF 18.		
7.601.7(D)(1)	Change to implement statute	Living with a Relative - The child must have lived with a parent or other specified relative: a. During the month in which court proceedings to remove the child were initiated or a voluntary placement agreement was signed; or, b. Sometime within the six (6) months preceding the month in which court proceedings to remove the child were initiated or a voluntary placement agreement was signed.	Living with a Relative - The child/YOUTH must have lived with a parent or other specified relative: a. During the month in which court proceedings to remove the child/YOUTH were initiated or a voluntary placement agreement/VOLUNTARY SERVICES AGREEMENT was signed; or~~,~~ b. Sometime within the six (6) months preceding the month in which court proceedings to remove the child/YOUTH were initiated or a voluntary placement agreement/VOLUNTARY SERVICES AGREEMENT was signed.	This change implements HB 21-1094.	HB 21-1094 Task Group
7.601.7(D)(2)	Change to implement statute	Deprivation of Parental Support - The child must be deprived of parental support or care of	Deprivation of Parental Support - The child/YOUTH must be deprived of parental	This change implements HB 21-1094.	HB 21-1094 Task

		one or both parents by reason of: a. Death; b Incapacity - physical or mental; c. Continued absence from the home; or d. Unemployment - deprivation due to unemployment exists when: 1) Both of the child's natural or adoptive parents resided in the removal home in the month the voluntary placement agreement was signed or court proceedings were initiated to remove the child from the home; and, 2) The household income, after AFDC income tests are applied, is less than the need standard for the household.	support or care of one or both parents by reason of: a. Death; b Incapacity - physical or mental; c. Continued absence from the home; or d. Unemployment - deprivation due to unemployment exists when: 1) Both of the child's natural or adoptive parents resided in the removal home in the month the voluntary placement agreement was signed or court proceedings were initiated to remove the child from the home; and~~,~~ 2) The household income, after AFDC income tests are applied, is less than the need standard for the household. e. DEPRIVATION OF PARENTAL SUPPORT FINDINGS ARE NOT REQUIRED WHEN THE YOUTH IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM.		Group
7.601.7(D)(4)(a)(i)	New		THE YOUTH IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM AND MEET ELIGIBILITY CRITERIA DESCRIBED IN 12 CCR 2509-03 7.203.4.	This change implements HB 21-1094.	HB 21-1094 Task Group
7.601.7(D)(4)(b)	Technical fix	Citizenship - The child must be a United States citizen, naturalized citizen, or qualified alien to be eligible of Title IV-E. Refer to Section 3.140 of the Income Maintenance rules (9 CCR 2503-1).	Citizenship - The child must be a United States citizen, naturalized citizen, or qualified alien to be eligible ~~of~~FOR Title IV-E. Refer to Section 3.140 of the Income Maintenance rules (9 CCR 2503-1).	This change corrects an incorrect word.	
7.601.7(F)	New		F. ELIGIBILITY FACTOR – VOLUNTARY SERVICES AGREEMENT 1. A VOLUNTARY SERVICES	This change implements HB 21-1094.	HB 21-1094 Task Group

			AGREEMENT MUST BE COMPLETED AND SIGNED BY THE YOUTH AND THE COUNTY DEPARTMENT. 2. ELIGIBILITY FOR TITLE IV-E FOSTER CARE CAN BEGIN NO EARLIER THAN THE SIGNATURE DATE OF THE VOLUNTARY SERVICES AGREEMENT. 3. IF THE PLACEMENT OF THE YOUTH IS TO CONTINUE BEYOND NINETY (90) CALENDAR DAYS, THE COUNTY DEPARTMENT MUST FILE A PETITION FOR A FOSTER YOUTH IN TRANSITION CASE TO ENSURE JUDICIAL OVERSIGHT. 4. THERE MUST BE AN ORDER BY THE COURT WITHIN ONE HUNDRED EIGHTY (180) CALENDAR DAYS OF THE YOUTH'S PLACEMENT IN FOSTER CARE THAT "CONTINUED PLACEMENT IS IN THE BEST INTERESTS OF THE YOUTH", OR WORDS TO THAT EFFECT. IF SUCH AN ORDER IS NOT MADE BY THE COURT WITHIN THE ALLOWABLE ONE HUNDRED EIGHTY (180) CALENDAR DAYS, THE YOUTH IS NOT ELIGIBLE FOR TITLE IV-E FOSTER CARE REIMBURSEMENT FOR THE REMAINDER OF THE YOUTH'S PLACEMENT IN OUT-OF-HOME CARE.		
7.601.7(G)	Technical	F. Eligibility Factor - Relinquishment	~~F~~G. Eligibility Factor - Relinquishment	This is a technical fix for renumbering.	HB 21-1094 Task Group

7.601.7(H)	Technical	G. Minor Parent and Child in Mutual Care	~~G~~H. Minor Parent and Child in Mutual Care	This is a technical fix for renumbering.	HB 21-1094 Task Group
7.601.7(I)	Technical	H. Required Time Frames	~~H~~I. Required Time Frames	This is a technical fix for renumbering.	HB 21-1094 Task Group
7.601.7(J)	Change to implement statute	I. Referral to Child Support Enforcement The county department shall refer every child determined eligible for Title IV-E foster care to the county department's Child Support Enforcement Unit for child support services, except when the: 1. Child is in continuous placement for less than thirty-one (31) days. 2. Child's absent parent is unknown. 3. Best interests of the child would not be served, such as when parental rights have been terminated or the Family Services Plan documents that family contact is inappropriate. 4. Child's deprivation status under Title IV-E eligibility is “Unemployment”.	~~I~~J. Referral to Child Support Enforcement The county department shall refer every child determined eligible for Title IV-E foster care to the county department's Child Support Enforcement Unit for child support services, except when the: 1. Child is in continuous placement for less than thirty-one (31) days. 2. Child's absent parent is unknown. 3. Best interests of the child would not be served, such as when parental rights have been terminated or the Family Services Plan documents that family contact is inappropriate. 4. Child's deprivation status under Title IV-E eligibility is “Unemployment”. 5. YOUTH IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM.	This change implements HB 21-1094.	HB 21-1094 Task Group
7.601.7(K)	Change to implement statute	J. Redetermination of Title IV-E Eligibility Requirements 1. A court order must remain in effect which grants legal custody of the child to the county department or a petition to review the need for placement was filed and the	~~J~~K. Redetermination of Title IV-E Eligibility Requirements 1. A court order must remain in effect which grants legal custody of the child to the county department or a petition to review the need for placement was filed and the	This change implements HB 21-1094.	HB 21-1094 Task Group

		court has ordered legal authority for continued placement within one hundred eighty (180) calendar days of the date a child entered out-of-home care by voluntary placement agreement. 2. Effective March 27, 2001, there must be an order of the court finding that the county department has made reasonable efforts to finalize a permanency plan. This finding must be made within twelve (12) months of the date the child enters foster care, and every twelve (12) months thereafter while the child remains in out-of-home care. If twelve (12) months elapse without this judicial determination, eligibility for Title IV-E foster care temporarily ends. Title IV-E eligibility can resume the 1st day of the month in which the finding is made.	court has ordered legal authority for continued placement within one hundred eighty (180) calendar days of the date a child entered out-of-home care by voluntary placement agreement. 2. Effective March 27, 2001, there must be an order of the court finding that the county department has made reasonable efforts to finalize a permanency plan. This finding must be made within twelve (12) months of the date the child enters foster care, and every twelve (12) months thereafter while the child remains in out-of-home care. If twelve (12) months elapse without this judicial determination, eligibility for Title IV-E foster care temporarily ends. Title IV-E eligibility can resume the 1st day of the month in which the finding is made. 3. REDETERMINATIONS OF AFDC REQUIREMENTS IS NOT REQUIRED FOR YOUTH PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM.		
7.601.7(L)	Technical	K. Redetermination of Provider Eligibility	~~K~~L. Redetermination of Provider Eligibility	This is a technical fix for renumbering.	HB 21-1094 Task Group
7.601.7(M)	Technical	L. Reasonable Candidates	~~L~~M. Reasonable Candidates	This is a technical fix for renumbering.	HB 21-1094 Task Group

Title of Proposed Rule:	**Extended Foster Care & Re-Entry (12 CCR 2509-7)**	
CDHS Tracking #:	**21-07-22-01**	
Office, Division, & Program:	Rule Author: Trevor Williams	Phone: 303-866-4539 E-Mail: trevor.williams@state.co.us

STAKEHOLDER COMMENT SUMMARY

Development

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

The rules were developed through a Child Welfare SubPAC approved task group and included representation from urban and rural counties across the state, runaway and homeless youth providers, the Office of the Child's Representative, foster care providers, child placement agencies, and a youth advocacy group.

This Rule-Making Package

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

County departments of human/social services, Office of the Childs Representative, Colorado Network to End Youth Homelessness, Rural Collaborative for Homeless Youth, Project Foster Power.

Other State Agencies

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

[ ] Yes [X] No

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

Sub-PAC

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

[X] Yes [ ] No

Name of Sub-PAC	Child Welfare		
Date presented	10/7/2021		
What issues were raised?	No substantive issues were raised, one small change was made to add the word 'youth'.		
Vote Count	*For*	*Against*	*Abstain*
	Unanimous		
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [ ] No

Date presented			
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

Title of Proposed Rule:	**Extended Foster Care & Re-Entry (12 CCR 2509-7)**	
CDHS Tracking #:	**21-07-22-01**	
Office, Division, & Program:	Rule Author: Trevor Williams	Phone: 303-866-4539 E-Mail: trevor.williams@state.co.us

☐ Yes ☒ No

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

(12 CCR 2509-1)

<Title2>**7.601.71 Title IV-E Foster Care [Eff. 1/1/15]**

Title IV-E of the Social Security Act provides federal matching funds to help pay for the cost of foster care for eligible children. It also pays for training and administrative costs associated with the delivery of services to Title IV-E eligible children/YOUTH.

A. Eligibility Verification and Documentation

1. Verification of the child's citizenship or alien status is required. Other information received by the county department to support a Title IV-E eligibility determination does not require verification unless it conflicts with other information in the possession of the department. If such a conflict occurs, the county department shall use verification procedures provided in the rules for the Colorado Works Program to resolve the conflict (Section 3.140, et seq.; 9 CCR 2503-1).

2. The county department shall document each of the eligibility factors on the state prescribed form. The county must ensure that a copy of the signed voluntary placement agreement or court order and any required verification are present in the case file.

3. The county department shall use the following eligibility effective dates in the state automated case management system:

a. The eligibility effective date of the child for Title IV-E shall be the first day of the month in which all eligibility criteria for the child are met, but can be no earlier than the first day of placement.

b. The date of eligibility of the placement for reimbursements through Title IV-E is the first day of the month in which all the Title IV-E provider eligibility criteria are met.

c. With respect to the court order/petition, the date that is used is the date of the court order or the date a petition is filed for custody/AUTHORITY FOR CARE AND PLACEMENT of the child/YOUTH which eventually leads to a court ordered removal of the child from the home.

B. Title IV-E Eligibility Criteria for a Child/YOUTH - Initial Determination

1. The child was removed from his/her parent(s) or other specified relative either by:

a. A voluntary placement agreement entered into by the child's parent or legal guardian; or~~,~~

b. A VOLUNTARY SERVICES AGREEMENT ENTERED INTO BY A YOUTH WHO IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM AS DESCRIBED IN 12 CCR 2509-3; 7.203.4 ET SEQ.

~~b~~c. Order of the court.

2. The first court ruling sanctioning the removal of the child from the home must contain findings to the effect that:

a. Continuation in the home would be contrary to the welfare of the child; or,

b. Out-of-home placement is in the best interests of the child.

If this “best interests” determination is not recorded in the first written court order, signed by a judge or magistrate, pertaining to the removal of the child from the home, a transcript of the findings and orders from the court proceeding is the only other documentation that can be accepted to verify that the required judicial determination was made. Neither affidavits nor subsequent “nunc pro tunc” orders are acceptable verification for meeting the “best interests” requirement.

3. There must be an order of the court within sixty (60) calendar days after the date the child is placed in out-of-home care with a finding to the effect that:

   a. Reasonable efforts were made to prevent the removal of the child from the home; or

   b. An emergency situation exists such that the lack of preventative services was reasonable; or,

   c. Reasonable efforts to prevent the removal of the child from the home were not required. (See Section 7.304.53, B, 3, for circumstances in which the court may determine, that reasonable efforts to prevent removal are not required).

   If a “reasonable efforts to prevent the removal” determination was made by the court as required, but was not recorded in the original written court order signed by the judge or magistrate pertaining to that judicial determination, a transcript of the findings and orders from the court proceeding is the only other documentation that can be accepted to verify that the required determination was made. Neither affidavits nor subsequent “nunc pro tunc” orders are acceptable verification for meeting this “reasonable efforts” requirement.

4. The county is granted legal custody/AUTHORITY FOR PLACEMENT AND CARE of the child/YOUTH or the child/YOUTH is in out-of-home care under a voluntary placement agreement/VOLUNTARY SERVICES AGREEMENT.

5. The child must have lived with a parent or other specified relative from whom the child is removed through a voluntary placement agreement or court-ordered custody with the county department in the month, or within the six (6) months preceding the month, in which the voluntary placement agreement was signed or court proceedings were initiated to remove the child OR THE CHILD HAS ENTERED INTO A VOLUNTARY SERVICES AGREEMENT PURSUANT TO 19-7-306, C.R.S.

6. A child removed through a “constructive removal” shall be determined Title IV-E eligible if all other applicable criteria for Title IV-E eligibility are met.

   A constructive removal occurs when all of the following apply:

   a. The child resides with a non-parent caretaker who is not the legal custodian or guardian of the child;

   b. The child is court ordered into the custody of the county department or placed through a voluntary placement agreement; and

   c. The child remains in the home of the caretaker who serves as the out-of-home care provider to the child after the county is awarded custody or obtains the agreement for voluntary placement.

7. To be eligible for Title IV-E, the child must be determined eligible for Aid to Families with Dependent Children (AFDC) in accordance with the July 16, 1996, regulations (and exceptions as allowed).

C. Title IV-E Eligibility Criteria of a Provider

For the placement costs of a Title IV-E eligible child/YOUTH to be claimable through Title IV-E funding the provider must be a Title IV-E eligible provider. An out-of-home provider must be fully licensed or fully certified to be a Title IV-E eligible provider.

Placement costs of Title IV-E eligible children/YOUTH placed with provisionally licensed or provisionally certified out-of-home care providers will not be claimable through Title IV-E foster care as they are not fully licensed or fully certified providers.

Administrative costs for an otherwise Title IV-E eligible child who is placed in less than fully licensed or fully certified out-of-home care placements are not claimable through Title IV-E funding, except when the child/YOUTH is placed with a relative and the relative is pursuing full foster care certification. Administrative costs can be claimed for up to six months while the child/YOUTH remains in placement with a provisionally certified relative provider.

Administrative costs are not claimable through Title IV-E funding for children/YOUTH who are placed in facilities that are not Title IV-E eligible facilities, such as a detention placement, except for the calendar month in which a child moves from a facility that is not eligible for Title IV-E funding to a Title IV-E claimable out-of-home care facility.

PLACEMENT COSTS OF TITLE IV-E ELIGIBLE YOUTH WHO ARE RESIDING IN A SUPERVISED INDEPENDENT LIVING PLACEMENT AS DESCRIBED IN 12 CCR 2509-04; 7.305.2(D) AND HAVE REACHED THE AGE OF 18.

D. AFDC Eligibility Tests

Title IV-E requires that eligibility for Aid to Families with Dependent Children (AFDC) must be determined in accordance with the regulations as in effect on July 16, 1996, and exceptions as allowed. See AFDC rules from July 16, 1996. The AFDC eligibility month is the month court proceedings leading to the removal were initiated or the month in which a voluntary placement agreement was signed.

1. Living with a Relative - The child/YOUTH must have lived with a parent or other specified relative:

    a. During the month in which court proceedings to remove the child/YOUTH were initiated or a voluntary placement agreement/VOLUNTARY SERVICES AGREEMENT was signed; or~~,~~

    b. Sometime within the six (6) months preceding the month in which court proceedings to remove the child/YOUTH were initiated or a voluntary placement agreement/VOLUNTARY SERVICES AGREEMENT was signed.

2. Deprivation of Parental Support - The child/YOUTH must be deprived of parental support or care of one or both parents by reason of:

    a. Death;

    b Incapacity - physical or mental;

    c. Continued absence from the home; or

    d. Unemployment - deprivation due to unemployment exists when:

        1) Both of the child's natural or adoptive parents resided in the removal home in the month the voluntary placement agreement was signed or court proceedings were initiated to remove the child from the home; and~~,~~

2) The household income, after AFDC income tests are applied, is less than the need standard for the household.

e. DEPRIVATION OF PARENTAL SUPPORT FINDINGS ARE NOT REQUIRED WHEN THE YOUTH IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM.

3. Determination of Need

The income and resources of the household members of the removal home must be within the allowable standards for an AFDC assistance unit. Refer to the AFDC rules from July 16, 1996, to determine which members of the household are considered in the determination of income and resources.

a. Resources - The family must have less than $10,000 in countable resources.

b. Income Test - The household income after AFDC income tests are applied must be less than the need standard for the household.

4. Additional AFDC Eligibility Factors

a. Age - The child must be under eighteen (18) years, or if over eighteen (18) but not yet nineteen (19) years of age, must be a fulltime student in a secondary school or in the equivalent level of vocational or technical training and expected to complete the program before age 19. Such children are eligible for Title IV-E though the month of completion of the educational program.

(i) THE YOUTH IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM AND MEET ELIGIBILITY CRITERIA DESCRIBED IN 12 CCR 2509-03 7.203.4.

b. Citizenship - The child must be a United States citizen, naturalized citizen, or qualified alien to be eligible ~~of~~FOR Title IV-E. Refer to Section 3.140 of the Income Maintenance rules (9 CCR 2503-1).

c. Residency - The child must be a resident of Colorado. If the child's residency is from another state, that state is responsible for determining Title IV-E eligibility of the child.

E. Eligibility Factor - Voluntary Placement Agreement

1. A voluntary placement agreement must be completed and signed by the parent(s) or legal guardian and the county department.

2. Eligibility for Title IV-E foster care can begin no earlier than the signature date of the voluntary placement agreement.

3. Voluntary placement agreements are limited to ninety (90) calendar days. If placement of the child is to continue beyond ninety (90) calendar days, the county department must obtain a petition to review the need for placement that leads to a court order granting the county department legal custody.

4. There must be an order by the court within one hundred eighty (180) calendar days of the child's placement in foster care that “continued placement is in the best interests of the child”, or words to that effect. If such an order is not made by the court within the allowable one hundred eighty (180) calendar days, the child is not eligible for Title IV-E foster care reimbursement for the remainder of the child's placement in out-of-home care.

F. ELIGIBILITY FACTOR – VOLUNTARY SERVICES AGREEMENT

1. A VOLUNTARY SERVICES AGREEMENT MUST BE COMPLETED AND SIGNED BY THE YOUTH AND THE COUNTY DEPARTMENT.

2. ELIGIBILITY FOR TITLE IV-E FOSTER CARE CAN BEGIN NO EARLIER THAN THE SIGNATURE DATE OF THE VOLUNTARY SERVICES AGREEMENT.

3. IF THE PLACEMENT OF THE YOUTH IS TO CONTINUE BEYOND NINETY (90) CALENDAR DAYS, THE COUNTY DEPARTMENT MUST FILE A PETITION FOR A FOSTER YOUTH IN TRANSITION CASE TO ENSURE JUDICIAL OVERSIGHT.

4. THERE MUST BE AN ORDER BY THE COURT WITHIN ONE HUNDRED EIGHTY (180) CALENDAR DAYS OF THE YOUTH'S PLACEMENT IN FOSTER CARE THAT “CONTINUED PLACEMENT IS IN THE BEST INTERESTS OF THE YOUTH”, OR WORDS TO THAT EFFECT. IF SUCH AN ORDER IS NOT MADE BY THE COURT WITHIN THE ALLOWABLE ONE HUNDRED EIGHTY (180) CALENDAR DAYS, THE YOUTH IS NOT ELIGIBLE FOR TITLE IV-E FOSTER CARE REIMBURSEMENT FOR THE REMAINDER OF THE YOUTH'S PLACEMENT IN OUT-OF-HOME CARE.

~~F~~G. Eligibility Factor - Relinquishment

If a child is relinquished to the county department, the county shall petition the court to judicially remove the child even though the parent relinquished the child to the agency. Children relinquished to the county department can be Title IV-E eligible when:

1. The child had last been living with the parent within six (6) months of the date court proceedings were initiated.

2. The court order contains the findings shown at Section 7.601.81, B, 2.

3. The child meets other eligibility factors.

~~G~~H. Minor Parent and Child in Mutual Care

A child residing in mutual out-of-home care with his/her adult parent is not considered removed from the parent because the child continues to reside with the parent in the same residence; therefore, the child is not IV-E eligible.

When the parent is a minor and the minor parent has been determined eligible for Title IV-E foster care, the child's placement costs are reimbursable through Title IV-E foster funding as an extension of the minor parent's cost of care.

~~H~~I. Required Time Frames

1. The county department is responsible for determining the eligibility of every child entering out-of-home foster care within forty-five (45) calendar days of the placement date unless good faith efforts have been made and recorded in the child's record.

2. Counties shall redetermine eligibility using the state prescribed form every twelve (12) months from the date the child enters foster care.

~~I~~J. Referral to Child Support Enforcement

The county department shall refer every child determined eligible for Title IV-E foster care to the county department's Child Support Enforcement Unit for child support services, except when the:

1. Child is in continuous placement for less than thirty-one (31) days.

2. Child's absent parent is unknown.

3. Best interests of the child would not be served, such as when parental rights have been terminated or the Family Services Plan documents that family contact is inappropriate.

4. Child's deprivation status under Title IV-E eligibility is “Unemployment”.

5. YOUTH IS PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM.

~~J~~K. Redetermination of Title IV-E Eligibility Requirements

1. A court order must remain in effect which grants legal custody of the child to the county department or a petition to review the need for placement was filed and the court has ordered legal authority for continued placement within one hundred eighty (180) calendar days of the date a child entered out-of-home care by voluntary placement agreement.

2. Effective March 27, 2001, there must be an order of the court finding that the county department has made reasonable efforts to finalize a permanency plan. This finding must be made within twelve (12) months of the date the child enters foster care, and every twelve (12) months thereafter while the child remains in out-of-home care. If twelve (12) months elapse without this judicial determination, eligibility for Title IV-E foster care temporarily ends. Title IV-E eligibility can resume the 1st day of the month in which the finding is made.

3. REDETERMINATIONS OF AFDC REQUIREMENTS IS NOT REQUIRED FOR YOUTH PARTICIPATING IN THE FOSTER YOUTH IN TRANSITION PROGRAM.

~~K~~L. Redetermination of Provider Eligibility

An out-of-home care provider must be licensed or certified to be a Title IV-E eligible placement. Placement costs for a Title IV-E eligible child are only Title IV-E claimable when a child is placed with a Title IV-E eligible provider.

Effective September 1, 2000, provisionally licensed or provisionally certified out-of-home care providers will not be claimable placements through Title IV-E foster care as they are not fully licensed or fully certified.

~~L~~M. Reasonable Candidates

Reasonable candidates for foster care, for the purposes of Title IV-E program, are children determined to be at risk of imminent placement out of the home as defined in Section 19-1-103(64), C.R.S. Administrative costs may be claimed for children who are determined to be at imminent risk of removal from the home through a voluntary placement agreement or court-ordered custody with the county department. A determination must be made as to whether the child is at imminent risk of removal from the home no less frequently than every six (6) months. Reasonable efforts shall be made to prevent the removal of the child from the home until such time that pursuing removal of the child from the home becomes necessary.

****

Notice of Proposed Rulemaking

Tracking number

2021-00777

Department

500,1008,2500 - Department of Human Services

Agency

2518 - Adult Protective Services

CCR number

12 CCR 2518-1

Rule title

ADULT PROTECTIVE SERVICES

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's response to COVID-19. Anticipated to be held entirely online

Subjects and issues involved

Individuals found to be responsible for the mistreatment of an at-risk adult have a right to a State level appeal to contest the substantiated finding. HB21-1132 requires the Colorado Department of Human Services (CDHS) to share appeal information, to include appeal outcome, with the Colorado Department of Regulatory Agencies (DORA) for the purposes of a regulatory investigation. The rule change is necessary to accommodate the statutory requirements outlined in HB21-1132.
NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Please check here for any updates on location/connection: https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107, C.R.S.; 26-1-109, C.R.S.; 26-1-111, C.R.S.; 26-3.1-111(5); 26-3.1-111(5)(h)

Contact information

Name

Sheanette Odell

Title

Program Manager

Telephone

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Email

sheanette.odell@state.co.us

Title of Proposed Rule:	**30.920 State Level Appeals Process**	
CDHS Tracking #:	**21-05-07-01**	
Office, Division, & Program: OAS/ARD/CAMDRS	Rule Author: Sheannette Worden-O'Dell	Phone: 303.866.7035
DRAFT 5.28.21		E-Mail: sheannette.odell@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review [X] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
	Amended Rules
3	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	October 2021

What date is being requested for this rule to be effective?	January 1, 2022
Is this date legislatively required?	Yes

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board October 8, 2021 2nd Board November 5, 2021 Effective Date January 1, 2022

Title of Proposed Rule:	**30.920 State Level Appeals Process**	
CDHS Tracking #:	**21-05-07-01**	
Office, Division, & Program: OAS/ARD/CAMDRS	Rule Author: Sheannette Worden-O'Dell	Phone: 303.866.7035
DRAFT 5.28.21		E-Mail: sheannette.odell@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

Individuals found to be responsible for the mistreatment of an at-risk adult have a right to a State level appeal to contest the substantiated finding. HB21-1132 requires the Colorado Department of Human Services (CDHS) to share appeal information, to include appeal outcome, with the Colorado Department of Regulatory Agencies (DORA) for the purposes of a regulatory investigation. The rule change is necessary to accommodate the statutory requirements outlined in HB21-1132.

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

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

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

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

Code	Description
26-3.1-111(5) 26-3.1-111(5)(h)	26-3.1-111(5)The state department shall promulgate rules for the implementation of this section, which rules must include the following: 26-3.1-111(5)(h)THE INFORMATION THAT WILL BE MADE AVAILABLE TO A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR, AS DEFINED IN SECTION 12-20-102 (14), WITHIN SUCH A HEALTH OVERSIGHT AGENCY, FOR THE PURPOSE OF CONDUCTING A REGULATORY INVESTIGATION PURSUANT TO SECTION 12-20-401.

Does the rule incorporate material by reference? ☐ Yes ☒ No

Title of Proposed Rule:	**30.920 State Level Appeals Process**	
CDHS Tracking #:	**21-05-07-01**	
Office, Division, & Program:	Rule Author: Sheannette Worden-O'Dell	Phone: 303.866.7035
OAS/ARD/CAMDRS		E-Mail:
DRAFT 5.28.21		sheannette.odell@state.co.us

Does this rule repeat language found in statute? [X] Yes [ ] No

If yes, please explain. DORA may request appeal information for a specific population of licensed individuals. Language from statute was used in rule to outline these details.

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OAS/ARD/CAMDRS		E-Mail:
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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

This rule will impact the CDHS and DORA.

2. Describe the qualitative and quantitative impact.

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

HB21-1123 requires the CDHS to create rules to share information with DORA when requested for a regulatory investigation. DORA may request appeal information, to include the appeal outcome, for individuals who are licensed by DORA and have been found responsible for the mistreatment of an at-risk adult. This information may inform decisions made during the regulatory investigation conducted by DORA.

3. Fiscal Impact

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

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

It is anticipated that there will be a minimal fiscal impact, which can be absorbed, to CDHS and DORA.

County Fiscal Impact

There is no fiscal impact at the county level. This rule change is specific to a new information sharing process between CDHS and DORA. The fiscal impact is at the state level.

Federal Fiscal Impact

There is no fiscal impact at the federal level. This rule change is specific to a new information sharing process between CDHS and DORA and there is no federal funding related to this function.

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

No other fiscal impact. This rule change is specific to a new information sharing process between CDHS and DORA.

4. Data Description

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

N/A

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5. Alternatives to this Rule-making

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

No alternatives were considered by CDHS as the rule-making was statutorily required by HB21-1123.

Title of Proposed Rule:	**30.920 State Level Appeals Process**	
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OAS/ARD/CAMDRS		E-Mail:
DRAFT 5.28.21		sheannette.odell@state.co.us

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
30.920	HB21-1123 requires the Department to promulgate rules for the Department to share appeal information, including appeal outcome, with DORA for the purposes of a regulatory investigation.		30.920(O). PURSUANT TO SECTION 26-3.1-108(H), C.R.S., DORA MAY REQUEST APPEAL INFORMATION FROM THE STATE DEPARTMENT FOR THE PURPOSES OF A REGULATORY INVESTIGATION WHEN THE INVESTIGATION INVOLVES AN INDIVIDUAL WHO HOLDS A HEALTH-CARE PROVIDER OR HEALTH-CARE OCCUPATION LICENSE WHO HAS BEEN FOUND RESPONSIBLE FOR THE MISTREATMENT OF AN AT-RISK ADULT WHILE IN THE PROVISION OF THEIR PROFESSIONAL DUTIES AND HAS AN APPEAL THROUGH THE STATE DEPARTMENT. WHEN MAKING THE REQUEST TO THE STATE DEPARTMENT, DORA MUST INCLUDE THE INFORMATION PROVIDED TO DORA THROUGH THE NOTIFICATION PROCESS OUTLINED IN 30.520(E)(2).	To implement with HB21-1123	No
30.920	Addition of the information that will be shared by the Department with DORA.		30.920(P) AFTER THE STATE DEPARTMENT RECEIVES THE REQUEST FROM DORA, THE STATE DEPARTMENT WILL PROVIDE DORA WITH THE APPEAL SUMMARY FOR THE PURPOSES OF THE REGULATORY INVESTIGATION.	To implement with HB21-1123	No
30.920	Addition of confidentiality related to sharing appeal information with DORA.		30.920(Q) APPEAL INFORMATION PROVIDED TO DORA IS CONFIDENTIAL, NOT SUBJECT TO PART 2 OF ARTICLE 72 OF TITLE 24, AND MUST BE USED FOR PURPOSES OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT TO SECTION 12-20-401.	To implement with HB21-1123	No

Title of Proposed Rule:	**30.920 State Level Appeals Process**	
CDHS Tracking #:	**21-05-07-01**	
Office, Division, & Program:	Rule Author: Sheannette Worden-O'Dell	Phone: 303.866.7035
OAS/ARD/CAMDRS		E-Mail:
DRAFT 5.28.21		sheannette.odell@state.co.us

Title of Proposed Rule:	**30.920 State Level Appeals Process**	
CDHS Tracking #:	**21-05-07-01**	
Office, Division, & Program:	Rule Author: Sheannette Worden-O'Dell	Phone: 303.866.7035
OAS/ARD/CAMDRS		E-Mail:
DRAFT 5.28.21		sheannette.odell@state.co.us

STAKEHOLDER COMMENT SUMMARY

Development

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

- Adult Protective Services (APS) Task Group
- Public Stakeholder Sessions
- Administrative Review Division (ARD) Steering Committee
- Policy Advisory Committee (PAC)
- Aging and Adult Sub-PAC
- DORA

This Rule-Making Package

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

- Adult Protective Services (APS) Task Group
- Public Stakeholder Sessions
- Administrative Review Division (ARD) Steering Committee
- Policy Advisory Committee (PAC)
- Aging and Adult Sub-PAC
- DORA

Other State Agencies

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

[X] Yes [ ] No

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

DORA has been contacted.

Sub-PAC

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

[X] Yes [ ] No

Name of Sub-PAC	Aging and Adult		
Date presented	August 5, 2021		
What issues were raised?	None		
Vote Count	*For*	*Against*	*Abstain*
	14	0	0
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[X] Yes [ ] No

Title of Proposed Rule:	**30.920 State Level Appeals Process**	
CDHS Tracking #:	**21-05-07-01**	
Office, Division, & Program: OAS/ARD/CAMDRS DRAFT 5.28.21	Rule Author: Sheannette Worden-O'Dell	Phone: 303.866.7035 E-Mail: sheannette.odell@state.co.us

Date presented	September 2, 2021		
What issues were raised?	None		
Vote Count	*For*	*Against*	*Abstain*
	Unanimous		
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

☐ Yes ☒ No

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

DEPARTMENT OF HUMAN SERVICES
Adult Protective Services
ADULT PROTECTIVE SERVICES
12 CCR 2518-1

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

30.920 STATE LEVEL APPEALS PROCESS

A. Substantiated perpetrator(s) of mistreatment shall have the right to a State level appeal to contest the substantiated finding. The request for appeal of the decision shall first be submitted to the State Department unit designated to handle such appeals. If the State Department and the appellant are unable or unwilling to resolve the appeal in accordance with the provisions set forth below in this section, the State Department shall forward the appeal to the Office of Administrative Courts (OAC) to proceed to a fair hearing before an Administrative Law Judge (ALJ).

B. The grounds for appeal shall consist of the following:
1. The substantiated finding(s) are not supported by a preponderance of credible evidence; or,
2. The actions ultimately found to be substantiated as mistreatment do not meet the statutory or regulatory definition of mistreatment.

C. The substantiated perpetrator(s) of mistreatment shall have ninety (90) calendar days from the date of notice of substantiation of mistreatment to appeal the finding in writing to the State Department. The written appeal shall be submitted via the State approved online form or using the hard copy appeal form provided to the substantiated perpetrator by the county department and shall include:

1. The contact information for the appellant;

2. A statement detailing the basis for the appeal; and,

3. Notice of finding of responsibility for mistreatment of an at-risk adult sent to the appellant by the county department.

D. The State level appeal process must be initiated by the substantiated perpetrator(s) of mistreatment or his/her attorney. The appellant does not need to hire an attorney to file an appeal. If the substantiated perpetrator(s) is a minor child, the appeal may be initiated by his/her parents, legal custodian, or attorney.

E. The appeal must be submitted to the State Department within ninety (90) calendar days of the date of the notice of the substantiated finding. If the appeal is filed more than ninety (90) calendar days from the date of notice of the substantiated finding, the appellant must show good cause for not appealing within the prescribed time period as set forth in Section 30.920.c. A failure to request State review within the ninety-day (90) period without good cause shall be grounds for the State Department to not accept the appeal.

F. The substantiated finding shall continue to be used for safety and risk assessment, employment and background screening by the State Department while the administrative appeal process is pending.

G. The appellant shall have the right to appeal, even if a court action or criminal prosecution is pending as a result of the mistreatment. The State Department shall hold in abeyance the administrative appeal process pending the outcome of the court action or criminal prosecution if requested by the appellant, or if the State Department determines that awaiting the outcome of the court case is in the best interest of the parties. If the appellant objects to the continuance, the continuance shall remain in place, but the continuance of the appeal shall not exceed one hundred eighty (180) calendar days without the appellant having the opportunity to seek a review of the continuance by an administrative law judge. The pendency of other court proceedings shall be considered good cause to extend the continuance of the appeal past the one hundred eighty (180) day timeframe.

H. The following circumstances shall be considered to be admissions to the factual basis of the substantiated finding(s) of the responsibility for the mistreatment of an at-risk adult in CAPS and shall be considered conclusive evidence of the factual basis of the individual's responsibility for the mistreatment to support a motion for summary judgment submitted to the Office of Administrative Courts:

1. The appellant has been found guilty of a crime against an at-risk adult pursuant to Section 18-6.5-103, C.R.S. arising out of the same factual basis as the substantiated finding in CAPS.

2. The appellant has been found guilty or has pled guilty or nolo contendere as part of any plea agreement including, but not limited to, a deferred judgement agreement to a crime against an at-risk adult pursuant to Section 18-6.5-103, C.R.S. arising out of the same factual basis as the substantiated finding in CAPS.

3. The appellant has been found guilty or has pled guilty or nolo contendere as part of any plea agreement including, but not limited to, a deferred judgment agreement, in a case in which a crime against an at-risk adult was charged pursuant to Section 18-6.5-103, C.R.S., arising out of the same factual basis as the substantiated finding in CAPS. The offense to which the appellant pled guilty must be related to the same factual basis as the substantiated finding in CAPS.

I. After the appellant requests an appeal, the State Department shall inform the appellant of the details regarding the appeal process, including timeframes for the appeals process and contact information for the State Department.

1. The appellant, as the party in interest, shall have access to the investigative record relied upon by the county department to make the finding in order to proceed with the appeal. The appellant's use of the investigative record for any other purpose is prohibited unless otherwise authorized by law.

2. Prior to providing access to the appellant, the State Department shall redact identifying information contained in the investigative record and documents to ensure compliance with all state and federal confidentiality laws and rules regarding adult mistreatment records or other

protected information, including but not limited to: reporting party name(s) and address(es), Social Security Number or alien registration number and information pertaining to other parties in the case that the appellant does not have a legal right to access.

J. The State Department is authorized to enter into settlement negotiations with the appellant as part of the litigation process. The State Department is authorized to enter into settlement agreements that modify, overturn or expunge the reports and/or findings as reflected in the State portion of CAPS. The State Department is not authorized to make any changes in the county portion of CAPS. In exercising its discretion, the State Department shall take into consideration the best interests of the at-risk adults, the weight of the evidence, the severity of the mistreatment, any patterns of mistreatment reflected in the record, the results of any court processes, the rehabilitation of the appellant and any other pertinent information.

K. The county department's findings shall not be changed to reflect the State Department's response to the appeal. The State Department shall document all decisions and the outcome of the appeal in CAPS.

L. The State Department and the appellant shall have one hundred twenty (120) calendar days from the date the State Department receives the appeal to resolve the issue(s) on the appeal. The one hundred twenty (120) day time frame may be extended by agreement of both the appellant and the State Department if it is likely that the additional time will result in a fully executed settlement agreement or resolution of the appeal.

M. As soon as it is evident within the one hundred twenty (120) days that the appellant and State Department will not resolve the issue(s) on appeal, the State Department shall forward a copy of the appellants original appeal document(s) to the Office of Administrative Courts to initiate the Office of Administrative Courts fair hearing process.

N. If, by the end of the one hundred twenty (120) day period, the State Department has been unable to contact the appellant using the information submitted by the appellant, including by first class mail, and the appellant has not contacted the State Department, the appeal shall be deemed abandoned. The substantiated finding entered into CAPS by the county department shall be upheld in CAPS without further right of appeal. The State Department shall notify the appellant of this result by first class mail to the address provided by the appellant.

O. PURSUANT TO SECTION 26-3.1-108(H), C.R.S., DORA MAY REQUEST APPEAL INFORMATION FROM THE STATE DEPARTMENT FOR THE PURPOSES OF A REGULATORY INVESTIGATION WHEN THE INVESTIGATION INVOLVES AN INDIVIDUAL WHO HOLDS A HEALTH-CARE PROVIDER OR HEALTH-CARE OCCUPATION LICENSE WHO HAS BEEN FOUND RESPONSIBLE FOR THE MISTREATMENT OF AN AT-RISK ADULT WHILE IN THE PROVISION OF THEIR PROFESSIONAL DUTIES AND HAS AN APPEAL THROUGH THE STATE DEPARTMENT. WHEN MAKING THE REQUEST TO THE STATE DEPARTMENT, DORA MUST INCLUDE THE INFORMATION PROVIDED TO DORA THROUGH THE NOTIFICATION PROCESS OUTLINED IN 30.520(E)(2).

P. AFTER THE STATE DEPARTMENT RECEIVES THE REQUEST FROM DORA, THE STATE DEPARTMENT WILL PROVIDE DORA WITH THE APPEAL SUMMARY FOR THE PURPOSES OF THE REGULATORY INVESTIGATION.

Q. APPEAL INFORMATION PROVIDED TO DORA IS CONFIDENTIAL, NOT SUBJECT TO PART 2 OF ARTICLE 72 OF TITLE 24, AND MUST BE USED FOR PURPOSES OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT TO SECTION 12-20-401.

Notice of Proposed Rulemaking

Tracking number

2021-00782

Department

500,1008,2500 - Department of Human Services

Agency

2518 - Adult Protective Services

CCR number

12 CCR 2518-1

Rule title

ADULT PROTECTIVE SERVICES

Rulemaking Hearing

Date

01/07/2022

Time

08:30 AM

Location

Location Pending State's response to COVID-19. Anticipated to be held entirely online

Subjects and issues involved

The proposed rules are required to implement HB21-1123, which makes changes to the Adult Protective Services statute (Title 26, Article 3.1). The changes will be effective January 1, 2022.
NOTE: Due to the ongoing COVID-19 situation, it is anticipated that this meeting will take place entirely online. Check here for any updates on location/connection:
https://cdhs.colorado.gov/sbhs

Statutory authority

26-1-107(5)(b), C.R.S.; 26-3.1-108(1), C.R.S.

Contact information

Name

Stefanie Woodard

Title

Program Manager

Telephone

303.552.4788

Email

stefanie.woodard@state.co.us

Title of Proposed Rule: **Expansion of CAPS Checks to DORA and the Courts**

CDHS Tracking #: **21-04-23-01**

Office, Division, & Program: OAADS/AAS/APS

Rule Author: Peggy Rogers

Phone: 303.866.2829

E-Mail: peggy.rogers@state.co.us

DRAFT 8.5.21

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review

[X] Initial Board Reading

[ ] AG 2nd Review

[ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
4	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	October 2021

What date is being requested for this rule to be effective?	January 1, 2022
Is this date legislatively required?	Yes

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board _____ 2nd Board _____ Effective Date _____

Title of Proposed Rule:	**Expansion of CAPS Checks to DORA and the Courts**	
CDHS Tracking #:	**21-04-23-01**	
Office, Division, & Program: OAADS/AAS/APS	Rule Author: Peggy Rogers	Phone: 303.866.2829
DRAFT 8.5.21		E-Mail: peggy.rogers@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

The proposed rules are required to implement HB21-1123, which makes changes to the Adult Protective Services statute (Title 26, Article 3.1). The changes will be effective January 1, 2022.

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

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

Justification for emergency: N/A

State Board Authority for Rule:

Code	Description
26-1-107(5)(b), C.R.S. (2020)	State Board to promulgate rules for programs administered and services provided by the state department as set forth in titles 26 and 27 of the C.R.S. Adult Protective Services is governed by article 3.1 of Title 26.

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

Code	Description
26-3.1-108(1), C.R.S. (2020)	State Board to promulgate rules for title 25, article 3.1.

Does the rule incorporate material by reference? [ ] Yes [X] No
Does this rule repeat language found in statute? [X] Yes [ ] No

If yes, please explain. Confidentiality exceptions added with HB21-1123 have been incorporated into the rules at 30.250,B, 10-11, using statute language.

Title of Proposed Rule:	**Expansion of CAPS Checks to DORA and the Courts**	
CDHS Tracking #:	**21-04-23-01**	
Office, Division, & Program: OAADS/AAS/APS	Rule Author: Peggy Rogers	Phone: 303.866.2829
DRAFT 8.5.21		E-Mail: peggy.rogers@state.co.us

REGULATORY ANALYSIS

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

This rule impacts county departments of social/human services adult protective services (APS) staff; district and probate courts (court); persons petitioning the court to become a guardian or conservator of an at-risk adult; the Department of Regulatory Agencies (DORA); healthcare professionals licensed by the DORA; and employers of healthcare professionals licensed by DORA.

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

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

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

There is no fiscal impact to CDHS. There is a fiscal impact to the courts as they will have to pay the fee to request a CAPS check. The courts may offset this cost by charging the petitioner for the CAPS check fee. DORA had earlier indicated to APS staff that there would be no fiscal impact to DORA.

County Fiscal Impact

For counties with policies to name the APS caseworker or supervisor as the guardian/conservator and for counties that are not appointed as clients' guardians and/or conservators there will be no fiscal impact. If the county department has a policy to name the county director or another county staff person who is not an APS caseworker or supervisor as the APS client's guardian or conservator, a CAPS check will be required. The county department may be charged the CAPS fee by the court.

Federal Fiscal Impact

None. APS does not have federal regulations or oversight. For recently obtained federal funding related to COVID, there is no impact.

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

Families of APS clients who pursue guardianship or conservatorship may be charged by the court the fee for the CAPS check.

4. Data Description

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

These rules are the result of HB21-1123, which was moved by the Legislative Audit Committee to close gaps in the APS statute related to reporting substantiated perpetrators to the Department of Regulatory Agencies and the courts.

5. Alternatives to this Rule-making

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

None. HB21-1123 was signed into law and rules must be adopted to enact the statutory changes.

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
30.100	Adds a definition	N/A	Adds a definition of “authorized requestor” as it applies to CAPS checks.	To simplify language and improve readability and understanding.	Yes
30.100	Adds a definition	N/A	Adds a definition for “court” as it applies to the CAPS check process (Section 30.960).	To be clear about which court may request CAPS checks.	Yes
30.100	Adds a definition	N/A	Adds a definition for “DORA” as it applies to Section 30.520.	To simplify language and improve readability and understanding.	Yes
30.100	Adds a definition	N/A	Adds a definition for “licensed healthcare professional” as it applies to Section 30.520.	To simplify language and improve readability and understanding.	Yes
30.100	Adds a definition	N/A	Adds a definition for “potential appointee” as it applies to the CAPS check process for courts (Section 30.960).	To simplify language and improve readability and understanding.	Yes
30.250.B.10	Adds a confidentiality exception.	N/A	Adds a new exception that allows the sharing of certain APS information without a court order with the Department of Regulatory Agencies (DORA).	To implement with HB21-1123.	Yes
30.250.B.11	Adds a confidentiality exception.	N/A	Adds a new exception that allows the sharing of certain APS information without a court order with District and probate courts that hear petitions for guardianship and/or conservatorship of at-risk adults.	To implement with HB21-1123.	No
30.520.B.5	Adds a requirement for employers required to request CAPS checks.	N/A	Employers that are required to request CAPS checks are now required to provide the DORA license number for current or former employees who have been substantiated of mistreatment.	To implement with HB21-1123.	No
30.520.D.3	Adds a requirement for county departments to ascertain and document a substantiated perpetrator’s DORA license number.	N/A	County department APS caseworkers are now required to ascertain and document the DORA license number for any substantiated perpetrators who hold a healthcare profession or occupation license when the mistreatment occurred during the conduct of their professional duties. The rule provides three ways that the county department can ascertain the number, from the employer, the substantiated perpetrator, or the DORA website search tool.	To implement with HB21-1123.	No
30.520.E	Adds rules regarding the information that will be provided to DORA when a licensed healthcare professional is substantiated of mistreatment.	N/A	The rule details the effective date of the rule, the specific information that will be shared with DORA, the timeline for providing that information to DORA, and that the information provided to DORA is not subject to the Colorado Open Records Act.	To implement with HB21-1123.	No
30.960. B	Adds a requirement to	N/A	Beginning January 1, 2022 courts will be required to	To implement with HB21-	No

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	complete CAPS checks for the court.		request CAPS checks for persons who may be appointed as a guardian and/or conservator of an at-risk adult. The rule is being updated to include the court and persons who may be appointed as guardian or conservator.	1123.	
30.960. E	Technical cleanup	Includes the phrase “employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer”.	Replaces the phrase with “authorized requestor”.	To simplify language and improve readability and understanding.	Yes
30.960.G	Adds the courts to the rule.	Rule currently includes employers only. Includes the phrase “employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer”.	Beginning January 1, 2022 courts will be required to request CAPS checks for persons who may be appointed as a guardian and/or conservator of an at-risk adult. The rule is being updated to add the courts and replaces the lengthy phrase with “authorized requestor”.	To implement with HB21-1123 and to simplify language and improve readability and understanding.	No
30.960.H	Adds the courts and persons who may be appointed as a guardian and/or conservator.	Rule currently includes employers only. Includes the phrase “employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer”.	Beginning January 1, 2022 courts will be required to request CAPS checks for persons who may be appointed as a guardian and/or conservator of an at-risk adult. The rule is being updated to include the court and persons who may be appointed as guardian or conservator and replaces the lengthy phrase with “authorized requestor”.	To implement with HB21-1123 and to simplify language and improve readability and understanding.	No
30.960.I	Adds the courts and persons who may be appointed as a guardian and/or conservator.	Rule currently includes employers only. Includes the phrase “employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer”.	Beginning January 1, 2022 courts will be required to request CAPS checks for persons who may be appointed as a guardian and/or conservator of an at-risk adult. The rule is being updated to include the court and persons who may be appointed as guardian or conservator and replaces the lengthy phrase with “authorized requestor”.	To implement with HB21-1123 and to simplify language and improve readability and understanding.	No
30.960.I.3	Adds requirement for the courts to request a new CAPS check under certain conditions.	N/A	The rule will require the court to ensure that a guardian or conservator who is not appointed in a case but may be considered for a case more than 30 days later, the court must request a new CAPS check. This is to prevent to the extent possible, the possibility of a guardian/conservator being substantiated in the interim and never reported to the court. There is an exception if the guardian/conservator is a professional used frequently by the court. And the rule requires each court that uses a professional to request a check for that professional.	To implement with HB21-1123.	No
30.960.I.4	Adds the courts.	Rule currently includes employers only.	Allows the CAPS Check Unit to request information from the court when the information was incomplete.	To implement with HB21-1123.	No
30.960.I.5	Adds the courts.	Rule currently includes employers only.	Allows the CAPS Check Unit to request additional information when there is reason to believe the information provided was inaccurate.	To implement with HB21-1123.	No
30.960.I.7	Adds the courts.	Rule currently includes employers only.	Includes the court in the misdemeanor penalty for requesting a check on an individual who is not a potential appointee.	To implement with HB21-1123.	No
30.960.J.1 and 2.a	Technical clean up.	Rule currently calls CAPS checks “employer CAPS checks” and references	Removing “employer”. Updates language to reflect current website.	Technical clean up.	No

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		a future website.			
30.960.J.3. a-c	Technical clean up.	Currently uses the phrase “employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer”	Replaces with “authorized requestor”.	To simplify language and improve readability and understanding.	Yes
30.960.K	Adds timeline for providing results to the court.	Rule currently includes the employer timeline only.	Beginning January 1, 2022 courts will be required to request CAPS checks for persons who may be appointed as a guardian and/or conservator of an at-risk adult. The rule is being updated to include the court timeline to receive results.	To implement with HB21-1123.	No
30.960.K.1	Technical clean up.	Currently uses the phrase “employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer”	Replaces with “authorized requestor”.	To simplify language and improve readability and understanding.	Yes
30.960.L.1-5	Adds the courts and potential appointees. Adds additional information that will be provided on CAPS checks.	Rule currently includes the employer only.	Beginning January 1, 2022 courts will be required to request CAPS checks for persons who may be appointed as a guardian and/or conservator of an at-risk adult. The rule is being updated to include information that will be provided to the court with CAPS check results.	To implement with HB21-1123.	No
30.960.M	Technical clean up.	Currently uses the phrase “employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer”	Replaces with “authorized requestor”.	To simplify language and improve readability and understanding.	Yes

DRAFT 8.5.21

STAKEHOLDER COMMENT SUMMARY

Development

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

This Rule-Making Package

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

County department directors, APS Task Group members, Aging and Adult Sub-PAC members, PAC members, Department of Regulatory Affairs, Judicial, court clerks, employers registered to request CAPS checks, licensed healthcare professionals, Colorado Health Care Association, Colorado Hospital Association, ARC of Colorado, ARC of Aurora, Alliance, Colorado Cross Disability Coalition, Colorado Gerontological Society, Goodwill Services, Health Care Policy and Financing, Colorado Department of Public Health and Environment, Regional Centers, Veterans Community Living Centers, Developmental Disabilities Council, Office of Public Guardianship, Office of Behavioral Health, Disability Law Colorado, Area Agencies on Aging, Colorado Commission on Aging, and the Strategic Action Planning Group on Aging.

Other State Agencies

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

[X] Yes [ ] No

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

DORA and the courts were supportive of the statutory changes. The APS staff have been working closely with representatives of both agencies to develop the rules and implement the bill's requirements.

Sub-PAC

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

[X] Yes [ ] No

Name of Sub-PAC	Aging and Adult		
Date presented	Initial presentation July 8, 2021. No concerns raised. Final presentation and vote August 5, 2021.		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
	14	0	0
If not presented, explain why.	4 members were absent		

PAC

Have these rules been approved by PAC?

[ ] Yes [ ] No

Date presented	September 2, 2021		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

DRAFT 8.5.21

Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

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

Stakeholder Engagement Process and Feedback

April 26, 2021 – Began meeting with representatives from the Department of Regulatory Agencies (DORA) and Judicial to begin to establish processes to implement the statute.

May 12, 2021 – House Bill 21-1123 and the key rule changes that might be needed were discussed during the May APS Task Group meeting. During the meeting the Task Group recommended:

- The rules include a definition of "court" as it applies to CAPS checks to be clear it is only courts that hear petitions for guardianship and conservatorship of at-risk adult that can and must request CAPS checks.
    - This has been included in the proposed rule packet in Section 30.100.
- Simplifying some language. A number of phrases from statute are long and cumbersome, creating issues with ease of reading and comprehending the rules. The task group recommended adding definitions to allow the shortening of these phrases.
    - These have all been included in the proposed rule packet in Section 30.100:
        - 'Authorized requestor' defined as employer or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer, or the court.
        - 'DORA', defined as the Department of Regulatory Agencies, Division of Professions and Occupations.
        - 'Licensed healthcare professional', defined as a person with a healthcare professional or healthcare occupation license from DORA.
        - 'Potential appointee' defined as a person who may be appointed as guardian or conservator.
- The rules be certain to include that the "provision of their professional duties" requirement from statute be incorporated into rules in the investigation section where the rules around findings on licensed professionals are written.
    - This was incorporated into the rules in Section 30.520.
- A clear rule to let workers know not to share additional information with DORA when DORA is conducting an investigation, unless it meets an exception in the confidentiality rules.
    - This was incorporated into the rules in Section 30.250.

May 19, 2021 – Two Stakeholder Listening Sessions were held. DORA and Judicial attended to answer any questions specific to their agencies. A number of questions arose about the bill and how it will impact professionals and caregivers. A CDHS Fact Sheet and Stakeholder FAQ was developed from those questions and posted to the APS website on 6.16.21. There were no suggestions on how to draft/what to include in rule. Stakeholders invited to this meeting included:

- Employers registered to request CAPS checks
- Licensed healthcare professionals
- Court clerks
- Statewide associations representing employers required to request CAPS checks, including the Colorado Health Care Association and the Colorado Hospital Association,

- Advocacy groups and individuals, including ARC of Colorado, ARC of Aurora, Alliance, the Colorado Cross Disability Coalition, Colorado Gerontological Society, Goodwill Services
- County department directors, and PAC, Aging and Adult Sub-PAC, and APS task group members
- Other State agencies and offices, including Health Care Policy and Financing (HCPF), Colorado Department of Public Health and Environment (CDPHE), Regional Centers, Veterans Community Living Centers, Developmental Disabilities Council, Office of Public Guardianship, and the Office of Behavioral Health
- Disability Law Colorado
- Area Agencies on Aging
- Colorado Commission on Aging (CCOA)
- Strategic Action Planning Group on Aging (SAPGA)

June 9, 2021 – During the June APS Task Group Meeting, the group reviewed the draft rules. The Task Group voted 11-0, with one voting member absent, to approve the rules to move forward to the Aging and Adult Sub-PAC in August 2021.

July 8, 2021 – Discussed the rules with the Aging and Adult Sub-PAC during their meeting. One member noted that at 30.520.D.3 the rule did not include the phrase “committed during the performance of their professional duties” to clarify when the DORA license number is required. The Department made the correction to that rule. There was no other feedback or concerns.

Stakeholder Feedback on Drafted Rules

Judicial requested that when discussing the court, that “district” courts are noted prior to “probate” courts because there is only one probate court in Colorado. This change was made in the regulatory analysis and in the definition of “court” in 30.100.

Judicial noted that professional guardians and conservators may be appointed by several different courts. With this feedback, the Department added a rule (30.960.I.3.b) to ensure that each court request a CAPS check of the professional to ensure that should a professional guardian or conservator be subsequently substantiated of mistreatment, all courts that utilize that professional would be notified of the new finding.

DEPARTMENT OF HUMAN SERVICES

Adult Protective Services

ADULT PROTECTIVE SERVICES

12 CCR 2518-1

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

30.000 ADULT PROTECTIVE SERVICES

30.100 DEFINITIONS [Rev. eff. 8/2/19]

The following definitions shall apply to these rules.

"Abuse", pursuant to Section 26-3.1-101(1), C.R.S., means any of the following acts or omissions committed against an at-risk adult:

A. The non-accidental infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;

B. Confinement or restraint that is unreasonable under generally accepted caretaking standards; or,

C. Unlawful sexual behavior as defined in Section 16-22-102(9), C.R.S.

"Adult Protective Services (APS) Program" means the State Department supervised, county department administered program that has the authority to investigate and/or assess allegations of mistreatment and self-neglect of at-risk adults. The APS Program offers protective services to prevent, reduce, or eliminate the current or potential risk of mistreatment or self-neglect to the at-risk adult using community based services and resources, health care services, family and friends when appropriate, and other support systems. The APS Program focuses on the at-risk adult and those services that may prevent, reduce, or eliminate further mistreatment or self-neglect. The APS Program refers possible criminal activities to law enforcement and/or the district attorney for criminal investigation and possible prosecution.

"Allegation" means a statement asserting an act or suspicion of mistreatment or self-neglect involving an at-risk adult.

"Assessment" means the process of evaluating a client's functional abilities to determine the client's level of risk and, in cooperation with the client whenever possible, to identify service needs for the case plan.

"Assumed responsibility", as used in the definition of caretaker, means a person who is providing or has provided recurring or temporary assistance to help meet the basic needs of an at-risk adult. The assumption of responsibility can attach by entering into a formal or informal agreement, whether paid or unpaid; by identifying oneself as a caretaker to others; or based on the nature of the situation or relationship between the caretaker and the at-risk adult.

"At-risk adult", pursuant to Section 26-3.1-101(1.5), C.R.S., means an individual eighteen years of age or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

“AUTHORIZED REQUESTOR” PURSUANT TO SECTION 30.960, MEANS AN EMPLOYER, A PERSON OR ENTITY CONDUCTING THE EMPLOYEE CAPS CHECK ON BEHALF OF THE EMPLOYER, OR THE COURT THAT ARE REQUIRED TO REQUEST CAPS CHECKS.

“CAPS” means the Colorado Adult Protective Services (APS) State Department prescribed data system.

“CAPS check” means a check of the Colorado Adult Protective Services data system pursuant to Section 26-3.1-111, C.R.S.

“Caretaker”, pursuant to Section 26-3.1-101(2), C.R.S., means a person who:

A. Is responsible for the care of an at-risk adult as a result of a legal relationship; or

B. Has assumed responsibility for the care of an at-risk adult; or,

C. Is paid to provide care, services, or oversight of services to an at-risk adult.

“Caretaker neglect”, pursuant to Section 26-3.1-101(2.3)(a), C.R.S., means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision, or other treatment necessary for the health, safety, or welfare of the at-risk adult is not secured for an at-risk adult 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 when a caretaker knowingly uses harassment, undue influence, or intimidation to create a hostile or fearful environment for an at-risk adult. However, the withholding, withdrawing, or refusing of any medication, any medical procedure or device, or any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, is not deemed caretaker neglect. In addition to those exceptions identified above, access to Medical Aid in Dying, pursuant to Title 25, Article 48, C.R.S., shall not be considered caretaker neglect.

“Case” means the process by which a county department provides services to an at-risk adult. A case begins when a report identifies an at-risk adult and allegations that qualify as a mistreatment or self-neglect, and the report is screened in for investigation and assessment. The county department may continue to provide services under a case after the investigation has concluded.

“Caseload average” means the fiscal year monthly average of new cases and the sum of cases carried over from the prior fiscal year, per caseworker. The fiscal year caseload average is calculated as: [(new cases/12) + cases carried over from prior FY] / FTE on June 30 = caseload average]. Caseload average will fluctuate on a monthly basis that may be influenced by a number of factors; therefore, the caseload average is based on the fiscal year average.

“Case planning” means using the information obtained from the investigation and/or assessment to identify, arrange, and coordinate protective services in order to reduce the client’s level of risk for mistreatment and self-neglect and improve safety.

“Certification due date” means the date by which new APS staff must complete certification training. The certification due date for supervisors, lead caseworkers, and caseworkers is six months from the date the supervisor, lead caseworker, or caseworker was hired or transferred to the APS program. The certification due date for case aides and screeners is one month from the date the case aide or screener was hired or transferred to the APS program.

“Clergy member”, pursuant to Section 26-3.1-101(2.5), C.R.S., means a priest; rabbi; duly ordained, commissioned, or licensed minister of a church; member of a religious order; or recognized leader of any religious body.

"Client" means an actual or possible at-risk adult for whom a report has been received and the county department has made a response.

"Collateral contact" means a person who has relevant knowledge about the client's situation that supports, refutes, or corroborates information provided by a client, reporting party, or other person involved in the case. Examples of contacts include, but are not limited to, family members, law enforcement, health care professionals, service providers, facility staff, neighbors, the reporting party, friends, and any person who provides/provided ongoing care or support to the client.

"County Department" means a county department of human/social services.

"COURT", PURSUANT TO SECTION 30.960 MEANS A DISTRICT OR PROBATE COURT THAT HEARS PETITIONS FOR AND APPOINTS GUARDIANS AND/OR CONSERVATORS OF ADULTS.

"Date of notice" means the date that the notice of a substantiated finding against a perpetrator(s) is mailed to the last known mailing address(es) of the perpetrator(s).

"Direct care", pursuant to Section 26-3.1-101(3.5), C.R.S., means services and supports, including case management services, protective services, physical care, mental health services, or any other service necessary for the at-risk adult's health, safety, or welfare. An employer may identify which employees provide direct care, consistent with this definition, in an internal policy.

"DORA" PURSUANT TO SECTION 30.520, MEANS THE DEPARTMENT OF REGULATORY AGENCIES, DIVISION OF PROFESSIONS AND OCCUPATIONS THAT OVERSEES THE LICENSURE OF HEALTHCARE PROFESSIONALS.

"Employee", pursuant to Section 26-3.1-111(2), C.R.S., means a person, other than a volunteer, who is employed by or contracted with an employer and includes a prospective employee.

"Employer", pursuant to Section 26-3.1-111(2), C.R.S., means a person, facility, entity, or agency described in Section 26-3.1-111(7), C.R.S., and includes a prospective employer. "Employer" also includes a person hiring someone to provide Consumer-Directed Attendant Support Services pursuant to C.R.S. Article 10 of Title 25.5, if the person requests a CAPS check.

"Enhanced supervision" means CAPS security access that prevents a caseworker from finalizing an investigation, assessment, case plan, or case closure without supervisory approval.

"Exploitation" means an act or omission that:

A. Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of anything of value; or,

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 adult; or,

C. Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or,

D. Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

"Facility" means a medical or long-term care facility that provides 24 hour care and oversight for residents, and includes a group home, alternative care facility, state regional center, or state mental health facility.

"Financial institution" means a state or federal bank, savings bank, savings and loan association or company, building and loan association, trust company, or credit union.

"Fiscal Year" means the State Department fiscal year, which begins July 1 and ends June 30.

"FTE" means Full Time Equivalent. The actual percentage of time a person works on the APS program shall be considered that person's FTE.

"Good cause", except as applied by a court, means emergency conditions or other circumstances which would prevent a reasonable person from meeting a deadline or complying with APS rule or practice. Examples include, but are not limited to, law enforcement request to delay the APS investigation; inability to locate the client or collaterals despite reasonable, documented attempts; additional time required to obtain documents which were timely requested but not delivered; lack of proper notice to the substantiated perpetrator of the availability of an appeal; etc.

"Harmful act" means an act committed against an at-risk adult by a person with a relationship to the at-risk adult when such act is not defined as abuse, caretaker neglect, or exploitation but causes harm to the health, safety, or welfare of an at-risk adult.

"Inconclusive finding" means that indicators of mistreatment or self-neglect may be present but the investigation could not confirm the evidence to a level necessary to substantiate the allegation.

"Investigation" means the process of determining if an allegation(s) of mistreatment or self-neglect involving an at-risk adult can be substantiated by a preponderance of evidence.

"Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent mistreatment or self-neglect.

"LICENSED HEALTHCARE PROFESSIONAL" FOR THE PURPOSE OF SECTION 30.520 MEANS A PERSON WHO IS LICENSED THROUGH THE DEPARTMENT OF REGULATORY AGENCIES, DIVISION OF OCCUPATIONS AND PROFESSIONS (DORA) FOR A HEALTHCARE PROFESSION OR HEALTHCARE OCCUPATION.

"Medical Directive or Order" means a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical order for scope of treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a cardiopulmonary resuscitation (CPR) directive executed pursuant to Article 18.6 of Title 15, C.R.S.

"Minor impact" means the client may experience some difficulty with the assessment risk indicator, but there is very little impact on the client's overall health, safety, and/or welfare and no intervention is necessary to improve overall safety.

"Mistreatment", pursuant to Section 26-3.1-101(7), C.R.S., means:

A. Abuse;

B. Caretaker neglect;

C. Exploitation; or,

D. A harmful act.

"Mistreatment occurred - not culpable finding" means the investigation established by a preponderance of the evidence that mistreatment occurred but the individual who caused the mistreatment is not culpable. Documentation must clearly support that the individual who caused the mistreatment is an at-risk adult or

a minor child with cognitive functioning that prevents the at-risk adult or child from having awareness of the consequences of their actions, as demonstrated by county department observations of cognition or behaviors, and/or interviews with expert collaterals, and/or medical or neuro-psych records, and/or behavioral plans developed by the adult's or child's service agency. A "mistreatment occurred – not culpable finding" must be used if the individual who caused the mistreatment is a child under the age of ten (10) years old.

"Person with a relationship", as applied to the definition of harmful act, means a person who can be identified as having a relationship or attempting to develop a relationship with an at-risk adult. The relationship may include but is not limited to a familial, legal, caretaking, pastoral, friendship, or other relationship and excludes strangers.

"POTENTIAL APPOINTEE", PURSUANT TO SECTION 30.960 MEANS A PERSON WHO MAY BE APPOINTED BY THE COURT AS A GUARDIAN OR CONSERVATOR OF AN AT-RISK ADULT.

"Preponderance of Evidence" means credible evidence that a claim is more likely true than not.

30.200 ADULT PROTECTIVE SERVICES PROGRAM ADMINISTRATION AND OVERVIEW

30.250 CONFIDENTIALITY [Rev. eff. 8/2/19]

A. Pursuant to Section 26-3.1-102(7)(a), C.R.S. and except as provided in Section 26-3.1-102(7)(b), C.R.S. and Section 30.250, B, reports of the mistreatment or self-neglect of any at-risk adult, including the name and address of any at-risk adult, member of said adult's family, or informant, or any other identifying information contained in such reports and subsequent cases resulting from the reports, is confidential, and is not public information. The county department shall treat all information related to the report and the case, whether in written or electronic form, as confidential and such information includes, but is not limited to, the following:

1. Identifying information, such as the name, address, relationship to the at-risk adult, Date of Birth, or Social Security Number of the:

    a. At-risk adult;

    b. At-risk adult's family members;

    c. Reporting party;

    d. Alleged perpetrator; and,

    e. Other persons involved in the case.

2. Allegations, assessment, and investigative findings, including, but not limited to:

    a. The initial report of allegations and concerns;

    b. The client's safety and risk as determined by the client assessment;

    c. Medical and behavioral diagnoses, past medical conditions, and disabilities;

    d. Services provided to or arranged for the adult;

    e. Information learned as a result of a criminal investigation;

f. Information obtained during the APS investigation and the substantiation or non-substantiation of the allegations; and,

g. Legal protections in place including, but not limited to, wills, advance directives, powers of attorney, guardianship, conservatorship, representative payeeship, and protective orders.

B. Pursuant to Section 26-3.1-102(7)(b), C.R.S., disclosure of a report of the mistreatment or self-neglect of an at-risk adult and information relating to an investigation of such a report and subsequent cases resulting from the report is permitted only when authorized by a court for good cause. A court order is not required, and such disclosure is not prohibited when:

1. A criminal investigation into an allegation of mistreatment is being conducted, when a review of death by a coroner is being conducted when the death is suspected to be related to mistreatment, or when a criminal complaint, information, or indictment is filed and the report and case information is relevant to the investigation, death review, complaint, or indictment.

2. There is a death of a suspected at-risk adult from mistreatment or self-neglect and a law enforcement agency files a formal charge or a grand jury issues an indictment in connection with death.

3. The disclosure is necessary for the coordination of multiple agencies' joint investigation of a report or for the provision of protection services to an at-risk adult, such as, but not limited to:

a. Coordination with law enforcement to conduct a joint investigation;

b. Providing protective services, such as establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.

c. A review of a power of attorney is requested under the uniform power of attorney act, as outlined at C.R.S. Title 15, Article 14, Part 7 or review of a fiduciary under C.R.S. Title 15, Article 10, Part 5.

d. Reviewing a case with the Adult Protection Team to find solutions to cases with complex service provision needs, in accordance with the Adult Protection Team's by-laws, and when in executive session with members who have signed a confidentiality agreement.

4. The disclosure is necessary for purposes of an audit of a county department of human or social services pursuant to Section 26-1-114.5, C.R.S.

5. The disclosure is made for purposes of the appeals process relating to a substantiated case of mistreatment of an at-risk adult pursuant to Section 26-3.1-108(2), C.R.S.

a. This subsection is in addition to and not in lieu of other federal and state laws concerning protected confidential information. Disclosures allowed are:

i. Notification made by the county department to substantiated perpetrator(s) of mistreatment pursuant to Section 26-3.1-108, C.R.S.

ii. Disclosure by the State Department for purposes of the appeals process relating to a substantiated case of mistreatment of an at-risk adult pursuant to Section 26-3.1-108(2), C.R.S.

6. The disclosure is made by the State Department to an employer, or to a person or entity conducting employee screening on behalf of the employer, as part of a CAPS check pursuant to Section 26-3.1-111, C.R.S. or by a county department pursuant to Section 26-3.1-107, C.R.S.

7. The disclosure is made to an at-risk adult, or if the at-risk adult is otherwise incompetent at the time of the request, to the guardian or guardian ad litem for the at-risk adult, with the following conditions:

   a. The disclosure shall not be made until after investigation is complete; and,

   b. The disclosure shall not include any identifying information related to the reporting party or any other appropriate persons, as follows:

      i. The county department shall redact any and all identifying information related to the reporting party; and,

      ii. The county department may redact Personal Identifying Information (PII) related to the client, supports, collaterals, and alleged or substantiated perpetrators, as deemed necessary by the county department; and,

   c. The county department shall redact all Personal Health Information (PHI) protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), state, or federal law of the reporting party, supports, collaterals, and alleged or substantiated perpetrator; and,

   d. The county department shall obtain from the guardian a copy of the guardianship order or guardian ad litem appointment, independently verify that the order or appointment remains valid, and attach the order or appointment to the client's case in CAPS; and,

   e. If the guardian is a substantiated perpetrator in a case of mistreatment of an at-risk adult, the disclosure must not be made without authorization by the court for good cause. The county department shall require the guardian to obtain a court order and the county department shall obtain a copy of the court order from the guardian and attach the order to the case in CAPS.

8. The disclosure is made to a county department that assesses or provides protective services for children, when the information is necessary to adequately assess for safety and risk or to provide protective services for a child. A county department that assesses or provides protective services for at-risk adults is similarly permitted to access information from a county department that assesses or provides protective services for children pursuant to Section 19-1-307(2)(X), C.R.S.

   a. Information must be limited to information regarding prior or current reports, assessments, investigations, or case information related to an at-risk adult or an alleged perpetrator.

   b. The provisions of this Subsection 30.250, B, 8 are in addition to and not in lieu of other federal and state laws concerning protected or confidential information.

i. the county department may not share Personal Identifying Information (PII) or Personal Health Information (PHI) protected by HIPAA that is not necessary to the child welfare investigation, assessment, or provision of services for the child(ren).

ii. Information provided to child welfare staff must be the minimum necessary for worker safety concerns for child welfare staff, the investigation, assessment, and provision of services for the child(ren).

iii. County department APS staff may share information with any county department's child welfare staff.

iv. The county department's child welfare staff shall not be provided access to CAPS, unless that child welfare staff person is also the county department's APS staff person.

9. The disclosure is made to an employer required to request a CAPS check pursuant to Section 26-3.1-111 or to the State Department agency that oversees the employer when the information is necessary to ensure the safety of other at-risk adults under the care of the employer. The information must be the minimum information necessary to ensure the safety of other at-risk adults under the care of the employer or oversight of the State Department agency.

10. THE DISCLOSURE IS MADE PURSUANT TO SECTION 26-3.1-111(12) TO A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR, AS DEFINED IN SECTION 12-20-102(14), WITHIN SUCH A HEALTH OVERSIGHT AGENCY.

a. THE STATE DEPARTMENT, NOT COUNTY DEPARTMENTS, SHALL PROVIDE THIS INFORMATION TO DORA.

b. COUNTY DEPARTMENTS MUST OBSERVE ALL CONFIDENTIALITY REQUIREMENTS IN THE EVENT DORA CONTACTS THEM DURING AN INVESTIGATION.

11. THE DISCLOSURE IS MADE TO THE COURT PURSUANT TO SECTION 26-3-111(3)(b) AND (8.5)(b).

C. Whenever there is a question about the legality of releasing information the requestor shall be advised to submit a written request to the appropriate court to order the county department to produce the desired records or information within the custody or control of the county department.

D. Information released under Section 30.250, B, shall be the minimum information necessary to secure the services, conduct the investigation, or otherwise respond to the court order. The county department shall:

1. Provide the information only to persons deemed essential to the court order, criminal or APS investigation, adult protection team activities, or the provision of services;

2. Edit the information prior to its release to physically remove or redact sensitive information not essential to the court order, criminal or APS investigation, adult protection team activities, or provision of services and benefits;

3. Redact all information that would identify the reporting party unless ordered by the court, the reporting party has given written consent, or when sharing the report with law enforcement, per Section 26-3.1-102, (3), C.R.S;

4. Always redact all HIPAA protected information and any other confidential information which is protected by law unless specifically ordered by a court; and,

5. Redact all other report and case information not directly related to the court order.

E. In a criminal or civil proceeding or in any other circumstance in which the APS report and/or case record is subpoenaed or any request for disclosure has been made, or any county department or State Department representative is ordered to testify concerning an APS report or case, the court shall be advised, through proper channels, of the statutory provisions, rules, and policies concerning disclosure of information.

1. Confidential information shall not be released unless so ordered by the court for good cause, except as outlined in Section 30.250, B.

2. Courts with competent jurisdiction may determine good cause. Although it is not an exhaustive list, the following are examples of court proceedings in which a court may determine that good cause exists for the release of confidential information:

a. Guardianship or conservatorship proceeding in which either the county is the petitioner or has been ordered to testify;

b. Review of power of attorney under the uniform power of attorney act, as outlined at Title 15, Article 14, Part 7, Colorado Revised Statutes (C.R.S.);

c. Review of a fiduciary under Title 15, Article 10. Part 5, C.R.S.; and/or,

d. Criminal trial.

3. The county department or State Department shall comply within the time frame ordered by the court, unless a motion to quash is pending, or, if there is no stated timeline within the court order, in accordance with county department or State Department policy and provide a written notice with the information to be released regarding the legality of sharing confidential information.

F. Individuals or groups requesting information regarding APS reports and/or investigations shall be informed of the confidential nature of the information and shall be advised that a court order is required to release information held by the county department, except as provided at Section 30.250, B. These persons or groups include, but are not limited to:

1. Federal and state legislators;

2. Members of other governmental authorities or agencies, including county commissioners, city councils, school boards, and other city and county department boards, councils, officials, and employees;

3. Courts;

4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;

5. Family members, reporting parties, or other interested parties;

6. Any alleged perpetrator; and,

7. Media representatives.

G. Any person who violates any provision of this Subsection 30.250, A through F is guilty of a Class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars as provided in Section 26-3.1-102(7), C.R.S.

H. All confidential APS information and data shall be processed, filed and stored using safeguards that prevent unauthorized personnel from acquiring, accessing, or retrieving the information.

1. Client files created prior to July 1, 2014 when CAPS was implemented shall be kept in a secured area when not in use. All other documents related to APS reports and cases shall be kept in CAPS, as outlined in Section 30.260, B and C.

2. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

3. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.

4. The State Department shall ensure that only State Department and county department staff persons with a business need to do so shall have access to CAPS.

a. All CAPS users must electronically sign the CAPS Security and Confidentiality Agreement annually and follow the requirements therein.

b. County departments shall not access information in CAPS that is not necessary to serve the client.

c. Violations of CAPS security and confidentiality requirements may result in loss of access to CAPS, at the discretion of the State Department.

I. Clients shall be referred to the Colorado Address Confidentiality Program (ACP) as appropriate to determine their eligibility for services including the legal substitute mailing address and mail forwarding services. The State Department and county department shall comply with any applicable provisions for APS clients enrolled in the ACP.

30.500 INVESTIGATION AND ASSESSMENT

30.520 INVESTIGATION [Rev. eff. 8/2/19]

A. The county department shall conduct an investigation to determine findings related to allegations of mistreatment or self-neglect, as required by Section 30.510. The investigation shall include, but may not be limited to:

1. Determining the need for protective services. If the client is in clear and immediate danger, the county shall intervene immediately by notifying the proper emergency responders.

2. Determining if the investigation should be conducted jointly with another entity, except in self-neglect only cases, such as:

a. Law enforcement and/or the district attorney;

b. Community Centered Board;

c. Health Facilities Division;

d. Attorney General's Medicaid Fraud Unit;

e. The long-term care ombudsman; and/or,

f. County department Child Welfare programs.

3. Making reasonable efforts to conduct interviews, as outlined below. The interviews and collection of evidence must address the specific allegations identified in the report and any new mistreatment or self-neglect that may be identified during the assessment or investigation. If an interview cannot be conducted for good cause, the attempts and the cause shall be documented.

   a. An in-person initial interview with the client, unannounced and in private, whenever possible.

      i. The county department shall document in CAPS that the visit was unannounced and in private and if not unannounced and/or in private for good cause, the cause shall be documented in CAPS.

      ii. If the client is unable to be interviewed for good cause, the cause shall be documented in CAPS.

   b. Ongoing interviews with the client to complete the investigation and assessment as outlined in Section 30.530. If the client refuses to participate in the investigation or cannot be located, the county department shall complete the investigation by gathering evidence and interviewing other collateral contacts that have knowledge of the client and/or the alleged mistreatment or self-neglect.

   c. Interviews with all collateral contacts. In the event a collateral contact cannot be located or interviewed for good cause, the cause shall be documented in CAPS; and,

   d. Interview(s) with the alleged perpetrator(s), with or without law enforcement. In the event the alleged perpetrator is unable to be located or interviewed for good cause, the cause shall be documented in CAPS. The following information shall be collected related to the alleged perpetrator(s), to the fullest extent possible, in addition to information about the allegations:

      i. Full name of the alleged perpetrator(s) with accurate spelling;

      ii. Current email address, when available;

      iii. Current physical and mailing address;

      iv. Date of birth; ~~and,~~

      v. THE DORA LICENSE NUMBER IF THE SUBSTANTIATED PERPETRATOR IS A LICENSED HEALTH CARE PROFESSIONAL

WHO CAUSED MISTREATMENT WHILE IN THE PROVISION OF THEIR PROFESSIONAL DUTIES; AND,

~~v~~vi. Other identifying demographic and contact information.

4. Collecting evidence and documenting with photographs or other means, when appropriate, such as:

   a. Police reports;

   b. Any available investigation report from a currently or previously involved facility and the occurrence report from the Health Facilities Division;

   c. Medical and mental health records;

   d. Bank or other financial records;

   e. Care plans for any person in a facility or receiving other services that require a care plan and any daily logs or charts; and/or,

   f. Staffing records and employee work schedules when investigating in a facility.

5. Making a finding regarding each allegation and alleged perpetrator, including the severity level of the mistreatment when there is a substantiated finding. A severity level shall not be assigned to a substantiated self-neglect allegation.

6. Determining whether there are additional mistreatment or self-neglect concerns not reported in the initial allegations. If there are additional concerns the county department shall enter the mistreatment and alleged perpetrator or self-neglect into the case, investigate, and make a finding, including the severity level of the mistreatment when there is a substantiated finding. A severity level shall not be assigned to a substantiated self-neglect allegation.

7. Supervisory review of all findings and approval only when the county department has completed a thorough investigation and the evidence justifies the findings.

8. Notifying law enforcement when criminal activity is suspected.

B. Each employer defined by Section 30.960.A must provide access to the county department to conduct an investigation into an allegation of mistreatment. Access includes the ability to request interviews with relevant persons and to obtain relevant documents and other evidence, as follows:

   1. The patient, client, resident, or consumer of the agency who is the client in an APS case of mistreatment or who is relevant to the APS investigation; and,

   2. Personnel, including paid employees, contractors, volunteers, and interns who are relevant to the investigation; and,

   3. Individual patient, client, resident, or consumer records relevant to the investigation, including:

      a. Health records;

      b. Incident and investigative reports;

c. Care and behavioral plans;

d. Staffing schedules and time sheets; and,

e. Photos and other technological evidence.

4. Entrance to the employer's premises as necessary to complete a thorough investigation. At the time of entry, county department staff must identify themselves and the purpose of the investigation to the person in charge of the entity.

5. THE PROFESSIONAL LICENSE NUMBER ISSUED BY DORA FOR ANY CURRENT OR FORMER STAFF PERSON WHO IS A LICENSED HEALTHCARE PROFESSIONAL AND WHO IS SUBSTANTIATED OF MISTREATMENT DURING THE PROVISION OF THEIR DUTIES.

56. Attorneys and their staff who are providing legal assistance pursuant to a contract with an area agency on aging, and the long-term care ombudsman are not subject to the requirements in this Section 30.520.B.

C. In the event that a finding is determined to be incorrect after supervisory approval, the county department shall take the following applicable steps:

1. If the finding was originally unsubstantiated and the finding is changing to inconclusive, correct the finding in CAPS.

2. If the finding was originally inconclusive and the finding is changing to unsubstantiated, correct the finding in CAPS.

3. If the finding was originally unsubstantiated or inconclusive and the finding is changing to substantiated, correct the finding in CAPS and notify the alleged perpetrator as outlined in Section 30.910, A-C.

4. If the finding was originally substantiated and the finding is changing to unsubstantiated or inconclusive, correct the finding in CAPS and notify the alleged perpetrator of the correction as outlined in Section 30.910, C. If there is an open appeal at the time of the correction, the county department shall notify the State Department of the change in finding no later than ten (10) calendar days of identifying the need to correct the finding.

D. The county department shall complete the investigation into the allegation(s) within sixty (60) calendar days of the receipt of the report. When allegations are received or identified after the initial report, the county department shall complete the investigation into the additional allegation(s) within sixty (60) days of the receipt or identification of the additional mistreatment or self-neglect. For all investigations the county department shall ensure that documentation of the investigation occurs in CAPS throughout the investigation process, as follows:

1. All interviews, contacts, or attempted contacts with the client, collaterals, alleged perpetrators, and other contacts during the investigation shall be documented within fourteen (14) calendar days of receipt of the information.

2. All evidence collected during the investigation shall be scanned and attached to the case by the conclusion of the investigation.

3. IF THE SUBSTANTIATED PERPETRATOR IS A LICENSED HEALTHCARE PROFESSIONAL AND THE MISTREATMENT WAS COMMITTED DURING THE PERFORMANCE OF THEIR PROFESSIONAL DUTIES, THE COUNTY DEPARTMENT

SHALL DOCUMENT THE LICENSE NUMBER IN CAPS. THE COUNTY DEPARTMENT MAY ASCERTAIN THE LICENSE NUMBER USING ONE OF THE METHODS OUTLINED BELOW:

a. IF THE SUBSTANTIATED PERPETRATOR'S CURRENT OR FORMER EMPLOYER IS AN AGENCY REQUIRED TO REQUEST CAPS CHECKS, AS OUTLINED IN SECTION 30.960.A, THE EMPLOYER IS REQUIRED TO PROVIDE THE DORA LICENSE NUMBER TO THE COUNTY DEPARTMENT UPON REQUEST, AS OUTLINED IN SECTION 26-3.1-103(1.3)(a)(V) AND SECTION 30.520.B.5; OR

b. IF THE SUBSTANTIATED PERPETRATOR IS A LICENSED HEALTHCARE PROFESSIONAL, THE SUBSTANTIATED PERPETRATOR IS REQUIRED BY SECTION 26-3.1-103(1.4) TO PROVIDE THEIR DORA LICENSE NUMBER UPON REQUEST OF THE COUNTY DEPARTMENT; OR

c. THE DORA ONLINE COLORADO PROFESSIONAL OR BUSINESS LICENSE VERIFICATION SYSTEM.

~~3~~4. Findings for the allegations and alleged perpetrator(s) shall be documented no later than sixty (60) calendar days from receipt of the report, including supervisor review and approval of the findings. If the county is unable to complete the investigation timely for good cause, the cause shall be documented in CAPS. Beginning July 1, 2018 all substantiated perpetrators shall be provided notice of the substantiation and their appeal rights, as outlined in Section 30.910.

E. BEGINNING ON OR BEFORE JANUARY 1, 2022, THE STATE DEPARTMENT SHALL PROVIDE INFORMATION TO DORA WHEN A LICENSED HEALTHCARE PROFESSIONAL IS SUBSTANTIATED OF MISTREATMENT OF AN AT-RISK ADULT DURING THEIR PROFESSIONAL DUTIES.

1. NOTIFICATION TO DORA SHALL BE MADE BY THE STATE DEPARTMENT WITHIN TEN (10) CALENDAR DAYS AFTER A SUBSTANTIATED FINDING.

2. THE INFORMATION PROVIDED SHALL INCLUDE, AT A MINIMUM:

a. THE PROFESSIONAL'S NAME;

b. THE PROFESSIONAL'S LICENSE NUMBER;

c. THE NAME OF THE MISTREATED ADULT;

d. THE LOCATION OR RESIDENCE OF THE MISTREATED ADULT;

e. THE LOCATION WHERE THE MISTREATMENT OCCURRED;

f. THE DATE OF THE FINDING;

g. THE COUNTY THAT INVESTIGATED THE MISTREATMENT;

h. THE TYPE AND SEVERITY OF MISTREATMENT;

i. THE PROFESSIONAL'S RIGHT TO AN APPEAL AND THE TIME FRAME TO FILE AN APPEAL AND,

j. THE UNIQUE CAPS IDENTIFIER THAT TIES THE PERPETRATOR TO THE SUBSTANTIATED FINDING.

3. INFORMATION PROVIDED TO DORA REGARDING A SUBSTANTIATED FINDING OF MISTREATMENT CAUSED BY A LICENSED HEALTHCARE PROFESSIONAL IS CONFIDENTIAL, NOT SUBJECT TO PART 2 OF ARTICLE 72 OF TITLE 24, AND MUST BE USED FOR PURPOSES OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT TO SECTION 12-20-401.

30.900 NOTICE TO SUBSTANTIATED PERPETRATORS AND STATE LEVEL APPEALS PROCESS [Eff. 5/30/18]

30.960 EMPLOYER CAPS CHECKS

A. Pursuant to Section 26-3.1-111(6)(a)(I), C.R.S., beginning January 1, 2019, the following employers shall request a CAPS check prior to hiring a new employee who will provide direct care to an at-risk adult and may request a CAPS check for existing employees or volunteers who provide direct care to an at-risk adult.

1. Health facilities licensed pursuant to Section 25-1.5-103, C.R.S, including those wholly owned and operated by any governmental unit;

2. Adult day care facilities, as defined in Section 25.5-6-303(1), C.R.S.;

3. Community integrated health care service agencies, as defined in Section 25-3.5-1301(1);

4. Community-Centered Boards or program-approved service agencies that provide or contract for services and supports, pursuant to C.R.S. Article 10 OF Title 25.5;

5. Single Entry Point agencies, as described in Section 25.5-6-106, C.R.S.;

6. Area Agencies on Aging, as defined in Section 26-11-201(2), C.R.S., and any agency or provider the Area Agency on Aging contracts with to provide services;

7. Facilities operated by the State Department for the care and treatment of persons with mental illness, pursuant to C.R.S. Article 65 OF Title 27;

8. Facilities operated by the State Department for the care and treatment of persons with intellectual and developmental disabilities, pursuant to C.R.S. Article 10.5 OF Title 27;

9. Veterans Community Living Centers, operated pursuant to C.R.S. Article 12 OF Title 26; and,

10. The Office of Public Guardianship Pursuant to Section 13-94-105(6), C.R.S.

B. PURSUANT TO SECTION 26-3.1.111(3)(b), C.R.S., BEGINNING JANUARY 1, 2022, THE COURTS SHALL REQUEST A CAPS CHECK FOR ANY PERSON PETITIONING TO BE APPOINTED AS THE GUARDIAN AND/OR CONSERVATOR OF AN AT-RISK ADULT (POTENTIAL APPOINTEE), WITH THE EXCEPTION OF COUNTY DEPARTMENT ADULT PROTECTIVE SERVICES STAFF WHO ARE ALREADY REQUIRED TO UNDERGO A CAPS CHECK PURSUANT TO SECTION 26-3.1-107(2) AND THE OFFICE OF PUBLIC GUARDIANSHIP STAFF REQUIRED TO UNDERGO A CAPS CHECK PURSUANT TO SECTION 26-3.1-111(7)(j).

C. Pursuant to Section 26-3.1-111(8), beginning January 1, 2019, individuals receiving consumer-directed attendant support services (CDASS), pursuant to C.R.S. Article 10 of Title 25.5, may request a CAPS check for a new or existing employee.

~~B~~D. Employers identified in Section 30.960.A shall cooperate with and provide access to county departments conducting investigations of mistreatment of at-risk adults pursuant to Section 26-3.1-103(1.3), C.R.S and Section 30.520.B.

~~D~~E. Information obtained through a CAPS check by an ~~employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer,~~ AUTHORIZED REQUESTOR shall only be released pursuant to Section 26-3.1-111(6)(d), C.R.S.

F. Section 26-3.1-111(6)(e), C.R.S., creates a criminal penalty for any person who improperly releases or who willfully permits or encourages the release of data or information obtained through a CAPS check to persons not permitted access to the information pursuant to C.R.S. Title 26, Article 3.1.

~~E~~G. ~~Employers, or a person or entity conducting the employee CAPS check on behalf of the employer,~~ AUTHORIZED REQUESTORS shall register prior to requesting a CAPS check to allow for verification of the ~~employer's~~ REQUESTOR'S legal authority to request the check.

1. The ~~employer, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer,~~ THE REQUESTOR is responsible for ensuring the registration information is up to date.

2. There shall be no fee to the ~~employer~~ REQUESTOR to register.

~~F~~H. Using a form developed by the State Department, ~~employers, or a person or entity conducting the employee CAPS check on behalf of the employer,~~ AUTHORIZED REQUESTORS shall obtain written authorization and any required identifying information from the new or existing employee or volunteer OR POTENTIAL APPOINTEE prior to requesting a CAPS check. Required identifying information necessary to request the CAPS check includes information such as name, date of birth, and email address, etc.

1. The form must be completed and signed by the employee, ~~or~~ volunteer, OR POTENTIAL APPOINTEE.

2. Knowingly providing inaccurate information on the written authorization form is a class 1 misdemeanor as set forth in Section 26-3.1-111(6)(e.7), C.R.S.

3. The CAPS Check Unit (CCU) may request the employee's, VOLUNTEER'S, OR potential appointee's written authorization form from the employer OR THE COURT as supporting documentation.

~~G~~I. ~~Employers, or a person or entity conducting the employee or volunteer CAPS check on behalf of the employer,~~ AUTHORIZED REQUESTORS shall request a CAPS check using an online or hard copy form developed by the State Department.

1. If more than thirty (30) days have elapsed between an employer's request for a CAPS check for a potential employee or volunteer, and the employer's decision to initiate hiring, the employer must request a new CAPS check prior to hiring the employee or volunteer.

2. If an employee or volunteer leaves employment but is considered for rehire after more than thirty (30) days have elapsed since leaving employment, the employer must request a new CAPS check prior to rehire.

3. IF THE COURT DOES NOT APPOINT THE POTENTIAL APPOINTEE AS A GUARDIAN OR CONSERVATOR BUT THE PERSON IS CONSIDERED FOR APPOINTMENT AS A GUARDIAN OR CONSERVATOR OF AN AT-RISK ADULT MORE THAN THIRTY (30) DAYS AFTER THE COURT'S CASE WAS CLOSED, THE COURT MUST REQUEST A NEW CAPS CHECK PRIOR TO APPOINTMENT IN A NEW CASE.

    a. POTENTIAL APPOINTEES WHO ARE PROFESSIONAL GUARDIANS AND/OR CONSERVATORS FREQUENTLY APPOINTED BY THE COURT ARE EXEMPTED FROM THIS REQUIREMENT ONCE THEY HAVE HAD THEIR INITIAL CAPS CHECK.

    b. IF A PROFESSIONAL MAY BE APPOINTED AS A GUARDIAN AND/OR CONSERVATOR BY MULTIPLE COURTS, EACH COURT THAT USES THE PROFESSIONAL MUST CONDUCT ITS OWN CAPS CHECK OF THAT PROFESSIONAL TO ENSURE THAT THE COURT WILL BE NOTIFIED IN THE EVENT OF A SUBSEQUENT SUBSTANTIATED FINDING OF MISTREATMENT.

3. If the information provided for the CAPS check is incomplete the CCU may request additional information from the employer OR THE COURT.

    a. If the additional information is not provided by the employer OR THE COURT the CCU will close the request and will not conduct the CAPS check.

    b. The fee for the CAPS check shall not be refunded to the employer OR THE COURT.

4. If an employer OR THE COURT provides information the CCU has reason to believe is inaccurate:

    a. The CCU will contact the employer OR THE COURT regarding the information believed to be inaccurate.

    b. The CCU may request the employer OR THE COURT to provide the written authorization form to the CCU. If the employer OR THE COURT does not provide the written authorization form, the CCU will close the request and will not conduct the CAPS check. The CAPS check fee will not be refunded.

    c. If the CCU identifies a pattern of inaccurate information being provided by an employer OR COURT, the CCU will implement steps to address the pattern, which may include, but are not limited to, contacting the agency administrator, requiring submission of the written authorization form with each CAPS check request, and/or requesting legal assistance to resolve the concerns.

    d. Knowingly providing inaccurate information on a CAPS check request is a class 1 misdemeanor, as outlined in Section 26-3.1-111(6)(e.7), C.R.S.

5. If a screening company that requests CAPS checks on behalf of an employer provides information the CCU has reason to believe is inaccurate:

    a. The CCU will contact the employer and/or screening company regarding the information believed to be inaccurate.

    b. The CCU may request the screening company to provide the written authorization form to the CCU. If the screening company does not provide the

written authorization form, the CCU will close the request and will not conduct the CAPS check. The CAPS check fee will not be refunded.

c. If the CCU identifies a pattern of inaccurate information being provided by a screening company hired by an employer, the CCU will implement steps to address the pattern, which may include, but are not limited to, contacting the employer that hired the screening company, requiring submission of the written authorization form with each CAPS check request, prohibiting the screening company from requesting CAPS checks, and/or requesting legal assistance to resolve the concerns.

d. Knowingly providing inaccurate information on a CAPS check request is a class 1 misdemeanor, as outlined in Section 26-3.1-111(6)(e.7), C.R.S.

6. Submitting a CAPS check request for an individual who is not being considered for an employee or volunteer position providing direct care to at-risk adults or providing care through Consumer Directed Support Services OR FOR A PERSON WHO IS NOT A POTENTIAL APPOINTEE is a class 1 misdemeanor, as outlined in Section 26-3.1-111(6)(e.3), C.R.S.

~~H~~J. The fee for the CAPS check shall be:

1. Established to provide adequate revenue to support all direct and indirect costs related to the administrative appeals processes for substantiated perpetrators and the ~~employer~~ CAPS checks.

2. No greater than $16.50 per CAPS check, unless the State Board of Human Services approves an increased fee based upon increased direct and indirect costs of the administrative appeals and ~~employer~~ CAPS checks.

a. The current CAPS check fee shall be posted ~~to a~~ ON THE CAPS check website.

b. The current CAPS check fee may be adjusted with 30 days' notice, provided via the CAPS check website.

3. Paid by the ~~employer, or the person or entity conducting the CAPS check on behalf of the employer~~ AUTHORIZED REQUESTOR at the time of the request.

a. If the ~~employer, or the person or entity conducting the employee CAPS check on behalf of the employer,~~ AUTHORIZED REQUESTOR chooses to request the CAPS check via the online form, payment must be made through the online payment system at the time of the request. A CAPS check will not be completed without payment.

b. If the ~~employer, or the person or entity conducting the employee CAPS check on behalf of the employer,~~ AUTHORIZED REQUESTOR chooses to request the CAPS check via first class mail, payment in the form of an agency warrant or bank check must be attached to the form. A CAPS check will not be completed without payment.

c. ~~Employers, or a person or entity conducting the employee CAPS check on behalf of the employer,~~ AUTHORIZED REQUESTORS may choose to request that the ~~applicant or~~ EMPLOYEE, volunteer, or potential appointee reimburse the ~~employer, or the person or entity conducting the employee CAPS check on behalf of the employer,~~ REQUESTOR for the cost of the check.

~~I~~K. The State Department shall complete the CAPS check and respond to the EMPLOYER'S request as soon as possible, but no later than five (5) business days ~~from~~ FOLLOWING the receipt of the request. THE STATE DEPARTMENT SHALL COMPLETE THE CAPS CHECK AND RESPOND TO THE COURT'S REQUEST AS SOON AS POSSIBLE, BUT NO LATER THAN SEVEN (7) CALENDAR DAYS FOLLOWING THE RECEIPT OF THE REQUEST.

1. The State Department shall provide the CAPS check results to the ~~employer, or the person or entity conducting the employee or volunteer CAPS check on behalf of the employer~~ REQUESTOR via email, unless receipt of the results via first class mail is requested. ~~by the employer, or the person or entity conducting the employee CAPS check on behalf of the employer~~.

    a. If the employee is also the employer who requested the CAPS check on themselves, such as a facility administrator or owner, or an independent owner operator, and the employee/employer is determined not to have a substantiated finding of mistreatment, the results will be provided to the employee/employer.

    b. If the employee is also the employer who requested the CAPS check on themselves, such as a facility administrator or owner, or an independent owner operator, and the employee/employer is determined to have a substantiated finding of mistreatment, the results will be provided to the employee/employer and to the parent company and/or oversight agency(ies).

2. A person or entity conducting the employee CAPS check on behalf of the employer shall provide the results of the CAPS check to the employer.

L. The CAPS check results shall indicate:

1. Whether there is or is not a substantiated finding for the ~~new or existing~~ employee, ~~or~~ volunteer, or POTENTIAL APPOINTEE;

2. The purposes for which the information in CAPS may be made available;

3. The consequences of improper release of the information in CAPS; ~~and,~~

4. ~~For CAPS checks in which there is a substantiated finding, the CAPS check results will include the~~ WHETHER OR NOT THE PERSON HAS A SUBSTANTIATED FINDING. IF THE PERSON DOES HAVE A SUBSTANTIATED FINDING, THE RESULTS WILL ALSO PROVIDE THE date(s) of the SUBSTANTIATED finding(s), county department(s) that completed the investigation(s), ~~and~~ the type(s) and severity level(s) of the mistreatment, AND THE SUBSTANTIATED PERPETRATOR'S RIGHT TO APPEAL AND THE TIME FRAME ALLOWED BY RULE TO REQUEST AN APPEAL.

5. FOR CAPS CHECK RESULTS FOR THE COURT IN WHICH THERE IS A SUBSTANTIATED FINDING, THE CAPS CHECK RESULTS WILL ALSO INCLUDE WHETHER THERE IS AN ACTIVE APPEAL AT THE TIME OF THE COURT'S REQUEST.

M. Notification of any substantiated mistreatment finding made after the initial CAPS check shall be provided to the AUTHORIZED REQUESTOR ~~employer, or the person or entity conducting the employee CAPS check on behalf of the employer,~~ or to the employee/employer's parent company and/or oversight agency(ies), as outlined in Section 30.960.H.1.b, at the time the new finding is completed in CAPS.

N. Findings shall not be included in CAPS check results when:

1. The finding was made prior to July 1, 2018 when due process for substantiated perpetrators began, as outlined in Section 30.910; and/or,

2. The finding was expunged or overturned through the appeals process, as outlined in Section 30.920; and/or,

3. The substantiated perpetrator was under 16 years old at the time the mistreatment occurred; and/or,

4. A positive match of at least two data points between the employee and a substantiated perpetrator in CAPS, such as name, date of birth, or address, cannot be determined with certainty.

Editor's Notes

History

Entire rule eff. 08/01/2012.

Rules SB&P, 30.250, 30.640, 30.645 eff. 04/01/2013.

Rules SB&P, 30.100, 30.210, 30.330, 30.410, 30.520, 30.610-30.620, 30.830 eff. 04/01/2014.

Rules SB&P, 30.100-30.220 B.5, 30.230-30.310, 3.330-30.640, 30.650-30.810, 30.830 eff. 09/01/2014.

Entire rule eff. 02/01/2017.

Rules 30.100, 30.250 B, 30.250 E-30.250 G, 30.320 B, 30.330, 30.510 A, 30.510 B, 30.520, 30.620 C.4 eff. 04/01/2018.

Rules 30.100, 30.250 E.10, 30.260 E-F, 30.340 A-B, 30.410 D.6, 30.520 A.7-11, 30.520 B, 30.900 eff. 06/01/2018.

Rules 30.100, 30.250 E.11, 30.320, 30.960 eff. 07/30/2018.

Rules 30.100, 30.250, 30.520 A.2.d-f emer. rules eff. 08/02/2019.

Rules 30.100, 30.250, 30.520 A.2.d-f eff. 10/01/2019.

Rules 30.100, 30.210 B, 30.260 A-B, 30.330 B.4, 30.340 A.4, 30.340 D.1, 30.410 C, 30.420 F-G, 30.430 C, 30.510, 30.520, 30.530, 30.610, 30.620 K.3, 30.660 B,D 30.910 B.4,C eff. 12/30/2019. Rule 30.430 E repealed eff. 12/30/2019.

Rules 30.920 I, 30.930 A.2 emer. rules eff. 05/08/2020.

Rules 30.920 I, 30.930 A.2 eff. 08/01/2020.

Rules 30.100, 30.230-30.250, 30.310-30.330, 30.410-30.430, 30.510-30.530, 30.610-30.630, 30.660, 30.810, 30.830, 30.910, 30.930, 30.960 emer. rules eff. 09/13/2020.

Rules 30.100, 30.230-30.250, 30.310-30.330, 30.400, 30.500, 30.610-30.630, 30.660, 30.810, 30.830, 30.910, 30.930, 30.960 eff. 11/30/2020.

Annotations

The definition of "self-neglect" in Rule 30.100 (adopted 02/02/2018) was not extended by Senate Bill 19-168 and therefore expired 05/15/2019.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Liquor and Tobacco Enforcement Division

CCR number

1 CCR 203-2

Rule title

1 CCR 203-2 COLORADO LIQUOR RULES 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF REVENUE

Liquor Enforcement Division

COLORADO LIQUOR RULES

1 CCR 203-2

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

Regulation 47-100. Definitions.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b) and 44-3-202(2)(a)(I)(A), C.R.S. The purpose of this regulation is to ensure consistent application and interpretation of common terms within the relevant articles.

A. "Licensed, licensee, and licensed premises" mean persons or premises issued a license or permit under Articles 3, Articles 4 and Article 5 of Title 44.

B. "Manufacturer" means a Colorado licensed brewery, winery, limited winery, distillery, vintner's restaurant, distillery pub or brew pub as defined by C.R.S. 44-4-104 and 44-3-103.

C. "Nonresident manufacturer" means a Colorado licensee that manufactures malt liquor or fermented malt beverages outside the state of Colorado and has been issued a Brewer's Notice by the Alcohol and Tobacco Tax and Trade Bureau.

D. "On-site product sales promotion" means a sales promotion, featuring a particular brand of alcohol beverage, that is conducted on a retailer's licensed premises by an alcohol beverage supplier. On-site product sales promotion may include drink specials, product sampling and the giveaway of consumer goods.

E. "Sponsored event" means an event supported in whole or in part by a licensed supplier that is conducted at a retail licensed establishment.

F. "Supplier" means a Colorado licensed brewery, winery, distillery, brew pub, distillery pub, vintner's restaurant, limited winery, nonresident manufacturer, wholesaler or importer of alcohol beverages.

G. "Retailer" or an entity "licensed to sell at retail" means those persons licensed pursuant to sections 44-3-401(1)(h) – (t) and (v – w), C.R.S., and section 44-4-104(1)(c), C.R.S. to sell alcohol beverages to the end consumer.

H. "Unreasonable noise" means a level of noise that violates local noise ordinance standards, or where no local noise ordinance standard exists, a level of noise that would violate section 25-12-103, C.R.S.

I. "Wholesaler" means those entities authorized to sell alcohol beverages at wholesale to licensed retailers, including wholesalers of fermented malt beverages, malt liquors, vinous and spirituous liquors, limited wineries, brew pubs, distillery pubs, and vintner's restaurants.

J. "Sandwiches" as used in articles 3 and 5 of Title 44, C.R.S. are defined as single serving items such as hamburgers, hot dogs, frozen pizzas, burritos, chicken wings, or items of a similar nature.

"Light snacks" as used in articles 3 and 5 of Title 44, C.R.S. are defined as popcorn, pretzels, nuts, chips, or items of a similar nature.

K. "Colorado Liquor Code" or "Liquor Code" means article 3 of title 44, C.R.S.

L. "Colorado Beer Code" or "Beer Code" means article 4 of title 44, C.R.S.

M. "Special Event Code" means article 5 of title 44, C.R.S.

N. "Colorado Liquor Rules" means this regulatory article, 1 C.C.R. 203-2.

O. "Division" means the State of Colorado Department of Revenue's Liquor Enforcement Division, except as provided otherwise.

P. "Communal Outdoor Dining Area" means an outdoor space that is used for food and alcohol beverage service by two or more licensees licensed under article 3 or article 4 of title 44, C.R.S. as a:

1. Tavern;

2. Hotel and Restaurant;

3. Brew Pub;

4. Distillery Pub;

5. Vintner's Restaurant;

6. Beer and Wine Licensee;

7. Manufacturer that operates a sales room authorized under section 44-3-402(2) or (7), C.R.S.;

8. Beer wholesalers that operates a sales room under section 44-3-407(1)(b)(I), C.R.S.;

9. Limited Winery;

10. Lodging and Entertainment Facility;

11. Optional Premises; or

12. Fermented Malt Beverage Retailer licensed for consumption on the premises.

Regulation 47-104. Winery Direct Shipper's Permits.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-104(6), C.R.S. The purpose of this regulation is to clarify the scope of a winery direct shipper's permittee's privileges.

A. For purposes of this regulation, the term "permit" or "permittee" means the natural person or entity holding a winery direct shipper's permit and any manager, agent, servant, officer, or employee thereof.

B. For purposes of this regulation, the term "personal consumer" has the meaning set forth in section 44-3-103(36), C.R.S.

C. Subject to the requirements and limitations in section 44-3-104, C.R.S., a permittee may ship or deliver only wine that it produced or bottled to a personal consumer located in Colorado.

D. A winery direct shipper's permittee shall not engage in any in-person sale (as defined in section 44-3-103(52), C.R.S.) of wine to be shipped or delivered to a consumer in the State of Colorado, except at the licensed premises of a permittee's licensed winery or limited winery, or at an approved sales room of a licensed winery or limited winery that also has received a winery direct shipper's permit.

E. In-person sales (as defined in section 44-3-103(52), C.R.S.) of wine to be shipped or delivered to a consumer in the State of Colorado, shall also be allowed upon the licensed premises associated with a festival permit validly held by a licensed winery or limited winery.

Regulation 47-200. Petitions for Statements of Position and Declaratory Orders Concerning the Colorado Liquor Code, Colorado Beer Code, Special Event Code, or Colorado Liquor Rules.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(R), and 24-4-105(11), C.R.S. The purpose of this regulation is to establish clear and comprehensive procedures and considerations required for a statement of position and/or a declaratory order.

A. Statements of Position. Any person may petition the Division for a statement of position concerning the applicability to the petitioner of any provision of the Colorado Liquor Code, Colorado Beer Code, Special Event Code, or Colorado Liquor Rules.

B. Service of Petition for Statement of Position. A letter for petition for a statement of position shall be served on the Division by mailing or emailing such petition to the Division with a copy sent on the same date to the local licensing authority in the county or municipality where the petitioner's licensed premises or proposed licensed premises are located, if applicable. Each petition for a statement of position shall contain a certification that the service requirements of this paragraph have been met.

C. Time to Respond. The Division shall respond to a petition for statement of position in writing within forty-five (45) days of receiving such petition and set forth its position and the reasons therefore, or the grounds on which the division declines to provide a statement of position, pursuant to section 24-4-105(11), C.R.S., and/or paragraph (G) of this regulation.

D. Declaratory Orders. Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position may petition the state licensing authority within forty-five (45) days of the issuance of the statement of position for a declaratory order pursuant to section 24-4-105(11), C.R.S. Furthermore, any person who has not received a response within forty-five (45) days, may petition the state licensing authority for a declaratory order pursuant to section 24-4-105(11), C.R.S. The parties to any petition for a declaratory order pursuant to this regulation shall be the petitioner and the Division.

E. Requirements of Petition for Declaratory Order. Each petition for a declaratory order shall set forth the following:

1. The name and address of the petitioner; whether the petitioner is licensed pursuant to the Colorado Liquor Code, Beer Code, or Special Events Code and if so, the type of license or permit and address of the licensed premises.

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 the uncertainty as to the applicability to the petitioner of the statute, rule or order to which the petition relates.

4. A concise statement of the legal authorities if any, and such other reasons upon which petitioner relies.

5. A concise statement of the declaratory order sought by the petitioner.

F. Service. A petition for a declaratory order shall be served on the state licensing authority by mailing such petition to the state licensing authority with a copy of the petition sent on the same date to the Division, the local licensing authority in the county or municipality where the petitioner's licensed premises or proposed licensed premises are located, and to the Revenue & Utilities Section of the Colorado Department of Law. Each petition for a declaratory order shall contain a certification that the service requirements of this paragraph have been met.

G. Acceptance. The state licensing authority will determine whether to entertain any petition for declaratory order. If the state licensing authority decides it will not entertain a petition for declaratory order, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. The petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the state licensing authority more than forty-five (45) days after issuance of the statement of position.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule or order in question.

3. The petition involves a subject, question or issue which is currently involved in a court action, an administrative action before the state or any local licensing authority, ongoing investigation conducted by the Division or a written complaint filed with the state licensing authority or Division.

4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to the petitioner.

5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo.R.Civ.P. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule or order.

H. Determination. If the state licensing authority determines that it will entertain the petition for declaratory order, it shall promptly so notify all parties involved, and the following procedures shall apply:

1. The state licensing authority may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing. Any such request for additional information shall be served on all parties.

2. If the state licensing authority determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, the state licensing authority shall issue a Notice to

Set to all parties and on the date so set, a hearing shall be conducted in conformance with section 24-4-105, C.R.S.

3. In ruling on a petition for declaratory order, the state licensing authority may take administrative notice of general, technical or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.

4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.

5. Any other interested person may seek leave of the state licensing authority to intervene in the proceeding and such leave may be granted if the licensing authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.

6. A declaratory order shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

I. Record Retention and Reliability. Files of all requests, statements of position, and declaratory orders will be maintained and relied upon by the Division for a period of five (5) years, unless the statement of position or declaratory order is superseded by a statutory or regulatory change, amended by the Division, or amended or reversed by the state licensing authority. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

Regulation 47-300. Change in Class of License.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(a), 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(R), C.R.S. The purpose of this regulation is to establish procedures for a licensee requesting to change its license class, and provide clarity regarding a licensee's status pending this change.

A. A request for a change in the class of license from that presently held by a licensee shall be considered an application for a new license and subject to the requirements of sections 44-3-311, C.R.S and 44-3-313, C.R.S.

B. Repealed.

C. A new application to change the class of license shall not prohibit a licensee from operating under the terms and conditions of the old license, while its application for change in class is pending. Upon issuance of the new license, the licensee may continue the sale of the alcohol beverage inventory that was purchased under the old license, as long as the new license authorizes the sale of the same type of alcohol beverages. However, nothing herein shall authorize a licensee to sell a type of alcohol beverage unless specifically authorized to do so by the license it holds.

Regulation 47-302. Changing, Altering, or Modifying Licensed Premises.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44- 3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(D), C.R.S. The purpose of this regulation is to establish procedures for a licensee seeking to make material or substantial alterations to the licensed premises, and provide factors the licensing authority must consider when evaluating such alterations for approval or rejection.

A. After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the latest approved plans and specifications on file with the state and local licensing authorities without application to, and the approval of, the respective licensing authorities.

For purposes of this regulation, physical changes, alterations or modifications of the licensed premises, or in the usage of the premises requiring prior approval, shall include, but not be limited to, the following:

1. Any increase or decrease in the total size or capacity of the licensed premises.

2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises.

3. Any substantial or material enlargement of a bar, relocation of a bar, or addition of a separate bar. However, the temporary addition of bars or service areas to accommodate seasonal operations shall not require prior approval unless the additional service areas are accompanied by an enlargement of the licensed premises.

4. A temporary outside service area located on a sidewalk owned by a municipality, and that the licensee possesses in accordance with subsection (B)(2) of this regulation, may be approved by the state and local licensing authorities upon the annual filing of a temporary modification of premises application, due at the time of initial application or at the time of renewal, on a form approved by the State Licensing Authority, and payment of the associated fee as set forth in Regulation 47-506, provided that:

   a. the proposed temporary outside service area located on a sidewalk is immediately adjacent to the licensed premises;

   b. The licensed premises, as temporarily modified, will comprise a definite contiguous area; and

   c. Plans and specifications identifying the temporary outside service area located on a sidewalk accompany the form and fee.

5. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure detailed in the latest approved plans and specifications on file with the state and local licensing authorities. However, the following types of modifications will not require prior approval, even if a local building permit is required: painting and redecorating of premises; the installation or replacement of electric fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; and any non-structural remodeling where the remodel does not expand or reduce the existing area designed for the display or sale of alcohol beverage products.

6. The destruction or demolition, and subsequent reconstruction, of a building that contained the retailer’s licensed premises shall require the filing of new building plans with the local licensing authority, or in the case of manufacturers and wholesalers, with the state licensing authority. However, reconstruction shall not require an application to modify the premises unless the proposed plan for the newly-constructed premises materially or substantially alters the licensed premises or the usage of the licensed

premises from the plans and specifications detailed in the latest approved plans and specifications on file with the state and local licensing authorities.

7. Nothing herein shall prohibit a licensee, who is otherwise not eligible for an optional premises permit or optional premises license, from modifying its licensed premises to include in the licensed premises a public thoroughfare, if the following conditions are met:

   a. The licensee has been granted an easement for the public thoroughfare for the purpose of transporting alcohol beverages.

   b. The public thoroughfare is authorized solely for pedestrian and non-motorized traffic.

   c. The inclusion of the public thoroughfare is solely for the purpose of transporting alcohol beverages between licensed areas, and no sale or consumption will occur on or within the public thoroughfare.

   d. Any other conditions as established by the local licensing authority.

8. The addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.

9. Modification of the licensed premises to include a communal outdoor dining area, subject to the requirements of section 44-3-912, C.R.S., and Regulation 47-1103.

B. In making its decision with respect to any proposed changes, alterations or modifications, the licensing authority must consider whether the premises, as changed, altered or modified, will meet all of the pertinent requirements of the Colorado Liquor or Beer Codes and related regulations. Factors to be taken into account by the licensing authority shall include, but not be limited to, the following:

1. The reasonable requirements of the neighborhood and the desires of the adult inhabitants.

2. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.

3. Compliance with the applicable zoning laws of the municipality, city and county or county.

4. Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary.

5. The legislative declaration that the Colorado Liquor and Beer Codes are an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

C. If permission to change, alter or modify the licensed premises is denied, the licensing authority shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the licensing authority within fifteen (15) days after the date of notice.

D. This regulation shall be applicable to the holder of a manufacturer's license as specifically defined in Section 44-3-402, C.R.S., or a limited winery defined in section 44-3-403, C.R.S., only if the physical change, alteration, or modification involves any increase or decrease in the total size of the licensed premises, including the addition of a noncontiguous location to the licensed premises

of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S. Except, any change, alteration, or modification of a sales room, shall be reported in accordance with subsection (A).

E. The state licensing authority shall not impose any additional fees for the processing or review of an application for a modification of premises for the holder of a manufacturer's license, except for applications to modify the premises through the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.

F. Due to public health concerns raised by the presence COVID-19 in Colorado, a licensee may apply to temporarily modify its licensed premises to facilitate social distancing by employees and customers and to facilitate compliance with the requirements of applicable public health orders (*See* Regulation 47-1102).

1. If permitted by the relevant local licensing authority, the temporary premises modification may include expansion of the licensed premises into outside areas that the licensee possesses in accordance with subsection (B)(2) of this regulation, provided that:

   a. Any outside area proposed to be included in the licensed premises, as temporarily modified, is contiguous or adjacent to the licensed premises and appropriately monitored by the licensee;

   b. The licensed premises, as temporarily modified, will comprise a definite contiguous area;

   c. The licensee will designate the boundaries of the licensed premises, as temporarily modified, using barriers approved by the local licensing authority and state licensing authority and post warning signs in areas visible to the public, including all points of ingress and egress, regarding laws against public consumption of alcohol beverages;

   d. The licensed premises, as temporarily modified, will not encroach upon or overlap with the licensed premises of any other licensee;

   e. The licensed premises, as temporarily modified, complies with local building and zoning laws; and

   f. The licensed premises, as temporarily modified, complies with all other restrictions and requirements imposed by the Colorado Liquor Code and Rules.

2. A temporary modification of a licensed premises pursuant to this paragraph (F) may be approved by the state and local licensing authorities after the filing of a temporary modification of premises application on a form approved by the State Licensing Authority, including plans and specifications of the licensed premises, as temporarily modified, and a one-time payment of the modification of licensed premises fee set forth in Regulation 47-506.

3. Any temporary modification approved pursuant to this paragraph (F) shall expire on May 31, 2022, unless the relevant local licensing authority imposes an earlier expiration date. A licensee is not required to pay an additional modification of licensed premises fee or obtain approval to remove a temporary modification to the licensed premises upon expiration of this paragraph (F).

4. Nothing in this regulation requires a local licensing authority to allow temporary premises modifications in response to COVID-19. A local licensing authority that allows temporary premises modifications may establish an earlier expiration date for any temporary

modifications issued in the relevant jurisdiction and may establish additional requirements for temporary modifications that are at least as restrictive as the requirements in this paragraph (F).

5. This subsection (F) is effective until May 31, 2022 and is repealed effective June 1, 2022.

Regulation 47-303. License Renewal.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(C), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), 44-3-302, 44-3-501, and 44-4-105, C.R.S. The purpose of this regulation is to clarify and establish procedures and deadlines for a licensee that is applying to renew its license in accordance with section 44-3-302, C.R.S.

A. No one other than the license holder, or their duly-authorized representative, may file an application to renew the license with local and state licensing authorities.

B. At least ninety (90) days before the expiration date of an existing license, the State Licensing Authority shall notify the licensee of the expiration date by sending notice to the most recently provided email address and/or mailing address for the licensee.

C. A complete renewal application shall include evidence that the licensee remains in possession of the licensed premises by ownership, lease, rental, or other arrangement at the time of application. An agreement that may lapse within the new license year neither automatically disqualifies the licensee from renewing, nor automatically invalidates the license. However, this provision does not preclude the state or local licensing authority from initiating any action as provided by law to suspend or revoke a license for loss of possession of the licensed premises.

D. Nothing herein authorizes a licensee to purchase, sell, or serve alcohol beverages with an expired license, except as authorized in subparagraphs E, F(2), and G(3) of this regulation. Licensed privileges are not restored until and unless the applicable requirements of subparagraph F(2) and/or G(3) of this regulation are met.

E. Application for the renewal of an existing license shall be made to the local licensing authority not less than forty-five (45) days prior to the date of expiration and to the state licensing authority not less than thirty (30) days prior to the date of expiration. The state or local licensing authority may waive these requirements for good cause. Once an application for renewal has been filed with the local licensing authority, or the state licensing authority for state only licenses, the licensee may continue to operate until final agency action.

F. License expired for not more than ninety (90) days.

1. A licensee whose license has not been expired for more than ninety (90) days may file a late renewal application upon the payment of a non-refundable late application fee to the local licensing authority, and/or the state licensing authority.

2. A licensee who files a late renewal application and pays the requisite fees may resume operation until the state and/or local licensing authorities have taken final agency action to approve or deny such licensee's late renewal application.

G. License expired for more than ninety (90) days, but less than one hundred eighty (180) days.

1. Any licensee whose license has been expired more than ninety (90) but less than one hundred eighty (180) days, may submit to the local licensing authority, or state licensing authority for state only licenses, an application:

   a. For a new license, subject to section 44-3-301, C.R.S., or

   b. For a reissued license, subject to subsection 44-3-302(2)(d), C.R.S.

2. The local licensing authority, or state licensing authority for state-only licenses, shall have sole discretion to determine whether to allow a licensee to apply for a reissued license. If the local licensing authority, or state licensing authority for state-only licenses, does not allow the licensee to apply for a reissued license, then the licensee must apply for a new license.

3. A licensee applying for a reissued license may resume operation pending final agency action by all of the relevant licensing authorities to approve or deny the licensee's application only if:

   a. The local licensing authority, or state licensing authority for state-only licensee, allows the licensee to apply for a reissued license;

   b. The licensee submits the application, along with payment for the required fees and fines, to the local licensing authority or the state licensing authority for state-only licensees; and

   c. The local licensing authority, or the state licensing authority for state-only licenses, accepts the reissued license application and required fees and fines.

H. Any licensee whose license has been expired for one hundred eighty (180) days or more must apply for a new license pursuant to section 44-3-311, C.R.S., and shall not purchase or sell any alcohol beverage until all required licenses have been obtained, unless otherwise authorized under these regulations.

I. A licensee that is in lawful possession of its alcohol beverage inventory at the time it receives approval from the local licensing authorities for an application for the late license renewal pursuant to paragraph (F) of this regulation, or for an application for new license of reissued license pursuant to paragraph (G) of this regulation, may continue to possess its alcohol beverage inventory.

Regulation 47-305. Transfers – Wholesaler Confirmation.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(C), and 44-3-303(1)(d), C.R.S. The purpose this regulation is to provide guidance to applicants and licensing authorities regarding statutory requirements for transfers under subsection 44-3-303(1)(d), C.R.S. and what is satisfactory to demonstrate fulfillment of the requirement that all wholesalers have been paid in full prior to approval of a transfer application.

A. In accordance with section 44-3-303(1)(d), C.R.S., the applicant shall deliver a confirmation to each wholesaler licensed under this article, including brew pubs, distillery pubs, vintner's restaurants and limited wineries, who has sold alcohol beverages to the transferor-licensee within the preceding one hundred eighty (180) calendar days, in the form and substance approved by the Division.

B. The confirmation may be delivered via email, so long as the applicant can prove receipt of the email by the wholesaler. If the applicant cannot prove receipt be email, the confirmation shall be

delivered via United States mail or other common carrier with a minimum of a return receipt to the last known business address of the wholesaler, attention: credit department. The confirmation shall be deemed received by a wholesaler upon the third (3rd) day following the date on which the confirmation is deposited in the United States mail or common carrier or the date on the return receipt.

C. Upon delivery of a confirmation to a wholesaler, the transferor-licensee shall not purchase alcohol beverage on credit or accept an offer or extension of credit from the wholesaler and shall effect payment upon delivery of the alcohol beverage from the wholesaler. Allowed payments include cash, credit or debit cards, check, money orders, certified check, EFT transfer and any other method of payment approved by the Division.

D. A wholesaler shall have fifteen (15) business days upon receipt of a confirmation to complete and return the confirmation to the applicant, in the same manner and extent as specified in section B of this regulation. If a wholesaler does not complete and return the confirmation within the fifteen (15) business day period of time, the wholesaler shall be deemed paid in full solely for purposes of transferring the license.

E. Nothing within this regulation shall prohibit or restrict a local licensing authority from issuing a temporary permit or from processing the transfer application. However, a transfer shall not be approved unless the transferor-licensee is in compliance with this regulation.

F. The applicant, transferor-licensee and/or its agent and assign, and each wholesaler shall act in good faith and fair dealing with each other.

Regulation 47-312. Change of Location.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), 44-3-301(9), 44-3-309, and 44-3-410, C.R.S. The purpose of this regulation is to establish procedures for a licensee requesting to change the location of the licensed premises, and provide factors the licensing authority must consider when evaluating a change for approval or rejection.

A. When a licensee desires to change the location of its licensed premises from the location named in an existing license, it shall make application to the applicable licensing authorities for permission to change location of its licensed premises, except that an application for change of location shall not be required for the demolition and reconstruction of the building in which the original licensed premises was located.

B. Applications to change location shall be made upon forms prepared by the state licensing authority and shall be complete in every detail. Each such application shall state the reason for such change, and in case of a retail license, shall be supported by evidence that the proposed change will not conflict with the desires of the adult inhabitants and the reasonable requirements of the neighborhood in the vicinity of the new location.

1. An application to change the location of a retail license shall contain a report of the local licensing authority of the town, city, county, or city and county in which the license is to be exercised. Such report shall describe the findings of the local licensing authority concerning the reasonable requirements of the neighborhood and the desires of the adult inhabitants with respect to the new location, except that pursuant to section 44-3-312(2)(a), C.R.S., the needs of the neighborhood need not be considered for a change of location for a club license.

2. When a licensee is required by lease, lease renewal, condemnation, or reconstruction to move its licensed premises to a new address that is located within the same shopping

center, campus, fairground, or similar retail center, the local or state licensing authority may, at its discretion, waive the neighborhood needs and desires assessment requirements should it determine that the new location remains within the same neighborhood as the old location.

C. For retail licenses, no change of location shall be permitted until the state licensing authority has, after approval of the local licensing authority, considered the application and such additional information as it may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. A local licensing authority may, at its discretion, extend the time to change the location of the licensed premises, for good cause shown. However, no extension that is beyond twelve (12) months from the original date of approval shall be granted.

D. For those licensees not subject to approval by the local licensing authority, no change of location shall be permitted until the state licensing authority has considered the application and such additional information as it may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. The state licensing authority may, at its discretion, extend the time to change the location, for good cause shown. However, no extension that is beyond twelve months from the original date of approval shall be granted.

E. Once the licensee has changed the location of its licensed premises, the permit to change location shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains until the license is renewed.

F. For retail licenses no change of location shall be allowed except to another location within the same city, town, county, or city and county in which the license was originally issued. Except, a retail liquor store licensed on or before January 1, 2016, may apply to move its permanent location to another place within or outside the municipality or county in which the license was originally granted. Once approved, the retail liquor store licensee shall change the location of its premises within three (3) years after such approval.

1. A change of location for a fermented malt beverage retailer or retail liquor store will be approved only if the new location satisfies the distance requirements in section 44-3-301(9)(a)(I)(B)-(C), C.R.S.

2. It is unlawful for a licensee to sell any alcohol beverage at a new location until permission is granted by the state licensing and local licensing authorities.

G. Upon application for change of location, public notice shall be required by the local licensing authority in accordance with Section 44-3-311, C.R.S.

H. A licensee located within 500 feet from any public or parochial school or principal campus of any college, university or seminary may apply for a change of location within the same prohibited area in accordance with the requirements of section 44-3-301(9), C.R.S., but may not apply for a change of location within any other prohibited area as defined within section 44-3-313, C.R.S.

I. A licensee that is in lawful possession of its alcohol beverage inventory at the time it receives approval from the local and state licensing authorities to change the location of its licensed premises, may continue to possess its alcohol beverage inventory for sale at the new location.

Regulation 47-322. Unfair Trade Practices and Competition.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-102, 44-3-103, 44-3-201(1), 44-3-202(1)(b), 44-3-202(2)(a), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(C), 44- 3-202(2)(a)(I)(G), 44-3-202(2)(a)(I)(R), 44-3-308, and 44-4-102, C.R.S. The purpose of this regulation is to establish certain permitted and prohibited trade practices between suppliers and retailers in order to clarify and prevent statutorily prohibited financial assistance between tiers.

Suppliers and their agents or employees may not attempt to control a retail licensee's product purchase selection by engaging in unfair trade practices or competition.

Nothing in this regulation shall apply to non-profit, charitable, or other qualifying organizations, when such organization conducts licensed events pursuant to the requirements contained in article 5 of title 44 and related regulations, and such organization does not otherwise hold a retail license pursuant to article 3 or 4 of title 44. However, nothing herein shall authorize any financial assistance for the purpose of altering or influencing an organization's product selection for said events.

Retailers may not accept any prohibited financial assistance as described herein, and suppliers are prohibited from directly or indirectly engaging in the following unfair practices:

A. Sales of alcohol beverages.

1. No vinous or spirituous liquor may be sold by a vinous or spirituous liquor manufacturer or wholesaler to a retail licensee below the laid-in cost of said vinous and spirituous liquor products.

2. No malt liquors or fermented malt beverages may be sold by a malt liquor/beverage manufacturer or wholesaler to a retail licensee below the laid-in cost of said malt liquor/beverage products.

3. Product cost per case will be determined utilizing a “Last In/First Out” basis unless a supplier has adequate records to verify that the actual cost of said products was less than the most recent shipment received.

4. A wholesaler's laid-in cost is defined as the actual proportionate invoice price and freight charge to that wholesaler or distributor, plus applicable state and federal taxes of any given product. An in-state manufacturer's laid-in cost is defined as the actual costs of the manufacturer, plus applicable state and federal taxes.

5. Certain sales of alcohol beverages below cost are not designed or intended to influence or control a retailer's product selection. The following exceptions to below cost product sales are therefore permitted:

a. Product lines that will be discontinued by a supplier for a minimum of at least one year may be sold below cost at market value.

b. A wholesaler's aged inventory of vinous and spirituous liquors for which the current market value has fallen substantially below the wholesaler's original purchase cost, after a period of twelve (12) months, and for which a recovery of the original cost through an increase in market value is unlikely. For aged inventories sold to retailers below their cost due to market-below-cost conditions, wholesalers shall maintain the following records for a minimum of three years:

i. Original purchase invoice.

ii. Aged inventory schedule verifying slow sales and drop in market value.

iii. Other factors that had an effect on a decrease in market value (e.g. overproduction, poor media critique).

c. Products for use, but not for resale by the drink, by a non-profit organization or similar group, as defined in section 44-5-102, C.R.S., on a retailer's licensed premises, may be invoiced to a retailer at no cost. The invoice for said products must detail the products provided and the group for whose benefit it is provided. At the conclusion of the organization's event any unused product must be returned to the wholesaler, brew pub, distillery pub, or vintner's restaurant, or invoiced at a minimum of laid in cost to the retailer.

6. Suppliers authorized to sell alcohol beverages to licensed retailers pursuant to articles 3 or 4 of title 44, may offer product discounts to licensed retailers that meet the requirements of paragraph A, and the following additional conditions:

a. “Product Discount” shall mean a price reduction negotiated between supplier and retailer before the sale and delivery of alcohol beverage products, and where a description of the products subject to discount, and the dollar amount of the discount, is finalized and recorded in the supplier's sales records.

b. Discount programs are not subject to time limitations, and any discount program that will affect more than a single sales transaction and sales invoice are permitted, provided that no invoice, by itself, reflects a zero cost or below-cost sale.

c. Product discounts that are conditioned upon a retailer's commitment to prominently display the supplier's products are prohibited.

7. Any rebate, whereby a monetary value is returned by a supplier to a retailer, in cash, account credit, or free goods, as a reward or compensation for meeting a pre-specified purchase goal, is prohibited.

8. Suppliers authorized to sell alcohol beverages to licensed retailers pursuant to articles 3 or 4 of title 44, may offer account credits to licensed retailers under the following conditions:

a. Any account credit offered on previously issued sales invoices must be in direct relation to previous product purchases, lawful returns pursuant to this regulation or other legitimate commercial transactions as authorized under articles 3 or 4 of title 44, C.R.S. and related regulations.

b. Credits that cannot be connected with authorized business transactions, as described herein, will be considered unlawful financial assistance, and are therefore prohibited.

c. Both the seller and retail licensee shall maintain copies of sales invoices and evidence of payment related to the transactions described in this section, in accordance with 44-3-701, C.R.S., and for the time frame specified in Regulation 47-700.

9. Wholesaler invoices provided to retail liquor store, fermented malt beverage off-premises, and liquor licensed drugstore licensees must clearly designate a price paid for each product, which shall not be less than the wholesaler’s laid-in cost of each product. At no point may a retail liquor store, fermented malt beverage off-premises, or liquor licensed drugstore licensee receive any products from a wholesaler at less than laid-in cost.

B. On-site sales promotions

1. Suppliers may conduct an on-site product sales promotion at a retailer's licensed premises subject to the following conditions:

   a. Free goods of any value may be provided to the public, provided that a supplier's representative or authorized agent, who is not the retailer or a retail employee/agent, is physically present to award free goods to the public. Suppliers shall not require a customer purchase in order for the customer to receive the free goods.

   b. If only consumer advertising specialties, as described in Regulation 47-316(A), are to be provided at the promotion, neither suppliers or their agents need be present for their distribution.

   c. Suppliers are prohibited from providing anything other than the items specified in Regulation 47-316(A) to retailers or their employees at on-site product sales promotions.

   d. Suppliers may provide or pay for any media announcement of an on-site product sales promotion that primarily advertises the product, the location, and the date and time of the promotion. The name of the retail outlet may also be mentioned.

   e. Retailers may at their own cost advertise in advance a supplier's product sales promotion.

   f. No supplier may require that a retailer change its product selection as a condition of conducting a product sales promotion. Retailers may at their option change their product selection in support of a product sales promotion.

   g. Competitors' products may not be excluded during a product sales promotion.

2. On-Premises Sampling. A supplier-sponsored consumer sampling of alcohol beverages may be held at a retailer’s premises licensed for on-premises consumption for the purpose of product sales promotion under the following conditions:

   a. A supplier-sponsored consumer sampling held at the licensed premises of a retailer licensed for on-premises consumption shall include only the alcohol beverages the retailer is licensed to sell.

   b. The supplier shall only offer its alcohol beverage product to consumers during a supplier-sponsored consumer sampling.

   c. A retailer or supplier shall not impose any charge to the consumer to enter or participate in the sampling.

   d. Product used for sampling must be invoiced by the supplier, who is authorized to sell the alcohol beverages to licensed retailers pursuant to article 3 or 4 of title 44, as if sold to the retailer.

   e. If all product listed in the sales invoice is consumed as permitted herein, the supplier may issue the retailer a credit against the entire amount of the original invoice.

f. Any remaining product must be returned to the wholesaler, or sold to the retailer at a minimum of the wholesaler's cost.

g. The supplier must be present and shall be the person who provides the sample to a consumer who is twenty-one (21) years of age or older.

h. Suppliers may provide or pay for any media announcement of a supplier-sponsored consumer sampling that primarily advertises the product, the location, and the date and time of the sampling. The name of the retail outlet may also be mentioned.

3. Off-Premises Giveaway. A supplier-sponsored consumer giveaway of sealed malt liquor or fermented malt beverages may be held at a retailer's premises licensed for off-premises consumption for the purpose of product sales promotion under the following conditions:

a. A supplier-sponsored consumer giveaway held at the licensed premises of a retailer licensed for off-premises consumption is limited to either sealed malt liquor or fermented malt beverages, whichever the retailer is licensed to sell.

b. The supplier shall only offer its malt liquor or fermented malt beverages product to consumers during a supplier-sponsored consumer giveaway.

c. A retailer or supplier shall not impose any charge to the consumer to enter or participate in the giveaway.

d. Product used for the giveaway must be invoiced by a supplier, who is authorized to sell malt liquor or fermented malt beverage to licensed retailers pursuant to article 3 or 4 of title 44, as if sold to the retailer.

e. If all product listed in the sales invoice is given away as permitted herein, the supplier may issue the retailer a credit against the entire amount of the original invoice.

f. Any remaining product must be returned to the wholesaler, or sold to the retailer at a minimum of the wholesaler's cost.

g. The supplier must be present and shall be the person who gives the sealed container to consumers. The supplier must verify that each consumer is of lawful age prior to giving away the sealed container.

h. Suppliers may provide or pay for any media announcement of a supplier-sponsored consumer giveaway that primarily advertises the product, the location, and the date and time of the giveaway. The name of the retail outlet may also be mentioned.

i. The maximum amount of malt liquor or fermented malt beverages given to each consumer shall not exceed twenty-six (26) ounces.

C. Sponsored events: Lawful Advertising

1. Suppliers may provide sponsorship fees to advertise at charitable or civic events that are temporary in nature, where the supplier's sponsorship fee affords the supplier exclusive signage rights at the retail premises, and where sponsorship proceeds are received directly by the charity or civic endeavor, and not by a licensed retailer.

2. Suppliers may provide a sponsorship fee to advertise in ballparks, resorts, racetracks, stadiums, concert venues or entertainment districts as long as such sponsorship fee is not paid to a person or entity holding a retail license at such venue, directly or indirectly, and is not intended to influence the product selection of such retailer. The retailer's product selection for the event may not change as a condition of the event sponsorship and the products of the supplier's competitors may not be excluded.

3. Suppliers may provide or pay for any media announcement of a sponsored event that primarily advertises the product, the location, and the date and time of the event. The name of the retail outlet may also be mentioned.

4. Suppliers providing sponsorship fees to advertise at the aforementioned venues may also provide those items and services authorized under regulations 47-316, 47-320, and 47-322 to the licensed retailers at, or in conjunction with, the sponsored event.

D. Retailer entertainment

Suppliers may provide food, beverages, entertainment, recreation, or the costs associated with the same, to a retailer and its employees at meetings, social events, conferences, trainings, or other similar events, subject to the following:

1. Food, beverages, entertainment, or recreation are provided when, and where, suppliers or supplier representatives are participating or present.

2. Entertainment may include tickets or admission fees for athletic or sporting events, concerts, artistic performances, festivals, and similar forms of entertainment.

3. Recreation may include fees associated with participation in athletic or sports-related activities.

4. For any supplier-provided retailer entertainment, the supplier is prohibited from providing the costs associated with lodging and travel, other than nominal ground transportation.

5. Suppliers must maintain records sufficient to verify those entertainment expenses associated with retailers and their employees. Failure to maintain such records shall not be a per se violation of this regulation, but could constitute a violation of section 44-3-701, C.R.S. or Regulation 47-700.

E. Alcohol Beverage Samples for Retailers

1. Wholesalers, or those licensed to sell at wholesale pursuant to article 3 and 4 of title 44, may furnish or give a limited amount of alcohol beverage samples to retailers licensed solely for on-premises under the following conditions:

a. The retailer's class of liquor license permits the sale of the type of beverage offered as a sample.

b. The providing of samples is not conditioned upon future purchases of alcohol beverages, or as compensation for any previous alcohol beverage purchase.

c. The retailer has not purchased the product SKU of the alcohol beverage offered as a sample within the previous six (6) months.

d. The wholesaler provides not more than 3.0 liters per brand of spirituous liquor, not more than 3.0 liters per brand of vinous liquor, and not more than one six-

pack, or 72-ounce equivalent, per brand of malt liquor or fermented malt beverage so packaged. If a particular brand is not available in a size meeting the quantity limitations stated herein, a wholesaler may furnish the next available larger size.

e. Only the retailer and its employees are authorized to taste or test those alcohol beverages given as samples, as provided herein. Nothing shall authorize a retailer to sell any samples provided or to use such the same for consumer tastings.

2. Wholesalers, or those licensed to sell at wholesale pursuant to article 3 and 4 of title 44, may furnish or give a limited amount of alcohol beverage samples to retailers licensed solely for off-premises under the following conditions:

a. The retailer's class of liquor license permits the sale of the type of beverage offered as a sample.

b. The providing of samples is not conditioned upon future purchases of alcohol beverages, or as compensation for any previous alcohol beverage purchase.

c. The wholesaler provides not more than 3.0 liters per brand of spirituous liquor, not more than 3.0 liters per brand of vinous liquor, and not more than one six-pack per brand of malt liquor or fermented malt beverage so packaged. If a particular brand is not available in a size meeting the quantity limitations stated herein, a wholesaler may furnish the next available larger size.

d. The wholesaler is present at the time of consumption and maintains sole possession of the container after sampling. Samples, in the quantities described herein, may be left in the retailer's possession if the container seal is left intact, but must be removed from the licensed premises at the end of the day.

F. Wholesaler Trade Shows and Trade Events

1. For purposes of this Regulation 47-322(F):

a. “Trade show” means an event to which more than fourteen (14) authorized attendees are invited and which is organized and conducted by or on behalf of one or more wholesalers, as defined in Regulation 47-100(I), for the purpose of exhibiting and providing information regarding alcohol beverage products and services offered by the participating wholesaler(s), to retailers licensed to buy such alcohol beverage products from the wholesaler(s), and to provide samples of such alcohol beverage products for consumption during the event.

b. “Trade event” means an event to which fourteen (14) or fewer authorized attendees are invited and which is organized and conducted by or on behalf of one or more wholesalers, as defined in Regulation 47-100(I), for the purpose of exhibiting and providing information regarding alcohol beverage products and services offered by the participating wholesaler(s), to retailers licensed to buy such alcohol beverage products from the wholesaler(s), and to provide samples of such alcohol beverage products for consumption during the event.

c. “Hosting on-premises retailer” means a retailer licensed for on- premises consumption on whose licensed premises a trade show or trade event is held.

d. “Authorized attendees” means, and shall be limited to:

i. Officers, directors, and employees of a retail licensee that is licensed to sell the type of alcohol beverages to be exhibited and sampled during the trade show or trade event;

ii. Other individuals affiliated with one or more retail licensees as independent consultants or experts; and

iii. No more than one adult guest of each individual authorized to attend the trade show or trade event under subparagraphs (d)(i)-(ii).

2. Trade shows or trade events are subject to the following requirements and limitations:

a. A trade show or trade event shall take place only with the permission of, and on the licensed premises of, a hosting on-premises retailer that is licensed to sell the type of alcohol beverages to be exhibited and sampled during the trade show or trade event.

b. A trade show or trade event shall not be open to the general public, and shall be limited to authorized attendees registered (either in advance or at the door). The wholesaler(s) participating in the trade show or trade event shall maintain registration records containing, at a minimum, the date of the trade show or trade event, the name of the hosting on-premises retailer, the name of each authorized attendee who attended the trade show or trade event, and the name of the licensed retailer(s) with which each authorized attendee is associated. The registration records from the trade show or trade event shall be available for inspection by the Division during the trade show or trade event and shall be provided to the Division within ten (10) days of the conclusion of the trade show or trade event.

c. By agreement, the participating wholesaler(s), the hosting on-premises retailer or both (including such entities' agents and employees) may serve samples of alcohol beverage product(s) to authorized attendees during a trade show or trade event. Such samples shall be provided to authorized attendees free of charge.

i. The entity or entities responsible for the serving of the alcohol beverage products during a trade show or trade event shall be responsible for any violations of the Liquor Code, Beer Code, or Special Event Code, and/or any regulation promulgated pursuant thereto, related to the serving of alcohol beverage products during a trade show or trade event, including, but not limited to, violations related to service of alcohol beverages to a visibly intoxicated person or to a person under twenty-one years of age.

d. Alcohol beverage products used for a trade show or trade event must comply with all applicable product registration and labeling requirements, including those set forth in Regulation 47-904(F) and (G).

e. All taxes, fees and surcharges required by section 44-3-503, C.R.S., must be paid for all alcohol beverage products used in a trade show or trade event.

f. Invoices for alcohol beverage products used for a trade show or trade event must be clearly labeled as a "No-Cost Trade Show/Event Inventory Record" and shall be subject to the following requirements:

i. Any wholesaler participating in a trade show or trade event must invoice any alcohol beverage products to be used in the trade show or trade

event to the hosting on-premises retailer. Notwithstanding any other rule or regulation to the contrary contained in 1 CCR 203-2, the wholesaler shall invoice the hosting on-premises retailer for alcohol beverage products to be used in a trade show or trade event at no cost.

ii. The hosting on-premises retailer must receive all wholesalers' invoice(s) for alcohol beverage products to be used in the trade show or trade event prior to the commencement of the trade show or trade event, and shall retain such invoice(s) for their records.

iii. Any wholesaler(s) participating in a trade show or trade event shall provide the Division with copies of all invoice(s) to be issued in accordance with this paragraph (F)(2)(f) as an accounting for all the alcohol beverage products intended to be used during the trade show, and the anticipated drop-off and pick-up dates for such alcohol product, at least three (3) days prior to the commencement of the trade show.

iv. In order to account for unanticipated changes in the alcohol beverage products to be used during a trade show or trade event, any Wholesaler(s) participating in a trade show or trade event may provide the Division with an "Amended No-cost Trade Show/Event Inventory Record" before the commencement of the scheduled trade show or trade event, provided the wholesaler(s) complied with the provisions of paragraph (F)(2)(f)(iii) of this regulation in the first instance.

v. At the conclusion of the trade show or trade event, any alcohol beverage product(s) invoiced for use during the trade show or trade event (whether opened or unopened) shall be removed from the hosting on-premises retailer's licensed premises by the wholesaler(s), or destroyed.

A. Any alcohol beverage product(s) invoiced for use during the trade show or trade event remaining on the hosting on-premises retailer's licensed premises at the conclusion of the trade show or trade event, and awaiting wholesaler pick-up, must be held in a secure area of the hosting on-premises retailer's licensed premises, kept separate from, and clearly labeled to distinguish such alcohol beverage product(s) from, the host on-premises retailer's stock, by affixing a copy of the most current invoice issued pursuant to paragraph (F)(2)(f)(iii), or (F)(2)(f)(iv) of this regulation, and marking such invoice with the anticipated pick-up date of the alcohol beverage product(s), which shall be no more than thirty (30) days after the conclusion of the Trade Show or Trade Event.

B. Allowing any alcohol beverage product(s) invoiced for use during the trade show or trade event (whether opened or unopened) to remain on the hosting on-premises retailer's licensed premises after the conclusion of the thirty (30) day pick-up window allowed for in paragraph (F)(2)(f)(v)(A) above, shall be deemed a violation of this Regulation, for which both the wholesaler(s), and hosting on-premises retail licensee shall be responsible.

g. No delivery or exchange of alcohol beverage product(s) between a participating wholesaler and authorized buyer of same shall take place during the trade show or trade event.

h. A hosting on-premises retailer shall not be deemed to be receiving unlawful financial assistance from the wholesaler(s) participating in the trade show or trade event, so long as the hosting on-premises retailer does not directly benefit from the sale of any alcohol beverage product exhibited to or sampled by authorized attendees during the trade show or trade event.

i. All documents and information required to be provided to the Division pursuant to paragraphs (F)(2)(b) and (F)(2)(F) of this regulation, shall be provided using a method authorized by the Division (which, at the Division's discretion, may be through uploading the records to an online location specified by the Division or through electronic mail).

3. This Regulation 47-322(F) shall not apply to:

a. Events similar to those addressed in this Regulation that are organized and conducted as special events pursuant to, and in compliance with article 5 of title 44, the exemption set forth in section 44-5-108, C.R.S., provisions of article 3 of title 44 applicable to special events, and Regulations 47-1000 through 47-1022, 1 CCR 203-2.

b. Tastings conducted by a licensed winery pursuant to section 44-3-402(2), C.R.S.; by a limited winery, pursuant to section 44-3-403(2)(e), C.R.S.; by a distillery, pursuant to section 44-3-402(7), C.R.S.; by a beer wholesaler, pursuant to section 44-3-407(1)(b), C.R.S.; or as part of a festival permit, pursuant to section 44-3-404, C.R.S.

G. Consignment Sales and Lawful Product Returns

1. Wholesalers are prohibited from making consignment sales to retailers.

2. A consignment sale is an arrangement whereby a wholesaler invoices and delivers alcohol beverages to a retailer who is under no obligation to pay for such beverages until they are resold. Consignment sales also afford the retailer the right to return product to the wholesaler for any reason.

3. Wholesalers are permitted to accept a return of alcohol beverages previously sold to retailers for ordinary and usual commercial reasons and to provide account credit or product exchange. Such commercial reasons for return shall be limited to the following:

a. Defective products: Products qualifying under this exception are those that are upon delivery, or later become, unmarketable due to contamination or deterioration of product ingredients, leaking containers, damaged labels, or missing, damaged or compromised container seals.

b. Broken containers or short-filled containers/cases: Nothing shall prevent a retailer from making a claim for the replacement of alcohol beverages that were delivered by a wholesaler in a damaged or incomplete condition, and nothing shall prevent a wholesaler from granting credible claims.

c. Error in products delivered: Any discrepancy between a retailer's product order and the products delivered may be corrected by the wholesaler within a reasonable period after delivery.

d. Discontinued products: When a manufacturer or importer discontinues the production, importation, or market availability of a product, a retailer may return

any remaining product to the original wholesaler. A retailer's decision to discontinue a product does not qualify.

e. Manufacturer's product change: When a manufacturer has changed the formula, proof, label or container of an alcohol beverage, wholesalers may withdraw the product from the retailer's inventory and replace it with the newly-manufactured product.

f. Manufacturer's quality standards: To ensure freshness standards for malt liquor and fermented malt beverages, wholesalers, with retailer consent, may withdraw product from the retailer's inventory and replace it with new product, without additional charge, under the following conditions:

i. Out of freshness standard is defined as: a product that has a pre-printed freshness date on the alcohol beverage container that is no more than thirty (30) days away from the current date.

ii. The product to be withdrawn is undamaged and in its original packaging.

iii. The retailer purchased the original product from the wholesaler providing the replacement, or the current wholesaler is acting as an authorized successor wholesaler.

iv. The wholesaler replaces the product with the identical product SKU, the identical quantity, and the identical package, or with a product from the same manufacturer’s portfolio that is equal to or lesser in value to the original purchase.

v. A wholesaler may sell a product to another retailer that was picked up because it was within thirty (30) days prior to the freshness date. The sale of this replaced product to another retailer can only be done once.

g. Retailer's seasonal operation: For those retailers who are only open for business a portion of the year due solely to seasonal influences, or for venues that operate only during scheduled events, a wholesaler may remove and grant credit for those products that are likely to spoil or violate a manufacturer's freshness standards.

h. Wholesalers that have lawfully exercised their claim to a retailer's inventory as secured creditors.

i. Products in a retailer's inventory that may no longer be sold due to statutory or regulatory changes or disciplinary actions over which the wholesaler and retailer had no control.

j. Within thirty days of evidence of an expiration or a lawful surrender and cancellation of a retail liquor license by the state licensing authority.

k. Holders of special events permits that have unsold alcohol beverages after the licensed event.

4. A return of product for the following reasons does not qualify as a return for ordinary and usual commercial reasons:

a. A retailer's overstocked inventory or slow-moving products.

b. Products for which there is only a limited-time or seasonal demand, such as holiday decanters or seasonal brands.

H. Warehousing of products for a retailer

Wholesalers shall not furnish free warehousing to retailers by delaying delivery of alcohol beverages beyond the time that payment for the product is received or, if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended pursuant to 44-3-202(2)(b), C.R.S.

I. Product resets

Resets by a supplier are permitted, but a competitor's alcohol beverage products may not be disturbed during the reset process, unless the in-state seller of the competing products has been given 72 hours written notice, during normal and customary business hours, and is not present at the time designated for the reset activity. Suppliers may furnish a retailer with a recommended shelf plan or shelf schematic.

J. Equipment rentals

All equipment rentals by a supplier to a retailer must be at fair market value.

K. Other goods

Suppliers may not provide a retailer with any other goods below fair market value except those items expressly permitted by articles 3, 4, or 5 of title 44, C.R.S, and related regulations.

When a supplier also deals in items of commerce that are not regulated by articles 3, 4, or 5 of title 44, only the following restrictions shall apply:

1. The unregulated item(s) may not be provided as an inducement, or require purchase of alcohol beverages.

2. Any equipment or other goods provided free of charge (e.g. energy drink refrigerated coolers) shall not be provided in conjunction with alcohol sales or promotions.

L. Indirect financial assistance through third party arrangements

1. A supplier's furnishing of any equipment, supplies, services, money, or other things of value to a third party that is not licensed pursuant to article 3 or 4 of title 44, C.R.S. where the benefits resulting from such things of value flow to individual licensed retailers through written agreements or otherwise, is prohibited.

2. A supplier will not be in violation of this regulation when the unlicensed third party provides the prohibited item or service to a retailer without the supplier's knowledge, and the supplier could not have reasonably foreseen that the item or service would flow to a retailer.

3. Retailers that collude with unlicensed third parties to obtain prohibited financial assistance through a third-party arrangement between a third party and a licensed supplier shall be in violation of this regulation.

4. It shall not be a violation for a supplier to furnish items or services to a retailer that are otherwise specifically authorized by regulation or any provision within articles 3 or 4 of title 44, C.R.S.

M. Value of Labor

1. Definitions for purposes of this subsection (L):

   a. "Deliver" or "delivering" is the act of a supplier bringing and unloading its alcohol beverage product from its delivery vehicle onto the retailer's licensed premises or permitted retail warehouse storage location. "Deliver" or "delivering" does not include a supplier bringing and unloading its alcohol beverage product from a permitted retail warehouse storage location to a retailer's licensed premises.

   b. "Merchandise" or "merchandising" is the act of organizing, constructing, maintaining, or stocking a display of alcohol beverage product or alcohol beverage product promotional materials, including alcohol beverage product signs, consumer advertising specialties, or point-of-sale advertising, within the retailer's licensed premises.

   c. "Price stamp" or "price stamping" is the act of affixing the retail price of alcohol beverage product to its respective shelf, refrigerator, or any other similar location within the retailer's licensed premises.

   d. "Rotate" or "rotating" is the act of moving alcohol beverage product from the rear to the front of any shelf, refrigerator, or similar location within the retailer's licensed premises.

   e. "Service" or "servicing" is the act of replacing, staging, and/or tapping kegs within a retail premises. "Service" or "servicing" also includes performing necessary cleaning of alcohol beverage dispensing equipment, to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

   f. "Stock" or "stocking" is the act of placing or replenishing alcohol beverage product on any shelf, refrigerator, or similar location within the retailer's licensed premises.

2. In a supplier's sole discretion, and if allowed by the retailer, a supplier may deliver, merchandise, price stamp, rotate, service, and stock its alcohol beverage product on the retailer's licensed premises at no cost to the retailer.

   a. A supplier is prohibited from materially disturbing another supplier's alcohol beverage product while delivering, merchandising, price stamping, rotating, servicing, or stocking its own alcohol beverage product.

   b. A supplier may only service the portion of the retailer's alcohol beverage dispensing equipment used for dispensing its alcohol beverage product.

3. A retailer is prohibited from requiring a supplier to provide any labor to the retailer, including, but not limited to, merchandising, price stamping, rotating, servicing, or stocking activities, as an express or implied condition of the delivery, purchase, or future purchases between the supplier and retailer.

4. Unless otherwise permitted under this Regulation, the Liquor Code, or the Beer Code, or unless the retailer pays the supplier at the normal hourly rate of the employee performing the labor, a supplier is prohibited from providing to a retailer, and a retailer is prohibited from accepting from a supplier, any labor other than the kinds of labor described in subsection (L)(2) of this Regulation, including, but not limited to:

a. Cleaning, repairing, or otherwise maintaining the interior or exterior of a retailer's premises;

b. Operating the retailer's powered mechanical equipment, other than pallet jacks; or

c. Performing inventory for the retailer's records.

N. Prohibition.

1. Except as otherwise provided by the Colorado Liquor Code, Colorado Beer Code, or Colorado Liquor Rules, a supplier is prohibited from disturbing another supplier's alcohol beverage product.

Regulation 47-322(A)(9) is effective July 1, 2019.

Regulation 47-422. Arts License.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(R), and 44-3-419, C.R.S. The purpose of this regulation is to define "production and performances of an artistic or cultural nature" required to qualify for an arts license

A. For the purposes of determining eligibility for an arts license pursuant to section 44-3-419, C.R.S., "productions and performances of an artistic or cultural nature" include all forms of theatrical and other performing arts, the display or exhibition of all forms of the visual arts, and activities conducted on the licensed premises in furtherance of the proper purposes of arts organizations.

B. An organization otherwise complying with section 44-3-419, C.R.S. shall be deemed to be engaged in a production or performance at all times that visual art is on exhibit for viewing within the licensed premises.

Regulation 47-424. REPEALED.

Regulation 47-426. Delivery Sales by Off-Premises Licensees.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-4-107(1)(c), 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(O), 44-3-202(2)(a)(I)(R), 44-3-409(3), 44-3-410(3), and 44-3-601, 44-3-701, C.R.S. The purpose of this regulation is to permit fermented malt beverage off-premises licensees, retail liquor stores, and liquor licensed drug stores to deliver alcohol beverage products to consumers within the requirements, restrictions, and limitations outlined in the regulation in accordance with the statutory provisions under which limited retail delivery activities are authorized.

A. Delivery Permitted.

A retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., may deliver such alcohol beverages authorized by its license to any location off the licensed premises, pursuant to the following restrictions:

1. Order.

a. The order for the alcohol beverages which are to be delivered, must be taken by the licensee or an ordering service acting as an agent of the licensee pursuant to a written agreement entered into with the licensee. Licensee shall provide a copy

of said agreement to the Division prior to any orders being accepted by licensee's agent.

b. The order may be taken by written order, by telephone, in person, or via internet communication with the licensee or its agent.

c. The person placing the order must provide the licensee with their name, date of birth, and delivery address. Under no circumstances shall a person under twenty-one (21) years of age be permitted to place an order for alcohol beverages.

2. Delivery.

a. Delivery of alcohol beverages shall only be made to a person twenty-one (21) years of age or older at the address specified in the order.

b. Delivery must be made by the licensee or the licensee's employee who is at least twenty-one (21) years of age and is using a vehicle owned or leased by the licensee to make the delivery.

c. The licensee or the licensee's employee who delivers the alcohol beverages shall note and log at the time of delivery the name and identification number, of the person the alcohol beverages are delivered to. Under no circumstances shall a person under twenty-one (21) years of age be permitted to receive a delivery of alcohol beverages.

d. A licensee must derive no more than fifty (50) percent of its gross annual revenues from total sales of alcohol beverages that the licensee delivers.

3. Licensees who deliver alcohol beverages shall maintain as a part of their required records, pursuant to 44-3-701, C.R.S., all records of delivery including delivery orders, receipt logs and journals. These records shall be maintained by the licensee for sixty (60) days. Failure to maintain accurate or complete records shall be a violation of this regulation.

4. Have a licensed premises with the following conditions:

a. Open to the public a minimum of three (3) days a week; and

b. Open to the public a minimum of five (5) hours each day the business is open; and

c. Have signage viewable from a public road.

5. Permit required.

a. Effective July 1, 2019, the state licensing authority will accept complete delivery permit applications from any applicant of or retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S.

b. Effective July 1, 2020, any retailer licensed pursuant to section 44-3-409 or 44-3-410, or subsection 44-4-107(1)(a), C.R.S., must hold a valid delivery permit issued by the state licensing authority to deliver alcohol beverages pursuant to the Colorado Liquor Code, the Colorado Beer Code, and this regulation.

c. The applicant must affirm on its delivery permit application that the applicant derives or will derive no more than fifty (50) percent of its gross annual revenues from total sales of alcohol beverages that the applicant delivers. However, nothing within this subsection (A)(5)(c) shall limit the authority of the state licensing authority to inspect books and records pursuant to Regulation 47-700, 1 C.C.R. 203-2, to verify this affirmation or compliance with this statutory requirement.

d. A delivery permittee shall display its delivery permit at all times in a prominent place on its licensed premises. A delivery permittee shall not be required to hold or carry a copy of its delivery permit in the delivery vehicle.

e. A delivery permit shall not be required for a retailer to deliver alcohol beverages within its customary parking area.

B. Suspension or Revocation.

Any delivery made in violation of Title 44, Articles 3 and Article 4, or in violation of this regulation may be grounds for suspension or revocation of the licensee's license and/or delivery permit by the state licensing authority as provided for in section 44-3-601, C.R.S.

Regulation 47-428. Sales Rooms.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103(49), 44-3-202(1)(b), 44-3-202(a)(I)(R), 44-3-202(2)(a)(I)(T), 44-3-402, 44-3-403, and 44-3-407, C.R.S. The purpose of this regulation is to establish procedural requirements for sales room applicants, and provide factors the licensing authority must consider when evaluating the application for approval or denial.

A. Any manufacturer of vinous or spirituous liquor, licensed pursuant to 44-3-402, C.R.S., a limited winery license issued pursuant to section 44-3-403, C.R.S., or beer (malt liquor) wholesaler licensed pursuant to section 44-3-407(1)(b), C.R.S., applying to operate a sales room as defined by section 44-3-103(49), shall submit an application for a sales room to the state licensing authority.

B. The applicant must send a copy of the application for the sales room concurrently to the state licensing authority and to the local licensing authority in the jurisdiction in which such sales room is proposed. All applications for vinous or spirituous liquor sales rooms to be operated for no more than three (3) consecutive days shall be filed with both the local and state licensing authorities not less than ten (10) business days prior to the proposed opening date.

C. The sales room application submitted to the state licensing authority and copies of the sales room application submitted to the local licensing authority shall be done in a manner that provides proof of date of delivery. This includes, but is not limited to, email, facsimile, or certified mail.

D. The local licensing authority may submit a response to the application to the state licensing authority including its determination whether or not the approval of the proposed sales room will impact traffic, noise, or other neighborhood concerns in a manner that is inconsistent with local regulations or ordinances, which may be determined by the local licensing authority without requiring a public hearing, or that the applicant cannot sufficiently mitigate any potential impacts identified by the local licensing authority. The local licensing authority submission to the state licensing authority shall be done in a manner that provides proof of date of delivery. This includes, but is not limited to, email, facsimile, or certified mail.

E. For proposed sales rooms operating more than three (3) consecutive days, the local licensing authority must submit its response to the state licensing authority within forty-five (45) days from the date of application to the state licensing authority.

F. For proposed sales rooms operating not more than three (3) consecutive days, the local licensing authority must submit its response to the state licensing authority within eight (8) business days from the date of application to the state licensing authority.

G. If the state licensing authority does not receive a response from the local licensing authority within the time frame as stated in paragraph E or F, the state licensing authority shall deem that the local licensing authority does not object to the sales room according to paragraph D.

H. For additional sales rooms for vinous or spirituous liquor, the applicant must affirm to the state licensing authority that the applicant has complied with local zoning restrictions.

I. The local licensing authority can request the state licensing authority take action in accordance with section 44-3-601, C.R.S. against a licensee who operates an approved sales room if the local licensing authority:

1. Demonstrates that the licensee has engaged in an unlawful action set forth in section 44-3-901, et seq, C.R.S.

2. Shows good cause as specified in subsections 44-3-103(19)(a), (19)(b), or (19)(d), C.R.S.

J. Neither the state or local licensing authority shall impose any additional fees for the processing or review of an application for a sales room

K. If a licensee that has a salesroom within its main licensed premises changes its location pursuant to Regulation 47-312, 1 C.C.R. 203-2, the licensee must apply for a new sales room license at its new location in accordance with this Regulation.

L. Sales rooms that do not sell and serve alcohol for consumption on the licensed premises are exempt from local licensing review in accordance with paragraphs B, D, E, F, and G.

M. A winery licensed pursuant to section 44-3-402, C.R.S. whose licensed premises includes multiple noncontiguous locations may operate a sales room on its primary licensed premises, and on no more than one of the noncontiguous locations.

1. A winery licensed pursuant to section 44-3-402, C.R.S., may only operate a sales room on one of the noncontiguous locations if the sales room is approved in accordance with the process outlined in section 44-3-402(2)(c), C.R.S.

2. A winery licensed pursuant to section 44-3-402, C.R.S., that operates a sales room on the primary licensed premises and one of the noncontiguous locations may not operate another sales room at any location.

N. A limited winery licensed pursuant to section 44-3-403, C.R.S. whose licensed premises includes multiple noncontiguous locations may operate a sales room on its primary licensed premises and on no more than one of the noncontiguous locations.

1. A limited winery may only operate a sales room on one of the noncontiguous locations of the licensed premises if the sales room is approved as one of the licensee’s additional sales rooms allowed under section 44-3-403(2)(e)(i)(a), C.R.S., in accordance with the process outlined in section 44-3-403(2)(e)(ii), C.R.S.

2. A limited winery that operates a sales room on its primary licensed premises and one of the noncontiguous locations may only operate additional sales rooms at up to four other approved locations.

Regulation 47-434. Winery and Limited Winery Licensed Premises That Include Noncontiguous Locations.

Basis and Purpose. The statutory authority for the regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(R), 44-3-301(2)(c), 44-3-301(11)(d), 44-3-402(2)(a), and 44-3-403-(2)(e)(I)(A), C.R.S. The purpose of this regulation is to clarify and establish requirements for a winery to obtain approval for and maintain a licensed premises that include noncontiguous locations.

A. If approved by the state licensing authority, the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S., may include, in addition to the primary licensed premises, up to two noncontiguous locations within a radius of ten miles of the primary original licensed premises. Any approved noncontiguous locations must also be used for manufacturing purposes.

B. The state licensing authority may approve a winery's licensed premises that includes the primary licensed premises and up to two noncontiguous locations through the winery's initial application for a license pursuant to sections 44-3-402 or 44-3-403, C.R.S., or through a modification of the premises pursuant to Regulation 47-302.

1. The Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury must have approved the description and diagram of the proposed or modified premises.

2. In order to obtain approval for a licensed premises that includes a noncontiguous location, an applicant or licensee must submit proof from the municipality in which the proposed premises is located of compliance with all applicable zoning, building, fire, and other requirements for occupancy and operation.

C. A winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S., may be part of an entertainment district or common consumption area. However, if the winery's licensed premises includes multiple noncontiguous locations, any noncontiguous location included in the licensed premises that falls outside of the approved boundaries of the entertainment district or common consumption area shall not be included in the certified promotional association or entertainment district.

D. A winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S., with a licensed premises that includes multiple noncontiguous locations may operate one or more sales rooms to the extent permitted by sections 44-3-402(2)(a) or 44-3-403(2)(e)(1)(A), C.R.S., and Regulation 47-428.

Regulation 47-500. Excise Taxes, Surcharges, and Fees Audits.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b) and 44-3-503(2), C.R.S. The purpose of this regulation is to establish a regular audit for manufacturers (as defined in Regulation 47-100(B) and (C)), holders of a winery direct shipper's permit, and wholesalers, and associated credits and liabilities consequential to this audit

The Department of Revenue shall cause each original monthly summary report to be audited.

A. If the audit reveals that the reporting manufacturer, holder of a winery direct shipper's permit, or wholesaler shall have paid more taxes, surcharges, penalties, or interest than was actually due,

the Department of Revenue shall issue to that manufacturer, holder of a winery direct shipper's permit, or wholesaler a tax credit form reflecting the amount of overpayment. The manufacturer, holder of a winery direct shipper's permit, or wholesaler may deduct the tax credit from any succeeding monthly report by attaching tax credit forms to the report.

B. If such audit reveals that the reporting manufacturer, holder of a winery direct shippers permit, or wholesaler shall have paid less taxes, surcharges, fees, penalties, or interest than was actually due, the Department of Revenue shall issue to that manufacturer, holder of a winery direct shippers permit, or wholesaler a notice of assessment form reflecting the amount of underpayment. The manufacturer, holder of a winery direct shipper's permit, or wholesaler must return the assessment form, along with the remittance, payable to the Department of Revenue.

Regulation 47-502. Excise Taxes, Surcharges, and Fees Reports.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b) and 44-3-503(2), C.R.S. The purpose of this regulation is to establish procedures for reporting excise taxes, surcharges, and fees.

A. Manufacturers, wholesalers, and holders of a winery direct shipper's permit.

1. Reporting of alcohol beverages received or manufactured.

   Each licensed manufacturer or wholesaler whose licensed premises are located within Colorado shall forward to the Department of Revenue on or before the 20th day of the month succeeding the month of receipt or manufacture of such alcohol beverage, a completed report. Wholesalers shall use form DR 0445 which shall include the date of receipt, supplier account number and name, invoice number, and gallons or liters received. A separate form shall be submitted for each commodity. Manufacturers shall use this form only if they are acting in a licensed wholesale capacity, and they shall include the amount of product manufactured. Manufacturers and wholesalers shall maintain upon the licensed premises, and make available for inspection by the state licensing authority or other agents of the department, documents or invoices supporting such reports.

2. Reporting and payment of excise taxes, surcharges, and fees - first sold.

   Each Colorado licensed wholesaler or manufacturer shall, in addition to filing form DR 0445, also complete and file each month with the Department of Revenue form DR 0442. Form DR 0442 shall be filed on or before the 20th of the month succeeding the month reported. Payment of excise taxes, surcharges, and fees due shall accompany the filing of form DR 0442.

3. Reporting and payment of excise taxes, surcharges, and fees - upon manufacture or receipt.

   Each Colorado licensed manufacturer or wholesaler electing this method of payment must in addition to the requirement in A.2. above, contact the Department of Revenue. The department may enter into a "memorandum of understanding" with the licensee stating that the taxes will be reported and paid upon manufacture or receipt of purchased product, rather than when the product was first sold by such licensee.

4. Reporting receipt of alcohol beverages for which excise taxes, surcharges, and fees have previously been paid.

All Colorado licensed wholesalers receiving alcohol beverages, where the excise taxes, surcharges, and fees upon such alcohol beverages have already been reported and paid to the Department of Revenue by a Colorado licensed wholesaler or manufacturer, or where the liability for reporting and payment of such excise taxes, surcharges, and fees has been incurred by a manufacturer or some other licensed wholesaler, shall report receipt of such alcohol beverages on form DR 0445 and shall attach invoices evidencing receipt of such.

5. Reporting and payment of excise taxes, surcharges, and fees – Holders of a winery direct shipper's permit.

   Each out-of-state winery must file with the Department of Revenue a separate return, on Form DR 0448, for each location with a Colorado Winery Direct Shipper's Permit. Form DR 0448 must be filed on or before the 20th of the month succeeding the month reported. Payment of excise taxes, surcharges, and fees due shall accompany the filing of form DR 0448.

6. Excise taxes, surcharges, and fees - credits, refunds.

   a. A Colorado manufacturer who transmits outside the state and there disposes of any alcohol beverages, upon which no state excise taxes, surcharges, and fees have been previously paid or liability incurred, may claim exemption from the payment of excise taxes thereon by submitting form DR 0443 as well as invoices or bills of lading evidencing such disposal. A Colorado wholesaler who shall transmit outside the state and there dispose of alcohol beverages, upon which excise taxes, surcharges, or fees have been previously paid or liability incurred, may claim credit for such taxes for which such wholesaler may be liable on form DR 0443 and shall attach a signed and itemized delivery receipt, invoice and bill of lading from a common carrier or affidavit showing such transaction.

   b. A Colorado manufacturer or wholesaler possessing alcohol beverages upon which state excise taxes, surcharges, or fees have been previously paid or liability incurred and which alcohol beverages have been rendered unsalable by reason of destruction or damage may claim exemption or credit for such taxes, surcharges, and fees for which such manufacturer or wholesaler may be liable by submitting an application for credit supported by a properly executed affidavit of destruction or damage. Nothing herein shall be construed to authorize claims for credit of taxes, surcharges, and fees paid on any alcohol beverages rendered unsalable by reason of spoilage.

   c. All claims for exemptions from excise taxes, surcharges, fees or claims for credit, shall be made on forms DR 0442 and DR 0443 on or before the 20th day of the month succeeding the date of disposal. In addition, all affidavits of destruction or damage, or invoices evidencing shipment outside of Colorado shall be submitted with said forms.

B. Any manufacturer, holder of a winery direct shipper's permit, or wholesaler may, in lieu of forms required in this regulation, forward a computer-generated report in a format approved by the Department of Revenue. Such reports must be submitted within the same time frames as set forth above.

Regulation 47-504. Payment of Excise Taxes by Non-licensees.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b) and 44-3-503(2), C.R.S. The purpose of this regulation is to establish standards and

procedures for excise taxes, surcharges, and fees payment and collection required of certain non-licensees.

A. Persons twenty-one years of age or older, not licensed pursuant to this article, arriving at any airport in this state on an air flight originating in a foreign country who is thereby subject to customs clearance at the airport, may lawfully possess up to one gallon or four liters (one imperial gallon), whichever measure is applicable, of an alcohol beverage without liability for the Colorado excise tax thereon. Excise taxes on alcohol beverages in excess of the aforesaid four (4) liters (or one imperial gallon) shall be paid to the Colorado Department of Revenue in the amounts set forth in section 44-3-503, C.R.S. Persons in possession of such alcohol beverages at the time of their arrival in Colorado shall be liable for the payment of excise taxes and fees thereon, and such payment shall be made within thirty (30) days of the date such alcohol beverages arrive in Colorado.

B. Notwithstanding the above, persons receiving vinous liquors in this state pursuant to the provisions of section 44-3-104 C.R.S., are exempt from payment of excise taxes, surcharges, and fees on such vinous liquors.

Regulation 47-600. Complaints against Licensees – Suspension, Revocation, and Fining of Licenses.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(E), 44-3-202(2)(a)(I)(R), and 44-3-601, C.R.S. The purpose of this regulation is to establish general processes and procedures required for the licensing authority to suspend, revoke, or fine a license for violations of any law, or rule or regulation of the state licensing authority.

A. Whenever a written complaint shall be filed with a licensing authority, alleging a violation by any licensee for the manufacture or sale of alcohol beverages with a violation of any law or of any of the rules or regulations adopted by the state licensing authority, the licensing authority shall investigate, as deemed appropriate, the allegations.

B. If it shall appear therefrom or shall otherwise come to the attention of the licensing authority appears from an investigation that there is reasonable cause to believe that a licensee has violated any such law, rule or regulation, the licensing authority may issue and cause to be served upon such licensee a notice of hearing and order to show cause why its license should not be suspended, revoked, or fined. Notice of discipline by the state licensing authority shall be issued pursuant to the procedures set forth in Regulation 47-606.

C. A hearing shall be held at a place and time designated by the licensing authority on the day stated in the notice, or upon such other day as may be set for good cause shown. Hearings for the state licensing authority shall be conducted in accordance with the procedures set forth in Regulation 47-606. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, evidence and statements in mitigation and/or aggravation of the offense shall also be permitted.

D. In the event the licensee is found not to have violated any law, rule or regulation, the charges against the licensee will be dismissed. If the licensee is found to have violated some law, rule or regulation, the licensee's license may be suspended, revoked, or fined. When making a determination to suspend, revoke, or fine a license—including the amount of fine to impose—a licensing authority shall consider the severity of the violation(s) based on the provisions established in Regulation 47-603.

E. Every licensee whose license has been suspended by any licensing authority shall, if ordered by the licensing authority, post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be two feet in length and fourteen inches in width containing lettering not less than ½ " in height, and shall be in the following form:

NOTICE OF SUSPENSION
ALCOHOL BEVERAGE LICENSES ISSUED
FOR THESE PREMISES HAVE BEEN
SUSPENDED BY ORDER OF THE STATE-LOCAL LICENSING AUTHORITY
FOR VIOLATION OF THE COLORADO LIQUOR/BEER CODE

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

F. During any period of active license suspension, when such suspension has not otherwise been stayed by a licensing authority through the payment of a fine pursuant to section 44-3-601(3) through (8), C.R.S., the licensee shall not permit the selling, serving, giving away, or consumption of alcohol beverages on the licensed premises.

G. For purposes of calculating a fine to be paid, including in lieu of an active suspension, "between", as used in subsections 44-3-601(1)(c) and 44-3-601(3)(b), C.R.S., shall include the minimum and maximum fine amounts permitted by statute.

Regulation 47-601. Written Warnings and Assurances of Voluntary Compliance.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b) and 44-3-202(2)(a)(I)(E), C.R.S. The purpose of this regulation is to establish general processes and procedures necessary for an assurance of voluntary compliance by a licensee for violations of certain laws, or rules or regulations of the state licensing authority.

A. Assurance of Voluntary Compliance. The Division Director or local licensing authority may accept an Assurance of Voluntary Compliance regarding any act or practice alleged to violate Articles 3, 4 or 5 of title 44, C.R.S., or the Colorado Liquor Rules, by a licensee who has engaged in, is engaging in, or is about to engage in such acts or practices.

1. The Assurance of Voluntary Compliance must be in writing and may include a stipulation for the voluntary payment of the costs of the investigation.

2. An Assurance of Voluntary Compliance may not be considered an admission of a violation for any purpose by the state or local licensing authority. However, the Assurance of Voluntary Compliance shall constitute evidence in any subsequent administrative proceeding that licensee entered into an agreement to comply with articles 3, 4, or 5 of title 44, C.R.S. and/or the Colorado Liquor Rules.

3. An Assurance of Voluntary Compliance shall not exceed nine (9) months from the date of executed agreement.

4. The state or local licensing authority may approve or review an Assurance of Voluntary Compliance executed by their respective agencies.

B. Written Warnings. During an investigation, if the Division identifies a violation(s) of articles 3, 4, or 5 of title 44, C.R.S., or the Colorado Liquor Rules, the Division may issue a written warning in lieu of recommending immediate administrative action.

1. The written warning shall identify the alleged violation(s).

2. The written warning shall not constitute an admission of a violation(s) for any purpose of finding of a violation(s) by the state or local licensing authority, and shall not be evidence that the licensee violated articles 3, 4, or 5 of title 44, C.R.S., or the Colorado Liquor Rules.

3. A written warning shall constitute evidence in any subsequent administrative proceeding, if relevant, that the licensee was previously warned of the violation(s).

4. The Division may, in its discretion, initiate a subsequent administrative action and prove the violation(s) that was the subject of the written warning.

C. Neither a written warning nor an Assurance of Voluntary Compliance constitutes a disciplinary action.

Regulation 47-605. Responsible Alcohol Beverage Vendor and Permitted Tastings by Retail Liquor Stores and Liquor-Licensed Drugstores

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-1002(2), C.R.S. The purpose of this regulation is to establish curricula required to be considered a responsible alcohol beverage vendor.

To be considered a Responsible Alcohol Beverage Vendor at any licensed premises, or to serve beverage alcohol at tastings held in retail liquor stores or liquor licensed drugstores, the following standards must be complied with.

A) Initial Certification Training Program Standards

1) A training program must be attended by the resident on-site owner (if applicable) or a manager, and all employees selling/serving alcohol beverages

2) Once a licensee is designated a “Responsible Vendor,” all new employees involved in the sale, handling and service of alcoholic beverages must complete the training described in this regulation within 90 days of date of hire

3) The program must include at least (2) hours of instruction time.

4) The program must provide written documentation of attendance and successful passage of a test on the knowledge of the required curriculum for each attendee

a) Attendees that can speak and write English must successfully pass a written test with a score of 70% or better

b) Attendees that cannot speak or write English may be offered a verbal test, provided the same questions are given as are on the written test and the results of the verbal test are documented with a passing score of 70% or better

5) Program providers may, at their discretion, conduct class surveys or discussions to help determine a program’s effectiveness. This time shall not be counted as part of the program’s instruction time.

B) Initial certification training class core curriculum

1) Discussion concerning alcohol’s effects on the human body

a) Alcohol's physical effects

b) Visible signs of intoxication

c) Recognizing the signs

d) Poly-substance interactions, including but not limited to, interaction with marijuana, prescriptions and over-the-counter medication, and other substances.

2) Liquor Liability

a) Civil liability

b) Criminal liability

c) Administrative liability (License Sanctions)

d) Liability for licensee and/or managers for the actions of employees

3) Sales to visibly Intoxicated persons

a) Colorado law provisions

b) Recognition and prevention, including identifying signs of visible alcohol and drug impairment.

c) Intervention techniques

d) Related laws or issues

(1) DUI/DWAI

(2) Reg. 47-900

4) Sales to minors

a) Colorado law provisions

b) Sale and service

c) Permitting consumption

5) Acceptable forms of Identification (Reg. 47-912)

a) How to check identification - protocol

b) Spotting false identification

c) Mistakes made in verification

6) Other key state laws and rules affecting owners, managers, sellers, and servers

a) Age requirements for servers and sellers

b) Provisions for confiscating fraudulent identifications

c) Removal of liquor from on-premises licensed establishment

d) Patrons prohibited from bringing liquor onto licensed premises

e) Permitted hours of sale and service

f) Conduct of establishment

g) Nudity and prohibited entertainment

h) Permitting inspections by state and local licensing and enforcement authorities

i) Reporting changes in ownership and management

j) Licensee responsible for activities occurring within licensed premises

k) Tastings in retail liquor stores and liquor licensed drugstores

l) Prohibited purchases

m) On-premises and off-premises delivery and takeout rules

n) Commonly arising issues with delivery and takeout sales

C) Information for Owners and Managers

1) Local Licensing and Enforcement

a) Encourage to become familiar with local law provisions

b) Encourage to develop a relationship with local agencies

2) State Licensing and Enforcement

a) Contact Information for the Division

b) Become familiar with state laws and regulations

c) Encourage to develop a relationship with area investigator

3) Recommendations for Licensees

a) Establish policies and procedures.

b) Establish a record keeping system to document activities and events

c) Contact local authority on incident reporting expectations

D) Training programs based on type of licensed establishment and portability of training

1) Training program curriculum may be tailored by Division-certified training program providers to on-premises only licensed establishments, to off-premises only licensed establishments, or to both on-premises and off-premises combined. Except as noted below, all approved training programs shall include the curriculum contained in paragraphs B and C of this regulation.

2) Combined training programs must include all of the curriculum contained in paragraphs B and C of this regulation. Persons certified in a combined training program may use the certification in both on- and off-premises licensed establishments.

3) On-premises only training programs may exclude from their curriculum subparagraph B(6)(k) of this regulation relating to liquor store tasting events. Persons certified in an on-premises only training program may use their certification only in an on-premises licensed establishment.

4) Off-premises only training programs may exclude from their curriculum subparagraphs B(6)(c), (d), (f), and (g) relating to activities at on-premises businesses. Persons certified in an off-premises only training program may use their certification only in an off-premises licensed establishment.

E) Recertification requirements

1) Recertification must occur every two (2) years, inclusive of a grace period of thirty (30) days.

2) Recertification shall be accomplished in any of the following manners:

a) Documented successful passage of a written or verbal test with a score of 70% or better administered by a Division-approved program trainer in person, including virtually through a live program, which demonstrates knowledge of new and existing alcohol beverage laws

(1) Completion of a course is not required before the test is administered

(2) Failure to pass the first administration of the test shall require attendance at either a recertification course or an initial certification training program

b) Documented attendance and completion of a recertification course

c) Documented attendance and completion of an initial certification training program

3) Recertification course

a) The curriculum must cover any and all changes in the law or regulations that affect the curriculum contained in the initial certification program

b) The course must provide a refresher on the following topics:

(1) Sales to intoxicated persons

(2) Sales to minors

(3) Legal sales hours

(4) Civil and criminal liabilities for law violations

c) No minimum instruction time or testing requirements shall apply

F. Records Retention The certified seller – server training program providers for the Responsible Alcohol Beverage Vendor Program must keep proof of attendance and records of successful

completion of the training for a minimum of three (3) years and make the records available to the Division upon request.

Regulation 47-606– Disciplinary and Denial Process for State Licensing Authority

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, sections 44-3-202(1)(b), 44-3-202(1)(c), 44-3-202(1)(d), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(E), 44-3-202(2)(a)(I)(R), 44-3-601, 44-3-901, 24-4-104, and 24-4-105, C.R.S The purpose of this regulation is to establish what entity conducts the administrative hearings for the state licensing authority, the procedures governing administrative hearings, and other general hearings issues

A. Initiation of Disciplinary Actions.

1. If the state licensing authority, on its own initiative or based on a complaint, has reasonable cause to believe that a licensee has violated the Liquor Code, the Beer Code, the Special Event Code, the Colorado Liquor Rules, or any of the state licensing authority's orders, the state licensing authority shall issue and serve upon the licensee an order to show cause as to why its license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

2. The order to show cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The order shall also provide an advisement that the license could be suspended, revoked, restricted, fined, or subject to other disciplinary sanction should the charges contained in the notice be sustained upon final hearing.

3. A respondent that has been served with an order to show cause shall be entitled to a hearing regarding the matters addressed therein.

B. License Denials.

1. If the state licensing authority denies an application, the state licensing authority shall inform the applicant in writing of the reasons for the denial in a notice of denial, mailed to the denied applicant at the last-known address as shown by the records of the Division and to the local licensing authority if a local license has been granted. A notice of denial shall be deemed to have been received three days after the date of mailing, if sent by mail.

2. A denied applicant that has been served with a notice of denial may request a hearing within the time set forth in the notice of denial by making a written request for a hearing to the Division. The request must be submitted by United States mail, by hand delivery, or by email at dor_led_legal@state.co.us. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a hearing must be received by the Division within the time stated in the Notice of denial. An untimely request for hearing will not be considered.

3. A denied applicant that timely requests a hearing following issuance of a Notice of Denial shall be served with a Notice of Grounds for Denial and shall be entitled to a hearing regarding the matters addressed therein.

C. General Procedures – Administrative Hearings.

1. Hearing Location. Hearings will generally be conducted by the Department of Revenue's Hearings Division. Hearings will be held virtually, unless otherwise ordered by the hearing

officer for good cause. If the hearing officer orders an in-person hearing, the hearing will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer. Good cause for in-person hearings includes unusual circumstances where justice, judicial economy, and convenience of the parties would be served by holding a hearing in person.

2. Scope of Hearing Regulations. This Regulation shall be construed to promote the just and efficient determination of all matters presented.

3. Right to Legal Counsel. Any denied applicant or respondent has a right to legal counsel throughout all processes described in regulations associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the denied applicant's or respondent's expense. Unless a denied applicant or respondent is an entity that satisfies the exception in section 13-1-127(2), C.R.S., the denied applicant or respondent must be represented by an attorney admitted to practice law in the state of Colorado.

D. When a Responsive Pleading is Required.

1. A respondent shall file a written answer with the hearings division and the Division within 30 days after the date of mailing of any order to show cause. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a respondent fails to file a required answer, the Hearing Officer, upon motion, may enter a default against that person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this Regulation, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

2. A denied applicant shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Notice of Grounds for Denial. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a denied applicant fails to file a required answer, the hearing officer, upon motion, may enter a default against that person pursuant to section 24-4-105(2)(b), C.R.S. For good cause shown, as described in this Regulation, the hearing officer may set aside the entry of default within ten days after the date of such entry.

E. Hearing Notices.

1. Notice to Set. The Division shall send a notice to set a hearing to the denied applicant or Respondent in writing by electronic mail or, if an electronic mail address is unknown, by first-class mail to the last mailing address of record.

2. Notice of Hearing. The Hearings Division shall notify the Division and denied applicant or Respondent of the date, place, time, and nature of the hearing regarding denial of the license application or whether discipline should be imposed against the Respondent's license at least 30 days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the Denied applicant or Respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.

A. If an order of summary suspension has been issued pursuant to Regulation 47-602, the hearing on the order to show cause will be scheduled and held promptly.

B. Continuances may be granted for good cause, as described in this Regulation, shown. A motion for a continuance must be timely.

C. Good Cause for Continuance. Good cause for a continuance may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker. Good cause for a continuance normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

F. Prehearing Matters Generally.

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the hearing officer's own motion. If a prehearing conference is held and a prehearing order is issued by the hearing officer, the prehearing order will control the course of the proceedings. Such prehearing conferences will be held virtually or by telephone, unless otherwise ordered by the hearing officer.

2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, C.R.C.P. 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with paragraphs (E)(2)(b) and (c) of this Regulation.

3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than seven calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file exhibits with the hearing officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:

A. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.

B. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

C. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and denied applicant or respondent using letters.

D. Stipulations. A list of all stipulations of fact or law reached.

4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.

5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

G. Conduct of Hearings.

1. The hearing officer shall cause all hearings to be electronically recorded.

2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed. Electronic filings will be accepted at: dor_regulatoryhearings@state.co.us.

3. The hearing officer shall administer oaths to all witnesses at hearing. The hearing officer may question any witness.

4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law.

   A. Reports and other information that would otherwise be confidential pursuant to subsection 44-3-202(1)(d), C.R.S., may be introduced as exhibits at hearing.

   B. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.

5. Court Rules.

   A. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word "court," "judge," or "jury" appears in the Colorado Rules of Evidence, such word shall be construed to mean a hearing officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.

   B. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean a hearing officer.

6. Exhibits.

   A. All documentary exhibits must be paginated by the party offering the exhibit into evidence.

   B. The Division shall use numbers to mark its exhibits.

C. The denied applicant or respondent shall use letters to mark its exhibits.

7. The hearing officer may proceed with the hearing or enter a default judgment if any party fails to appear at hearing after proper notice.

H. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an initial decision subject to review by the state licensing authority pursuant to the Colorado Administrative Procedure Act and this paragraph H.

1. Exception(s) Process. Any party may appeal an initial decision to the State licensing authority pursuant to the Colorado Administrative Procedure Act by filing written exception(s) within 30 days after the date of mailing of the initial decision to the denied applicant or respondent and the Division. The written exception(s) shall include a statement giving the basis and grounds for the exception(s). Any party who fails to properly file written exception(s) within the time provided in these regulations shall be deemed to have waived the right to an appeal. A copy of the exception(s) shall be served on all parties. The address of the state licensing authority is: state licensing authority, 1707 Cole Boulevard, Suite 350, Lakewood CO 80401.

2. Designation of Record. Any party that seeks to reverse or modify the Initial Decision of the hearing officer shall file with the state licensing authority, within 20 days from the mailing of the Initial Decision, a designation of the relevant parts of the record and of the parts of the hearing transcript which shall be prepared, and advance the costs therefore. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefore. No transcript is required if the review is limited to a pure question of law. A copy of this designation of record shall be served on all parties.

3. Deadline Modifications. The state licensing authority may modify deadlines and procedures related to the filing of exceptions to the initial decision upon motion by either party for good cause shown.

4. No Oral Argument Allowed. Requests for oral argument will not be considered.

I. No Ex Parte Communication. Ex parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the state licensing authority, or with conflicts counsel representing the hearing officer or state licensing authority, pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to the hearing officer or the state licensing authority in connection with a hearing or with the exceptions process.

J. Liquor Enforcement Division representation. The Division shall be represented by the Colorado Department of Law.

Regulation 47-607– Administrative Subpoenas

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, sections 44-3-202(1)(b), 44-3-202(1)(c), 44-3-202(1)(d), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(E), 44-3-202(2)(a)(I)(R),

44-3-601, and 24-4-105, C.R.S. The purpose of this regulation is to establish how all parties, including pro se parties, can obtain subpoenas during the administrative hearing process.

A. Informal Exchange of Documents Encouraged. Parties are encouraged to exchange documents relevant to the notice of denial or order to show cause prior to requesting subpoenas. In addition, to the extent practicable, parties are encouraged to secure the voluntary presence of witnesses necessary for the hearing prior to requesting subpoenas.

B. Hearing Officer May Issue Subpoenas.

1. A party or its counsel may request the hearing officer to issue subpoenas to secure the presence of witnesses or documents necessary for the hearing or a deposition, if one is allowed.

2. Requests for subpoenas to be issued by the hearing officer must be emailed to the Hearings Division of the Department of Revenue at dor_regulatoryhearings@state.co.us. Subpoena requests must include the return mailing address, and phone and facsimile numbers of the requesting party or its attorney.

3. Requests for subpoenas to be issued by the hearing officer must be made on a "Request for Subpoena" form authorized and provided by the Hearings Division. A hearing officer shall not issue a subpoena unless the request contains the following information:

A. Name of denied applicant or respondent;

B. License or application number;

C. Case number;

D. Date of hearing;

E. Location of hearing, including information necessary to access virtual proceedings, or telephone number for telephone check-in;

F. Time of hearing;

G. Name of witness to be subpoenaed; and

H. Mailing address of witness (home or business).

4. A request for a subpoena *duces tecum* must identify each document or category of documents to be produced.

5. Requests for subpoenas shall be signed by the requesting party or its counsel.

6. The hearing officer shall issue subpoenas without discrimination, as set forth in section 24-4-105(5), C.R.S. If the reviewing hearing officer denies the issuance of a subpoena, or alters a subpoena in any material way, specific findings and reasons for such denial or alteration must be made on the record, or by written order incorporated into the record.

C. Service of Subpoenas.

1. Service of any subpoena is the duty of the party requesting the subpoena.

2. All subpoenas must be served at least two business days prior to the hearing.

D. Subpoena Enforcement.

1. Any subpoenaed witness, entity, or custodian of documents may move to quash the subpoena with the hearing officer.

2. A hearing officer may quash a subpoena if he or she finds on the record that compliance would be unduly burdensome or impracticable, unreasonably expensive, or is unnecessary.

Regulation 47-904. Product Labeling, Substitution, Sampling and Analysis.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b) and 44-3-202(2)(a)(I)(M), and 44-3-202(2)(a)(I)(N), C.R.S. The purpose of this regulation is to establish filling, labeling, and sampling and analyzing standards for alcohol beverages.

A. No licensee, for the sale of alcohol beverages for consumption on the premises where sold, shall maintain thereon any container of alcohol beverage which contains any such substance other than that contained at the time such container was received by or delivered to the licensee. Nothing herein shall prohibit a licensee from using emptied alcohol beverage bottles with labels removed by filling them with non-alcohol items (e.g. marbles, sand, salt, pepper) for the purpose of decorations or display. Nothing herein shall prohibit a licensee from using emptied, cleaned alcohol beverage bottles with labels removed by filling them with water for patrons to consume on premises.

B. No licensee, for the sale of alcohol beverages for consumption on the premises where sold, shall substitute one brand, type, or alcohol content of alcohol beverages for that which has been specifically requested by a customer, unless the customer expressly consents to the substitution.

C. Except manufacturers or malt liquor manufacturers with an onsite wholesale sales room, no licensee shall refill or permit the refilling of any alcohol beverage container with alcohol beverage or reuse any such container by adding distilled spirits or any substance, including water, to the original contents or any portion of such original contents. There shall be no prohibition against the use of carafes, pitchers or similar serving containers for alcohol beverages.

D. If sampling, analysis or other means shall establish that any such licensee has upon the licensed premises any bottle or other container which contains alcohol beverage of a different brand, type, or alcohol content than that which appears on the label thereof, such licensee shall be deemed to have violated this regulation.

E. All licensees for the sale of alcohol beverages for consumption on the premises where sold shall, upon request of the Division or any of its officers, make available to the person so requesting a sufficient quantity of such alcohol beverage to enable sampling or analysis thereof. The licensee shall be notified of the results of the sampling or analysis without delay.

F. The manufacturer or importer of any alcohol beverage product sold in or shipped to Colorado must register said product with the Division prior to the date of the product's initial intended date of sale or shipment. If required by applicable Federal laws or regulations, alcohol beverages sold in Colorado must have obtained either a “Certificate of Label Approval” or a “Certificate of Exemption” from the Alcohol and Tobacco Tax and Trade Bureau (“TTB”).

G. The manufacturer or importer of alcohol beverage products that have obtained a TTB “Certificate of Exemption” are required upon request to certify that their product's label will comply with TTB labeling criteria as found in the “Federal Alcohol Administration Act” 27 CFR Subchapter A - Liquor Part 4, Subpart D; Part 5, Subpart D; and Part 7, Subpart C.

1 The material incorporated by reference shall be those effective as of January 1, 2019. Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Director of the Colorado Liquor Enforcement Division of the Department of Revenue at; dor_led@state.co.us, or at the Division's office located at 1707 Cole Boulevard, Suite 300, Lakewood, Colorado, 80401, and copies of the material may be examined at any state publication depository library.

Regulation 47-922. Gambling.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(M), and 44-3-901(6)(n), C.R.S. The purpose of this regulation is to clarify and define prohibited and permitted activities, games, and equipment on the licensed premises concerning gambling.

A. Activities prohibited.

1. No person licensed under Article 3, Article 4 and Article 5 of Title 44 to sell at retail shall authorize or permit on the licensed premises any gambling, or use of any gambling machine or device, or the use of any machine which may be used for gambling, except as specifically authorized for a racetrack, pursuant to Article 32 of Title 44 C.R.S., or for limited gaming, pursuant to Article 30 of Title 44 C.R.S.

2. No person licensed under these Articles shall authorize or permit on the licensed premises the holding of any lottery, except as authorized by Article 40 of Title 44, C.R.S. 1973 and any rules and regulations promulgated thereunder. Nothing in this regulation shall be deemed to prohibit the conducting of games of chance authorized by the bingo and raffles law (Article 9 of Title 12, C.R.S. 1973).

B. Equipment prohibited.

No person licensed under Article 3, Article 4 and Article 5 of Title 44 to sell at retail shall authorize, permit or possess on the licensed premises any table, machine, apparatus or device of a kind normally used for the purpose of gambling, except as specifically authorized and when licensed for limited gaming, pursuant to Article 30 of Title 44 C.R.S. Prohibited equipment shall include video poker machines and other devices, defined either as slot machines pursuant to C.R.S. 44-30-103(30)(a) and/or gambling devices pursuant to C.R.S. 18-10-102.

C. Equipment permitted.

1. Nothing in this regulation shall be deemed to prohibit the use of bona fide amusement devices, such as pinball machines or pool tables, provided however that such devices do not and cannot be adjusted to pay anything of value, and that such devices are not used for gambling, as defined in C.R.S. 18-10-102, as the same may be amended from time to time.

2. A licensee is permitted to conduct, on its licensed premises, tournaments or competitions involving games of skill as permitted by C.R.S. 18-10-102(2)(a), including the awarding of prizes or other things of value to participants, in connection with the use or operation of devices such as and including, but not limited to:

a. Pool tables

b. Billiard tables

c. Pinball machines

d. Foosball machines

e. Basketball games

f. Air hockey games

g. Shuffleboard games

h. Dart games

i. Bowling games

j. Golf Games

3. Licensees will not be considered in violation of this regulation if they permit on their licensed premises card or similar games of chance to be played between natural persons whereas no person is engaging in gambling as defined by C.R.S. 18-10-102(2).

D. Inspections and records.

1. Licensees shall keep a complete set of records, including operating manuals, concerning any game machine or device maintained on their licensed premises. Licensees who do not own their machines or devices shall be required to maintain a copy of their current contract with the vendor. This contract at a minimum shall detail the division of profits between the parties and how monies will be accounted for, including the payment of any monies, credits, or any other thing of value to customers of the licensee. Copies of any outstanding notes or loans between the parties must also be maintained by the licensee.

2. Licensees shall make available without delay to agents of the state or local licensing authority access to the interiors of any machine or device maintained upon the licensed premises to assist in the determination of whether or not said machine or device is permitted or prohibited equipment.

Regulation 47-924. Importation and Sole Source of Supply/Brand Registration.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b) and 44-3-202(2)(a)(I)(D), C.R.S. The purpose of this regulation is to establish procedures and forms required for a party to import alcohol beverages into the state of Colorado and to require where applicable compliance with requirements in the Federal Alcohol Administration Act.

A. Before any person, firm, company, partnership, or corporation ships any alcohol beverages into the State of Colorado, each such entity shall be properly licensed by the state licensing authority. The only exceptions to licensing for importation may be found under 44-3-104 and 44-3-106, C.R.S.

B. Prior to the sale or shipment of any alcohol beverages into the State of Colorado, each licensed manufacturer, non-resident manufacturer or importer shall submit to the state licensing authority a complete and approved report, on forms prepared and furnished by the state licensing authority, which shall detail: the licensee's name and license number; the designated Colorado licensed wholesaler(s); the name of the United States primary source of supply; the products to be imported, including the brand name, class or type, and fanciful name; and evidence of compliance with federal labeling requirements found in the “Federal Alcohol Administration Act” 27 CFR Subchapter A-Liquors Part 4, Subpart D; Part 5, subpart D; and Part 7, Subpart C. The

import licensee, if not the product manufacturer, shall also include with said form a separate letter from the primary source of supply designating such import licensee as the primary source in the United States or the sole source of supply in Colorado. A separate form is required for each primary source. Each non-resident manufacturer, manufacturer and importer shall also remit with said form the appropriate brand registration and/or sole source fee(s). A separate sole source fee is required for each primary source that an importer represents.

C. Should the primary source of supply change its designated licensed importer, the newly designated licensed importer is required to submit the same information described in paragraph B of this regulation on required forms thirty (30) days prior to shipment of any alcohol beverages. The newly designated importer shall also remit the appropriate sole source and brand registration fees with said form.

The material incorporated by reference shall be those effective as of January 1, 2019. Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Director of the Colorado Liquor Enforcement Division of the Department of Revenue at; dor_led@state.co.us, or, at the division's office located at 1707 Cole Boulevard, Suite 300, Lakewood, Colorado, 80401, and copies of the material may be examined at any state publication depository library.

Regulation 47-1016. Special Event Permittee - Purchase and Storage of Alcohol Beverages.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(K), and 44-5-109, C.R.S. The purpose of this regulation is to establish purchasing and storage requirements for a special event permit.

A. Special event permittees may purchase alcohol beverages authorized by such permits from a licensed wholesaler, brew pub, distillery pub, limited winery, vintner's restaurant, retail liquor store, or liquor-licensed drugstore.

1. Any alcohol beverages purchased from a retailer licensed for off-premises consumption for a non-profit event held at a retail location licensed for on-premises consumption will count against the on-premises licensee's statutory dollar limit of alcohol beverages purchased from an off-premises retailer.

B. Special event permittees may store alcohol beverage stock in areas outside the designated event area approved by the state or local licensing authority under the following conditions:

1. The application included the address of proposed storage locations and a diagram of said premises.

2. The application included evidence of the special event permittee's lawful possession of the storage premises by way of deed, lease, rental, or other arrangement and specifying the terms of storage.

3. The proposed location is not a location licensed pursuant to articles 3 or 4 of title 44, C.R.S.

4. State and local law enforcement authorities have the right to inspect each storage area that is used for permitted events.

5. Storage areas may only be maintained in anticipation of scheduled events. Nothing herein shall authorize long-term storage of alcohol beverages that have no nexus to

events. This subparagraph (B)(5) does not apply to special event permittees that hold a valid club or arts license.

6. A licensed wholesaler may deliver alcohol beverages purchased by a special event permittee to the storage location in accordance to subparagraphs (B)(1), (B)(2), (B)(3), and (B)(4) of this regulation, but such storage cannot be more than two (2) business days prior to the date for the special event. If a licensed wholesaler donates alcohol to the special event permittee, the wholesaler may pick up such unused donated alcohol beverage products from the storage area in accordance to subparagraphs (B)(1), (B)(2), (B)(3), and (B)(4) of this regulation. Such removal of unused donated alcohol beverage products must occur within two (2) business days after the end of the special event permit.

C. If the special event permittee is also a retailer licensed for on-premises consumption that holds a valid club or arts license, and the designated event area is the retailer's licensed premises, then the special event permittee need not store the alcohol beverages purchased for the special event in a separate area of the on-premises retailer's licensed premises.

1. At the conclusion of the special event, the on-premises retailer may sell alcohol beverages purchased for the special event to consumers by the drink pursuant to the on-premises retailer's licensed privileges and normal business operations.

2. This paragraph (C) only applies when the special event permittee is a qualified not-for-profit organization and is the same legal entity as the holder of the on-premises retailer's license.

3. This paragraph (C) only applies when the special event permittee purchases alcohol for a special event held for the benefit of the entity holding both the special event permit and the on-premises retailer's license.

4. This paragraph (C) does not apply to alcohol beverages donated to the special event permittee or purchased by the special event permittee below cost.

Regulation 47-1101. Delivery and Takeout Sales by On-Premises Licensees.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44- 3-202(2)(a)(I)(L), 44-3-202(2)(a)(I)(M), 44-3-202(2)(a)(I)(R), 44-3-601, 44-3-911, and 24-4-104(4)(a), C.R.S. The purpose of this regulation is to exercise proper regulation and control over the manufacture, distribution and sale of alcohol beverages, promoting the social welfare, the health, peace and morals of the people of the State. This regulation establishes a permit for on-premises licensees authorized to engage in such sales by section 44-3-911, C.R.S., which temporarily allows persons issued a license under sections 44-3-411, 44-3-413, 44-3-414, 44-3-417, 44-3-418, 44-3-422, 44-3-426, or 44-3-428, C.R.S., to sell alcohol beverages through delivery and takeout through July 1, 2025, the date section 44-3-911, C.R.S. is automatically repealed. Section 44-3-911, C.R.S., also temporarily allows a person issued a license under sections 44-4-104(1)(c)(I)(A) or 44-3-104(1)(c)(III), C.R.S., to sell alcohol beverages via takeout, and a person issued a license under sections 44-3-412, 44-3-415, 44-3-416, 44-3-419, 44-3-420, and 44-3-421, C.R.S., to sell alcohol beverages via delivery through July 1, 2025. Finally, section 44-3-911, C.R.S., also temporarily allows a person issued a license under sections 44-3-402 or 44-3-407, C.R.S., and that operates a sales room, to sell alcohol beverages through delivery until January 2, 2022. This regulation also addresses age verification, container, and other requirements and related recordkeeping for alcohol beverages sold through delivery or takeout by on premises licensees authorized to engage in such sales by section 44-3-911, C.R.S.

A. The requirements of paragraphs (B), (C), (D), and (E) of this this Regulation 47-1101 apply to persons issued a license under sections 44-3-411, 44-3-412, 44-3-413, 44-3-414, 44-3-415, 44-3-

416, 44-3-417, 44-3-418, 44-3-419, 44-3-420, 44-3-421, 44-3-422, 44-3-426, 44-3-428, 44-4-104 (1)(c)(I)(A), or 44-4-104 (1)(c)(III), C.R.S.

B. Unless the governor has declared a disaster emergency under part 7 of article 33.5 of title 24, no persons issued a license identified in paragraph (A) of this regulation may sell alcohol beverages through takeout and/or delivery pursuant to section 44-3-911, C.R.S., unless the licensee has first obtained a permit from the state licensing authority and paid the relevant fee established in Regulation 47-506.

1. If a person issued a license identified in paragraph (A) of this regulation applies for a takeout and/or delivery permit while a disaster emergency declared by the governor under part 7 of article 33.5 of title 24 is in effect, that person may continue engaging in takeout and/or delivery sales once the disaster emergency is rescinded or expired. However, the licensee shall cease all takeout and/or delivery sales if the state or local licensing authority denies the licensee's application for a takeout or delivery permit.

2. An applicant for a permit must affirm on its takeout and/or delivery permit application that the applicant derives, or will derive, no more than fifty (50) percent of its gross annual revenues from total sales of food and alcohol beverages from the sale of alcohol beverages through takeout orders and orders that the licensee delivers.

    a. This subparagraph (B)(2) does not apply if the governor has declared a disaster emergency under part 7 of article 33.5 of title 24; and

    b. Nothing within this subparagraph (B)(2) shall limit the authority of the state licensing authority or the local licensing authority, if applicable, to inspect books and records pursuant to Regulation 47-700, 1 C.C.R. 203-2, to verify the affirmation or compliance with this statutory requirement.

3. A takeout and/or delivery permittee shall display its takeout and/or delivery permit at all times in a prominent place on its licensed premises. The takeout and delivery permittee's employee making a delivery shall be required to carry, or have immediate access to, a copy of the takeout and delivery permit in the delivery vehicle. The copy of the permit may be electronic.

C. If the relevant local licensing authority creates a permit for takeout and delivery pursuant to section 44-3-911(4)(C), C.R.S., no persons issued a license identified in paragraph (A) of this regulation may engage in sales of alcohol beverages through takeout or delivery unless the licensee holds takeout and/or delivery permits from both the state and local licensing authorities.

1. This subparagraph (c) does not apply if the governor has declared a disaster emergency under part 7 of article 33.5 of title 24.

D. Any licensee authorized to engage in sales of alcohol beverages through delivery or takeout pursuant section 44-3-911, C.R.S., and this regulation shall comply with the following requirements and limitations:

1. Orders for delivery or takeout that include alcohol beverages may be accepted by only the licensee or its employees at the licensed premises, which may be accepted by telephone, in person, or via internet communication. No order for delivery may be solicited or accepted by a delivery driver or from a delivery vehicle. All orders for delivery shall be documented in a written order prepared by the licensee or its employees.

2. When receiving a delivery order, the licensee must obtain and record the name and date of birth of the person placing the order and the delivery address for the order. Under no

circumstances shall a person under twenty-one (21) years of age be permitted to place an order for takeout or delivery of alcohol beverages.

3. Delivery of orders that include alcohol beverages shall be made only to a person twenty-one (21) years of age or older at the address specified in the customer's delivery order.

4. Delivery of orders that include alcohol beverages shall not be made to any public place, including public parks, streets, alleys, roads, or highways.

5. Delivery must be made by an employee of the licensee who is at least twenty-one (21) years of age, and who has completed a seller server training program established under section 44-3-1001, C.R.S., and maintained recertification under the requirements of Regulation 47-605. Use of third-party delivery services is prohibited.

6. The licensee's employee who delivers the alcohol beverages shall note and log at the time of delivery the name and identification number of the person receiving the delivery of the alcohol beverages. Under no circumstances shall a person under twenty-one (21) years of age be permitted to receive a delivery of alcohol beverages.

7. Licensees who deliver alcohol beverages shall maintain all records relating to delivery, including delivery orders, receipt logs and journals, as part of their records required pursuant to section 44-3-701, C.R.S. These records shall be maintained by the licensee for sixty (60) days. Failure to maintain accurate or complete records is a violation of this regulation.

8. Licensees engaged in delivery shall comply with section 42-4-1305, C.R.S., and any local laws, ordinances or regulations, addressing prohibitions on open containers of alcohol beverages in motor vehicles.

9. Any alcohol beverage sold to a consumer through delivery or takeout under this regulation, which may include cocktails or mixed drinks, shall be in a sealed container.

    a. For the purposes of this regulation "sealed container" means a "sealed container" as defined in subsection 44-3-103(51), C.R.S., and shall also include a container filled with alcohol beverage, that is new, has never been used, and has a tamper evident secure lid or cap designed to prevent consumption without removal of the lid or cap. "Sealed container" does not include a container with a lid with sipping holes or openings for straws or a container made of paper or polystyrene foam. "Tamper evident" means a lid or cap that has been sealed with tamper-evident material, including, but not limited to, wax dip, heat shrink wrap, or adhesive tape or that is secured in such a manner that is visibly apparent if the container has been opened or tampered with.

    b. Persons issued a license identified in paragraph (A) of this regulation may not refill sealed containers as defined in subsection (D)(9)(a) or offer any such refilled containers for sale.

    c. Any sealed container of alcohol beverages sold pursuant to this regulation shall not exceed the relevant volume limits identified in paragraph (E) of this regulation.

10. Any sealed container containing an alcohol beverage that is sold for takeout or delivery under this regulation, other than an alcohol beverage sealed by its manufacturer, shall identify the licensee that sold the beverage and include a warning statement, with a minimum fourteen (14) font size, stating as follows: "WARNING: DO NOT OPEN OR

REMOVE SEAL WHILE IN TRANSIT. Purchasers are subject to state and local laws and regulations prohibiting drinking or possessing open containers of alcoholic beverages in motor vehicles, including section 42-4-1305, C.R.S."

11. Licensees who sell alcohol beverages through delivery or takeout pursuant to this regulation are responsible for compliance with all laws and regulations prohibiting the sale of alcohol beverages to an underage person or to a visibly intoxicated person.

12. Licensees shall only sell alcohol beverages through takeout and delivery between the hours of 7 a.m. and 12 midnight.

E. Unless the governor has declared a disaster emergency under part 7 of article 33.5 of title 24, no persons issued a license identified in paragraph (A) of this regulation shall sell more than the following amounts of alcohol beverage to a consumer as part of a takeout or delivery order:

1. 1,500 milliliters, or approximately 50.8 fluid ounces, of vinous liquors; and

2. 144 fluid ounces, or approximately 4,259 milliliters, of malt liquor, fermented malt beverages, and hard cider, and

3. One liter, or approximately 33.8 fluid ounces, of spirituous liquors.

F. A violation of this regulation by a licensee, or by any of the agents, servants, or employees of a licensee, may result in disciplinary action, up to and including license revocation, pursuant to section 44-3-601(1), C.R.S., and may result in summary suspension of a license pursuant to section 44-3-601(2) and Regulation 47-602.

G. This regulation is repealed, effective July 1, 2025, and any takeout and delivery permit then in effect shall be deemed to have expired, without further action by the state or local licensing authorities.

H, A person issued a license under sections 44-3-402 or 44-3-407, C.R.S., and that operates a sales room may sell alcohol beverage through delivery pursuant to section 44-3-911, C.R.S., and the requirements of this regulation. This paragraph (H) is repealed effective January 2, 2022.

Regulation 47-1103. Communal Outdoor Dining Areas.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103(11.5), 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-2020(2)(a)(I)(F), 44-3-202(2)(a)(I)(L), 44-3-202(2)(a)(I)(M), 44-3-202(2)(a)(I)(R), 44-3-601, 44-3-912(6), and 24-4-104(4)(a), C.R.S. The purpose of this regulation is to address requirements for the operation of communal outdoor dining areas.

A. No licensee shall sell or serve alcohol beverages in a communal outdoor dining area unless

1. The licensee obtains a permit from the state licensing authority and pays the permitting fee established in regulation 47-506; and

2. The state and local licensing authorities have approved both attaching the license to the communal outdoor dining area and a modification of licensed premises pursuant to Regulation 47-302 that includes the communal outdoor dining area.

3. A retail food establishment that does not have a liquor license may also serve food in a communal outdoor dining area approved under this regulation 47-1103.

B. A communal outdoor dining area must be within 1000 feet of the permanent licensed premises of each of the licensees associated with the communal outdoor dining area. This distance shall be computed by direct measurement from the nearest property line of the land used for the communal outdoor dining area to the nearest portion of the building in which the permanent licensed premises is located, using a route of direct pedestrian access.

C. If allowed by the local licensing authority, all licensees who wish to be associated with a communal outdoor dining area may submit a joint application to modify their licensed premises to include the communal outdoor dining area. Each licensee is responsible for paying the modification of the licensed premises fee set forth in Regulation 47-506.

D. All licensees associated with a communal outdoor dining area pursuant to this Regulation 47-1103 must adopt and agree to a security and control plan for the communal outdoor dining area that is approved by the state and local licensing authorities. The security and control plan shall ensure:

1. Any retail food establishments associated with the communal outdoor dining area that does not hold a liquor license acknowledges and agrees that alcohol beverages will be sold in the communal outdoor dining area only by, and under the control of, the licensees associated with the communal outdoor dining area;

2. One or more licensees will supervise or provide security within the communal outdoor dining area during all hours of operation to ensure compliance with this Regulation 47-1103 and all relevant requirements of article 3 of title 44 and the Colorado liquor rules;

3. All licensees associated with the communal outdoor dining area agree they are jointly responsible for complying with this Regulation 47-1103 and all relevant requirements of article 3 of title 44 and the Colorado liquor rules; and

4. All licensees have obtained and will maintain a properly endorsed general liability and liquor liability insurance policy that includes the communal outdoor dining area and is reasonably acceptable to the state and local licensing authorities.

E. A licensee associated with a communal outdoor dining area shall not:

1. Permit customers to leave the communal outdoor dining area with any alcohol beverage except as permitted under Regulation 47-918;

2. Permit customers to bring food into the communal outdoor dining area that was purchased outside of the communal outdoor dining area;

3. Permit takeout or delivery orders to be ordered from or delivered to the communal outdoor dining area;

4. Sell, serve, or permit consumption of alcohol beverages in the communal outdoor dining area during hours the licensed premises cannot sell alcohol under article 3 of title 44 or the limitations imposed by the local licensing authority;

5. Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of an alcohol beverage to a visibly intoxicated person or to a known drunkard;

6. Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, or giving of an alcohol beverage to a person under twenty-one years of age;

7. Permit a visibly intoxicated person to remain within the communal outdoor dining area without an acceptable purpose; or

8. Permit a person to consume an alcohol beverage within the communal outdoor dining area unless it was purchased within the communal outdoor dining area from a licensee associated with the communal outdoor dining area.

F. Licensees associated with a communal outdoor dining area shall promptly remove all alcohol beverages from the communal outdoor dining area at the end of the hours of operation.

G. This Regulation 47-1103 does not apply to a special event permit issued under article 5 of title 44 unless the permit holder desires to use an existing communal outdoor dining area and agrees in writing to the requirements of article 3 of title 44 and the local licensing authority concerning the communal outdoor dining area.

H. A violation of section 44-3-912, C.R.S., or this regulation by a licensee, or by any of the agents, servants, or employees of a licensee, may result in disciplinary action, up to and including license revocation, pursuant to section 44-3-601(1), C.R.S., and may result in summary suspension of a license pursuant to section 44-3-601(2) and Regulation 47-602.

1. If the licensee responsible for the violation cannot be identified, each attached licensee is deemed jointly responsible and subject to discipline for the violation.

COLORADO
Department of Revenue
Executive Director's Office

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1707 Cole Blvd., Ste. 300
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Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

Statement of Adoption

To: Michelle Stone-Principato, Director - Liquor Enforcement Division

From: Mark Ferrandino, Executive Director – Department of Revenue

Re: Statement of Adoption

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2013), I, Mark Ferrandino, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following additions and amendments to rules:

1 CCR 203-2, Liquor Enforcement Division Rules

Regulation 47-100. Definitions.

Regulation 47-104. Winery Direct Shipper's Permits.

Regulation 47-200. Petitions for Statements of Position and Declaratory Orders Concerning the Colorado Liquor Code, Colorado Beer Code, Special Event Code, or Colorado Liquor Rules.

Regulation 47-300. Change in Class of License.

Regulation 47-302. Changing, Altering, or Modifying Licensed Premises.

Regulation 47-303. License Renewal.

Regulation 47-305. Transfers – Wholesaler Confirmation.

Regulation 47-312. Change of Location.

Regulation 47-322. Unfair Trade Practices and Competition.

Regulation 47-422. Arts License.

Regulation 47-424. Engaging in Business (REPEALED)

Regulation 47-426. Delivery Sales by Off-Premises Licensees.

Regulation 47-428. Sales Rooms.

Regulation 47-434. Winery and Limited Winery Licensed Premises That Include Noncontiguous Locations.

Regulation 47-500. Excise Taxes, Surcharges, and Fees Audits.

Regulation 47-502. Excise Taxes, Surcharges, and Fees Reports.

Regulation 47-504. Payment of Excise Taxes by Non-licensees.

Regulation 47-600. Complaints against Licensees – Suspension, Revocation, and Fining of Licenses.

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Regulation 47-601. Written Warnings and Assurances of Voluntary Compliance.

Regulation 47-605. Responsible Alcohol Beverage Vendor and Permitted Tastings by Retail Liquor Stores and Liquor-Licensed Drugstores.

Regulation 47-606. Disciplinary and Denial Process for State Licensing Authority.

Regulation 47-607. Administrative Subpoenas.

Regulation 47-904. Product Labeling, Substitution, Sampling and Analysis.

Regulation 47-922. Gambling.

Regulation 47-924. Importation and Sole Source of Supply/Brand Registration.

Regulation 47-1016. Special Event Permittee - Purchase and Storage of Alcohol Beverages.

Regulation 47-1101. Delivery and Takeout Sales By On-Premises Licensees.

Regulation 47-1103. Communal Outdoor Dining Areas.

The new and amended rules are adopted this 10th day of November 2021.

Mark Ferrandino

Digitally signed by Mark Ferrandino
Date: 2021.11.10 09:55:00 -07'00'

Mark Ferrandino
Executive Director
State Licensing Authority

PHILIP J. WEISER
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STATE OF COLORADO
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Office of the Attorney General

Tracking number: 2021-00632

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

Liquor and Tobacco Enforcement Division

on 11/10/2021

1 CCR 203-2

COLORADO LIQUOR RULES

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:49:06

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

Permanent Rules Adopted

Department

Department of Revenue

Agency

Marijuana Enforcement Division

CCR number

1 CCR 212-3

Rule title

1 CCR 212-3 COLORADO MARIJUANA RULES 1 - eff 01/01/2022

Effective date

01/01/2022

COLORADO
Department of Revenue
Marijuana Enforcement Division

Final Adopted Rules

Colorado Marijuana Rules
1 CCR 212-3

Part 1 – General Applicability

Basis and Purpose – 1-105

The statutory authority for this rule includes but is not limited to sections 44-10-102(3), 44-10-202(1)(c), and 44-10-701(2)(a), C.R.S. Unless such activity is authorized by the Colorado Constitution, article XVIII, Section 14 or Section 16, the Colorado Marijuana Code, section 25-1.5-106.5, C.R.S., or these rules, any Person who buys, Transfers, or acquires Regulated Marijuana outside the requirements of the Colorado Marijuana Code is engaging in illegal activity pursuant to Colorado law. This rule clarifies that those engaged in the business of possessing, cultivating, dispensing, Transferring, transporting, or testing Medical Marijuana or Retail Marijuana must be properly licensed to be in compliance with Colorado law. This Rule 1-105 was previously Rules M and R 101, 1 CCR 212-1 and 1 CCR 212-2.

1-105 – Engaging in Business

A. Except as authorized by the Colorado Constitution, article XVIII, sections 14 or 16, the Colorado Marijuana Code, or section 25-1.5-106.5, C.R.S., no person shall possess, cultivate, dispense, Transfer, transport, offer to sell, manufacture, or test Regulated Marijuana unless said person is duly licensed by the State Licensing Authority and approved by the relevant Local Jurisdiction(s) and/or licensed by the relevant Local Licensing Authority(-ies).

B. Public Health Orders and Executive Orders.

1. All Licensees, their agents, and their employees shall comply with any applicable public health orders issued by any agency of the State of Colorado including, but not limited to the Colorado Department of Public Health and Environment.

2. All Licensees, their agents, and their employees, shall comply with any and all executive orders issued by the Governor pursuant to the Governor's disaster emergency powers under section 24-33.5-704, C.R.S.

3. A violation of this Rule by a Licensee, or by any of the agents or employees of a Licensee, is a license violation affecting public safety, which may result in disciplinary action up to and including license revocation and summary suspension pursuant to sections 44-10-901(1), C.R.S. and 44-10-901(2), C.R.S., and these Rules.

Basis and Purpose – 1-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), C.R.S. The purpose of this rule is to clarify that each rule is independent of the others, so if one is found to be invalid, the remainder will stay in effect. This will give the regulated community confidence in the rules even if one is challenged. This Rule 1-110 was previously Rules M and R 102, 1 CCR 212-1 and 1 CCR 212-2.

1-110 – Severability

If any portion of the rules is found to be invalid, the remaining portion of the rules shall remain in force and effect.

Basis and Purpose – 1-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(j), and 44-10-103, C.R.S., and all of the Marijuana Code. The purpose of this rule is to provide necessary definitions of terms used throughout the rules. Defined terms are capitalized where they appear in the rules, to let the reader know to refer back to these definitions. When a term is used in a conventional sense, and is not intended to be a defined term, it is not capitalized. This Rule 1-115 was previously Rules M and R 103, 1 CCR 212-1 and 1 CCR 212-2.

1-115 – Definitions

Definitions. The following definitions of terms, in addition to those set forth in section 44-10-103, C.R.S., apply to all rules promulgated pursuant to the Marijuana Code, unless the context requires otherwise:

"Accelerator Cultivator" means a Social Equity Licensee qualified to participate in the accelerator program established pursuant to the Marijuana Code and authorized to exercise the privileges of a Retail Marijuana Cultivation Facility on the premises of an Accelerator-Endorsed Retail Marijuana Cultivation Facility Licensee. The premises can be either the same premises or a separate Licensed Premises possessed by an Accelerator-Endorsed Licensee.

"Accelerator-Endorsed Licensee" means a Retail Marijuana Cultivation Facility Licensee, Retail Marijuana Products Manufacturer Licensee, or a Retail Marijuana Store Licensee who has, pursuant to these rules, been endorsed to host and offer technical and capital support to a Social Equity Licensee pursuant to the requirements of the accelerator program established pursuant to the Code.

"Accelerator Licensee" means an Accelerator Cultivator, Accelerator Manufacturer, or Accelerator Store.

"Accelerator Manufacturer" means a Social Equity Licensee qualified to participate in the accelerator program established pursuant to the Marijuana Code and authorized to exercise the privileges of a Retail Marijuana Products Manufacturer on the premises of an Accelerator-Endorsed Retail Marijuana Products Manufacturer Licensee. The premises can be either the same premises or a separate Licensed Premises possessed by an Accelerator-Endorsed Licensee.

"Accelerator Store" means a Social Equity Licensee qualified to participate in the accelerator program established pursuant to the Marijuana Code and authorized to exercise the privileges of a Retail Marijuana Store on the premises of an Accelerator-Endorsed Retail Marijuana Store Licensee. The premises can be either the same premises or a separate Licensed Premises possessed by an Accelerator-Endorsed Licensee.

"Acquire," when used in connection with the acquisition of an Owner's Interest of a Regulated Marijuana Business, means obtaining ownership, Control, power to vote, or sole power of disposition of the Owner's Interest, directly or indirectly through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession or other means.

"Acting in Concert" means knowing participation in a joint activity or interdependent conscious parallel action toward a common goal, whether or not pursuant to an express agreement.

"Additive" means any non-marijuana derived substance added to Regulated Marijuana to achieve a specific technical and/or functional purpose during processing, storage, or packaging. Additives

may be direct or indirect. Direct additives are used to impart specific technological or functional qualities. Indirect additives are not intentionally added but may be present in trace amounts as a result of processing, packaging, shipping, or storage. Botanically Derived Compounds which have been isolated or enriched and subsequently added back into cannabis products are additives.

“Adverse Health Event” means any untoward health condition or occurrence associated with the use of marijuana—this could include any unfavorable and unintended sign (including a hospitalization, emergency department visit, medical visit, abnormal laboratory finding, outbreak, death [non-motor vehicle]), symptom, or disease temporally associated with the use of a marijuana product, and may include concerns or reports on the quality, labeling, or possible adverse reactions to a specific marijuana (or hemp) product Transferred or manufactured at a Regulated Marijuana Business.

“Adverse Weather Event” means:

a. Damaging weather, which involves a drought, a freeze, hail, excessive moisture, excessive wind, or a tornado; or

b. An adverse natural occurrence, which involves an earthquake, wildfire, or flood.

“Advertising” means the act of providing consideration for the publication, dissemination, solicitation, or circulation, of visual, oral, or written communication, to directly induce any Person to patronize a particular Medical Marijuana Business or Retail Marijuana Business, or to purchase particular Regulated Marijuana. “Advertising” does not include packaging and labeling, Consumer Education Materials, or Branding.

“Affiliate” of, or Person affiliated with, a specified Person, means a Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the Person specified.

“Alarm Installation Company” means a Person engaged in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing a Security Alarm System in a Licensed Premises.

“Alternative Use Designation” means a designation approved by the State Licensing Authority, permitting a Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer to manufacture and Transfer Alternative Use Product.

“Alternative Use Product” means Regulated Marijuana that has at least one intended use that is not included in the list of intended uses in Rule 3-1015(B). Alternative Use Product may raise public health concerns that outweigh approval of the Alternative Use Product, or that require additional safeguards and oversight. Alternative Use Product cannot be Transferred except as permitted by Rule 5-325 or Rule 6-325 after obtaining an Alternative Use Designation. Rule 5-325 permits a Medical Marijuana Products Manufacturer to Transfer Alternative Use Product to a Medical Marijuana Testing Facility prior to receiving an Alternative Use Designation. Rule 6-325 permits a Retail Marijuana Products Manufacturer to Transfer Alternative Use Product to a Retail Marijuana Testing Facility prior to receiving an Alternative Use Designation. Except where the context otherwise clearly requires, rules applying to Regulated Marijuana Concentrate or Regulated Marijuana Product apply to Alternative Use Product.

“Applicant” means a Person that has submitted an application for licensure, permit, or registration, or for renewal of licensure, permit, or registration, pursuant to these rules that was accepted by the Division for review but has not been approved or denied by the State Licensing Authority.

"Approved Training Program" means a responsible vendor program that received approval from the Division prior to being offered to a Licensee.

"Audited Product" means a Regulated Marijuana Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration. Audited Product types may raise public health concerns requiring additional safeguards and oversight. These product types may only be manufactured and Transferred by a Medical Marijuana Products Manufacturer in strict compliance with Rule 5-325 or Retail Marijuana Products Manufacturer in strict compliance with Rule 6-325. Prior to the first Transfer of an Audited Product to a Medical Marijuana Store, Medical Marijuana Cultivation Facility that has a Centralized Distribution Permit, Retail Marijuana Store or Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit, the Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer shall submit to the Division and, if applicable, to the Local Licensing Authority or Local Jurisdiction an independent third-party audit verifying compliance with Rule 5-325 or Rule 6-325. All rules regarding Regulated Marijuana Product apply to Audited Product except where Rules 5-325, 6-325, 4-115, 3-1010, and 3-1015 apply different requirements.

"Bad Actor" means a Person who:

a. Has been convicted, within the previous ten years (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

   i. In connection with the purchase or sale of any Security;

   ii. Involving the making of any false filing with the Federal Securities Exchange Commission; or

   iii. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of Securities;

b. Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within the previous five years, that restrains or enjoins such Person from engaging or continuing to engage in any conduct or practice:

   i. In connection with the purchase or sale of any Security;

   ii. Involving the making of any false filings with the Federal Securities Exchange Commission; or

   iii. Arising out of conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of Securities:

c. Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

   i. Bars the Person from:

      A. Association with an Entity regulated by such commission, authority, agency, or officer;

B. Engaging in the business of Securities, insurance, or banking; or

C. Engaging in savings association or credit union activities; or

ii. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the previous ten years;

d. Is subject to an order of the Federal Securities Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934, or section 203(e) or (f) of the Investment Advisers Act of 1940 that:

i. Suspends or revokes such Person's registration as a broker, dealer, municipal securities dealer, or investment adviser;

ii. Places limitations on the activities, functions or operations of such Person; or

iii. Bars such Person from being associated with any Entity, or from participating in the offering of any Penny Stock;

e. Is subject to any order of the Federal Securities Exchange Commission entered within the previous five years that orders the Person to cease and desist from committing or causing a violation or future violation of:

i. Any scienter-based anti-fraud provision of the federal securities laws, including without limitations section 17(a)(1) of the Securities Act of 1933, section 10(b) of the Securities Exchange Act of 1934 and 17 C.F.R. 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 and section 206(1) of the Investment Advisers Act of 1940, or any other rule or regulation thereunder; or

ii. Section 5 of the Securities Act of 1933.

f. Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

g. Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the federal Securities Exchange Commission that, within the previous five years, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

h. Is subject to a United States Postal Service false representation order entered with the previous five years, or is subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

"Batch Number" means any distinct group of numbers, letters, or symbols, or any combination thereof, assigned by a Medical Marijuana Cultivation Facility or Medical Marijuana Products Manufacturer to a specific Harvest Batch or Production Batch of Medical Marijuana, or by a Retail

Marijuana Cultivation Facility or Retail Marijuana Products Manufacturer to a specific Harvest Batch or Production Batch of Retail Marijuana.

"Beneficial Owner" includes the terms "beneficial ownership", or "beneficially owns" and means:

a. Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

i. Voting power which includes the power to vote, or to direct the voting of, an Owner's Interest; and/or,

ii. Investment power which includes the power to dispose, or to direct the disposition of, an Owner's Interest.

b. Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose of effect of divesting such Person of beneficial ownership of an Owner's Interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Securities Act of 1933 shall be deemed for purposes of such sections to be the beneficial owner of such Owner's Interest.

c. All Owner's Interests of the same class beneficially owned by a Person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such Person.

d. Notwithstanding the provisions of paragraphs (a) and (c) of this rule:

i.

A. A Person shall be deemed to be the beneficial owner of an Owner's Interest, subject to the provisions of paragraph (b) of this rule, if that Person has the right to acquire beneficial ownership of such Owner's Interest, as defined in Rule 13d-3(a) (§ 240.13d-3(a)) within sixty days, including but not limited to any right to acquire: (1) Through the exercise of any option, warrant or right; (2) through the conversion of an Owner's Interest; (3) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (4) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires an Owner's Interest or power specified in paragraphs (d)(i)(A)(1), (2) or (3), of this section, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the Owner's Interests which may be acquired through the exercise or conversion of such Owner's Interests or power. Any Owner's Interests not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding Owner's Interests of the class owned by such Person but shall not be deemed to be outstanding for

the purpose of computing the percentage of the class by any other Person.

B. Paragraph (d)(i)(A) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying Owner's Interests even though the option, warrant, right or convertible Owner's Interests is of a class of equity Owner's Interest, as defined in § 240.13d-1(i), and may therefore give rise to a separate obligation to file.

ii. A member of a national securities exchange shall not be deemed to be a beneficial owner of an Owner's Interest held directly or indirectly by it on behalf of another Person solely because such member is the record holder of such Owner's Interests and, pursuant to the rules of such exchange, may direct the vote of such Owner's Interests, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the Owner's Interests to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

iii. A person who in the ordinary course of his business is a pledgee of Owner's Interests under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged Owner's Interests until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged Owner's Interests will be exercised, provided, that:

A. The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b);

B The pledgee is a Person specified in Rule 13d-1(b)(ii), including Persons meeting the conditions set forth in paragraph (G) thereof; and

C The pledgee agreement, prior to default, does not grant to the pledgee;

1. The power to vote or to direct the vote of the pledged Owner's Interests; or

2. The power to dispose or direct the disposition of the pledged Owner's Interests, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the Securities Act of 1933.

iv. A Person engaged in business as an underwriter of Owner's Interests who acquires Owner's Interests through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 shall not be deemed to be the beneficial owner of such Owner's

Interests until the expiration of forty days after the date of such acquisition.

"Blank Check Company" means an Entity that:

a. Is a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other Entity or Person; and

b. Is issuing Penny Stock.

"Botanically Derived Compounds" are organic chemicals that typically have a high vapor pressure at room temperature and are likely to be dispersed into the air. Botanically Derived Compounds include, but are not limited to terpenes, terpenoids, ketones, esters, and other molecules which are naturally occurring in plants and are used to affect the flavor and aroma of Regulated Marijuana.

"Branding" means promotion of a Regulated Marijuana Business's brand through publicizing the Regulated Marijuana Business's name, logo, or distinct design feature of the brand.

"Cannabinoid" means any of the chemical compounds that are the active principles of marijuana.

"Centralized Distribution Permit" means a permit issued to a Medical Marijuana Cultivation Facility pursuant to section 44-10-502, C.R.S., or a Retail Marijuana Cultivation Facility pursuant to section 44-10-602, C.R.S., authorizing temporary storage of Medical Marijuana Concentrate and Medical Marijuana Product received from a Medical Marijuana Products Manufacturer or Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Medical Marijuana Stores or Retail Marijuana Stores. For purposes of a Centralized Distribution Permit only, the term "commonly owned" means at least one natural person has a minimum of five percent ownership in both the Medical Marijuana Cultivation Facility possessing the Centralized Distribution Permit and the Medical Marijuana Store, or in both the Retail Marijuana Cultivation Facility possessing the Centralized Distribution Permit and the Retail Marijuana Store.

"Child-Resistant" means special packaging that is:

a. Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995). Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of the applicable federal regulations, which is available to the public;

b. Opaque so that the packaging does not allow the product to be seen without opening the packaging material; and

c. Resealable for any product intended for more than a single use or containing multiple servings.

"Commercially Reasonable Royalty" means a right to compensation in the form of a royalty payment for the use of intellectual property with a direct nexus to the cultivation, manufacture, Transfer or testing of Regulated Marijuana. A Commercially Reasonable Royalty must be limited to specific intellectual property the Commercially Reasonable Royalty interest owns or is otherwise authorized to license or to a product or line of products. A Commercially Reasonable Royalty must not cause reasonable consumer confusion or violate any federal copyright,

trademark or patent law or regulation will not be approved. To determine whether the Commercially Reasonable Royalty is reasonable, the Division will consider the totality of the circumstances, including but not limited to the following factors:

a. The percentage of royalties received by the recipient for the licensing of the intellectual property.

b. The rates paid by the Licensee for the use of other intellectual property.

c. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or non-restricted in terms of territory or with respect to whom the product may be sold.

d. The licensor's established policy and marketing program to maintain an intellectual property monopoly by not licensing others or by granting licenses under special conditions designed to preserve that monopoly.

e. The commercial relationship between the recipient and Licensee, such as, whether they are competitors in the same territory in the same line of business.

f. The effect of selling the intellectual property in promoting sales of other products of the Licensee; the existing value of the intellectual property to the recipient as a generator of sales of his non-intellectual property items; and the extent of such derivative sales.

g. The duration of the term of the license for use of the intellectual property.

h. The established or projected profitability of the product made using the intellectual property; its commercial success; and its current popularity.

i. The utility and advantages of the intellectual property over products or businesses without the intellectual property.

j. The nature of the intellectual property; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the intellectual property.

k. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the intellectual property.

l. The portion of the realizable profit that should be credited to the intellectual property as distinguished from non-intellectual property elements, the manufacturing process, business risks, or significant features or improvements added by the Licensee.

"Consumer Education Materials" means any informational materials that seek to educate consumers about Regulated Marijuana generally, including but not limited to education regarding the safe consumption of marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Products, provided it is not distributed or made available to individuals under twenty-one years of age.

"Consumption Area" means a designated and secured area within the Licensed Premises of a Licensed Hospitality Business where consumers can use and consume marijuana and where no

one under the age of 21 is permitted. A Consumption Area may, but is not required to, be part of a Restricted Access Area.

"Container" means the receptacle directly containing Regulated Marijuana that is labeled according to the requirements in the 3-1000 Series Rules.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting Owner's Interests, by contract, or otherwise. This definition of Control includes Controls, Controlled, Controlling, Controlled by, and under common Control with.

"Controlling Beneficial Owner" means a Person that satisfies one or more of the following criteria:

a. A natural person, an Entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, a trust, the trustee of a trust, a Publicly Traded Corporation, or a Qualified Private Fund that is not a Qualified Institutional Investor:

   i. Acting alone or Acting In Concert, that owns or Acquires Beneficial Ownership of ten percent or more of the Owner's Interest of a Regulated Marijuana Business;

   ii. That is an Affiliate that Controls a Regulated Marijuana Business and includes, without limitation, any Manager; or

   iii. That is otherwise in a position to Control the Regulated Marijuana Business except as authorized in section 44-10-506 or 44-10-606, C.R.S.; or

b. A Qualified Institutional Investor acting alone or Acting In Concert that owns or Acquires Beneficial Ownership of more than thirty percent of the Owner's Interest of a Regulated Marijuana Business.

c. Unless the context otherwise requires, the defined term Controlling Beneficial Owner includes Direct Beneficial Interest Owner.

"Corrective Action" means a reactive action implemented to eliminate the root cause of a Nonconformance and to prevent recurrence.

"Court Appointee" means a Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person; acting in accordance with section 44-10-401(3), C.R.S., and these rules; and authorized by court order to take possession of, operate, manage, or control a licensed Regulated Marijuana Business.

"Covered Securities" means:

a. A Security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of the Securities Act of 1933 that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or a Security of the same issuer that is equal in seniority or that is a senior Security to a Security designated as qualified for trading in the national market system.

b. A Security issued by an investment company that is registered, or that has filed a registration statement under the federal Investment Company Act of 1940.

c. A Security as defined by the Federal Securities Exchange Commission by rule pursuant to 15 U.S.C. §77r(b)(3).

d. A Security pursuant to 15 U.S.C. §77r(b)(4).

"Decontamination" means the process of neutralization or removal of dangerous substances or other contaminants from regulated marijuana without changing the product type of the Regulated Marijuana.

"Delivery Motor Vehicle" means any self-propelled vehicle that is designed primarily for travel on the public highways, that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle that is used for delivery of Regulated Marijuana to patients or consumers; except that the term does not include electric assisted bicycles, wheelchairs, or vehicles moved solely by human power.

"Denied Applicant" means any Person whose application for licensure, permit, or registration pursuant to the Marijuana Code has been denied, any Person whose application for a responsible vendor program has been denied, or any Licensee whose application for any of the following non-exhaustive list has been denied: An initial license application pursuant to Rule 2-220, a renewal application pursuant to Rule 2-225, the request for a finding of suitability pursuant to Rule 2-235, a change of owner pursuant to Rule 2-245; a change of location of the Licensed Premises pursuant to Rule 2-255; a change, alteration, or modification of the Licensed Premises pursuant to Rule 2-260; or a production management tier increase request pursuant to Rule 5-225 or 6-220.

"Department" means the Colorado Department of Revenue.

"Designated Test Batch Collection Area" means an area that has been designated within the Limited Access Area of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Medical Marijuana Products Manufacturer that is under surveillance and used for purposes of organizing and combining Sample Increments to create Test Batches, and which has been cleaned and sanitized prior to preparing Test Batches.

"Designated Test Batch Collector" means an Owner Licensee or an Employee Licensee who has been designated by a Regulated Marijuana Business and completed training required by Rule 4-110 to engage in Sample Increment Collection for the purpose of creating Test Batches.

"Director" means the Director of the Marijuana Enforcement Division.

"Disproportionate Impacted Area" means a census tract in the top 15th percentile for that state in at least two of the following categories as measured by the United States Census Bureau:

a. the percent of residents in the census tract receiving public assistance;

b. the percent of residents in the census tract falling below the federal poverty level;

c. the percent of residents in the census tract failing to graduate from High School; and

d. the percent of residents in the census tract who are unemployed.

"Division" means the Marijuana Enforcement Division.

"Edible Medical Marijuana Product" means any Medical Marijuana Product for which the intended use is oral consumption, including but not limited to, any type of food, drink, or pill.

"Edible Retail Marijuana Product" means any Retail Marijuana Product for which the intended use is oral consumption, including but not limited to, any type of food, drink, or pill.

"Employee License" means a license granted by the State Licensing Authority pursuant to section 44-10-401, C.R.S., to a natural person who is not a Controlling Beneficial Owner. Any person who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, or delivers Regulated Marijuana, who is authorized to input data into a Regulated Marijuana Business's Inventory Tracking System or point-of-sale system, or who has unescorted access in the Restricted Access Area or Limited Access Area must hold an Employee License. Employee License includes both Key Licenses and Support Licenses.

"Entity" means a domestic or foreign corporation, cooperative, general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, limited partnership association, nonprofit association, nonprofit corporation, or any other organization or association that is formed under a statute or common law of the state of Colorado or any other jurisdiction as to which the laws of this state of Colorado or the laws of any other jurisdiction governs relations among owners and between the owners and the organization or association and that is recognized under the laws of the state of Colorado or the other jurisdiction as a separate legal entity.

"Executive Officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy-making functions for the Regulated Marijuana Business.

"Exit Package" means an Opaque bag or other similar Opaque covering provided at the point of sale, in which Regulated Marijuana already in a Container is placed. If Regulated Marijuana flower, trim, or seeds are placed into a Container that is not Child-Resistant, then the Exit Package must be Child-Resistant. The Exit Package is not required to be labeled in accordance with the 3-100 Series Rules.

"Fibrous Waste" means any roots, stalks, and stems from a Regulated Marijuana plant.

"Final Agency Order" means an Order of the State Licensing Authority issued in accordance with the Marijuana Code and the State Administrative Procedure Act. The State Licensing Authority will issue a Final Agency Order following review of the Initial Decision and any exceptions filed thereto or at the conclusion of the declaratory order process. A Final Agency Order is subject to judicial review.

"Flammable Solvent" means a liquid that has a flash point below 100 degrees Fahrenheit.

"Flowering" means the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes of the stem.

"Food-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of propylene glycol, glycerin, butter, olive oil, or other typical cooking fats.

"Food-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats.

"Foreign Private Issuer" means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

a. More than 50 percent of the outstanding voting Securities of such issuer are directly or indirectly owned of record by residents of the United States; and

b. Any of the following:

i. The majority of the executive officers or directors are United States citizens or residents;

ii. More than 50 percent of the assets of the issuer are located in the United States; or

iii. The business of the issuer is administered principally in the United States.

"Good Cause" for purposes of denial of an initial, renewal, or reinstatement of a license, registration, or permit application, means:

a. The Licensee or Applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of the Marijuana Code, any rules promulgated pursuant to the Marijuana Code, or any supplemental relevant state or local law, rule, or regulation;

b. The Licensee or Applicant has failed to comply with any special terms or conditions that were placed upon the license pursuant to an order of the State Licensing Authority or the relevant local jurisdiction; or

c. The Licensee's Licensed Premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

"Good Moral Character" means having a criminal history that demonstrates honesty, fairness, and respect for the rights of others and for the law.

"Greenhouse" means a hoop house or other structure with non-rigid walls that utilizes natural light, in whole or in part, for the cultivation of Regulated Marijuana.

"Harvest Batch" means a specifically identified quantity of processed Regulated Marijuana that is uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals and harvested at the same time. A Harvest Batch may also include a Manicure Batch that was harvested prior to the creation of the Harvest Batch.

"Harvested Marijuana" means Regulated Marijuana flower reported as a package in the Inventory Tracking System or post-harvest Regulated Marijuana not including wet whole plant, trim, concentrate, waste, or Fibrous Waste that remains on the premises of the Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility or its off-premises storage location beyond 90 days from harvest.

"Heat/Pressure-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of heat and/or pressure. The method of extraction may be used by only a Medical Marijuana Products Manufacturer and can be used alone or on a Production Batch that also includes Physical Separation-Based Medical Marijuana Concentrate or Solvent-Based Medical Marijuana Concentrate.

"Heat/Pressure-Based Retail Marijuana Concentrate" means Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of heat and/or pressure. This method of extraction may be used by only a Retail Marijuana Products Manufacturer and can be used alone or on a Production Batch that also includes Physical Separation-Based Retail Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

"Identification Badge" means a physical badge issued by the Division to any natural person possessing an Owner License or Employee License, used to verify the identity and license status of the natural persons on the Licensed Premises of a Regulated Marijuana Business.

"Identity Statement" means the name of the business as it is commonly known and used in any Advertising.

"Immature plant" means a nonflowering marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping or seedling and is in a cultivating container.

"Indirect Financial Interest Holder" means a Person that is not an Affiliate, a Controlling Beneficial Owner, or a Passive Beneficial Owner of a Regulated Marijuana Business and that:

a. Holds a Commercially Reasonable Royalty in exchange for a Regulated Marijuana Business's use of the Person's intellectual property;

b. Holds a Permitted Economic Interest that was issued prior to January 1, 2020, and that has not been converted into an Owner's Interest or holds any unsecured convertible debt option, option agreement or warrant that establishes a right for a Person to obtain an interest that might convert to an ownership interest in a Regulated Marijuana Business obtained after January 1, 2020;

c. Is a contract counterparty with a Regulated Marijuana Business, other than a customary employment agreement, that has a direct nexus to the cultivation, manufacture, sale, or testing of Regulated Marijuana, including, but not limited to, a lease of real property on which the Regulated Marijuana Business operates, a lease of equipment used in the cultivation, manufacture, or testing of Regulated Marijuana, a secured or unsecured financing agreement with the Regulated Marijuana Business, a security contract with the Regulated Marijuana Business, or a management agreement with the Regulated Marijuana Business, provided that no such contract compensates the contract counterparty with a percentage of revenue for profits of the Regulated Marijuana Business.

    i. Any secured interest in Regulated Marijuana must expressly provide that it is subject to all required suitability and application requirements.

d. Unless the context otherwise requires, the defined term Indirect Financial Interest Holder includes Indirect Beneficial Interest Owner.

"Industrial Fiber Products" means intermediate or finished products made from Fibrous Waste that are not intended for human or animal consumption and are not usable or recognizable as

Regulated Marijuana. Industrial Fiber Products include, but are not limited to, cordage, paper, fuel, textiles, bedding, insulation, construction materials, compost materials, and industrial materials.

"Industrial Fiber Products Producer" means a Person who produces Industrial Fiber Products using Fibrous Waste.

"Industrial Hemp" means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.

"Industrial Hemp Product" means a finished product containing Industrial Hemp that:

a. Is a cosmetic, food, food additive, or herb;

b. Is for human use or consumption;

c. Contains any part of the hemp plant, including naturally occurring Cannabinoids, compounds, concentrates, extracts, isolates, resins, or derivatives; and

d. Contains a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent.

"Industrial Hygienist" means a natural person who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university.

a. The special studies and training of such persons must be sufficient in the cognate sciences to provide the ability and competency to:

   i. Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;

   ii. Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;

   iii. Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

b. Any person who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in the definition above.

c. Any person who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in the definition above.

"Ineligible Issuer" means:

a. Any issuer that is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 that has not filed all reports and other materials required to be filed during the preceding 12 months, other than reports on Form 8-K required solely pursuant to an item specified in General Instruction I.A.3(b) of Form S-3;

b. The issuer is, or during the past three years the issuer or any of its predecessors was:

i. A Blank Check Company;

ii. A Shell Company;

iii. An issuer of an offering of Penny Stock;

c. The issuer is a limited partnership that is offering and selling its Securities other than through a firm commitment underwriting;

d. Within the past three years, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the issuer, or a court-appointed a receiver, fiscal agent, or similar officer with respect to the business or property of the issuer subject to the following:

i. In the case of an involuntary bankruptcy in which a petition was filed against the issuer, ineligibility will occur upon the earlier to occur of:

A. 90 days following the date of the filing of the involuntary petition (if the case has not been earlier dismissed); or

B. The conversion of the case to a voluntary proceeding under federal bankruptcy or state insolvency laws; and

ii. Ineligibility will terminate if an issuer has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency, or receivership process;

e. Within the past three years, the issuer or any Entity that at the time was a subsidiary of the issuer was convicted of any felony or misdemeanor described in paragraphs (i) through (iv) of section 15(b)(4)(B) of the Securities Exchange Act of 1934;

f. Within the past three years, the issuer or any Entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that:

i. Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;

ii. Requires that the Person cease and desist from violating the anti-fraud provisions of the federal securities laws; or

iii. Determines that the Person violated the anti-fraud provisions of the federal securities laws;

g. The issuer has filed a registration statement that is the subject of any pending proceeding or examination under section 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order under section 8 of the Securities Act of 1933 within the past three years; or

h. The issuer is the subject of any pending proceeding under section 8A of the Securities Act of 1933 in connection with an offering.

"Infused Pre-Rolled Marijuana" means Regulated Marijuana that was produced by rolling, filling, or stuffing Harvested Marijuana flower, shake, and/or trim with Regulated Marijuana Concentrate(s) into paper, leaves, or an equivalent wrapper and is intended for consumption by inhalation.

"Ingredient" means any non-marijuana derived substance that is added to Regulated Marijuana to achieve a desired effect. The term Ingredient includes all Additives.

"Initial Decision" means a decision of a hearing officer in the Department following a licensing, disciplinary, or other administrative hearing. Either party may file exceptions to the Initial Decision. The State Licensing Authority will review the Initial Decision and any exceptions filed thereto, and will issue a Final Agency Order.

"Inventory Tracking System" means the required seed-to-sale tracking system that tracks Regulated Marijuana from either the seed or immature plant stage until the Regulated Marijuana is sold to a patient at a Medical Marijuana Store or to a consumer at a Retail Marijuana Store, Transferred to a Medical Marijuana Testing Facility or Retail Marijuana Testing Facility, Transferred to a Sampling Manager, Transferred to an Industrial Fiber Products Producer, Transferred to a Pesticide Manufacturer, or destroyed by a Regulated Marijuana Business, or used in a Research Project by a Marijuana Research and Development Facility.

"Inventory Tracking System Trained Administrator" means an Owner Licensee of a Regulated Marijuana Business or an Employee Licensee employed by a Regulated Marijuana Business, each of whom has attended and successfully completed Inventory Tracking System training and has completed any additional training required by the Division.

"Inventory Tracking System User" means an Owner Licensee of a Regulated Marijuana Business or an Employee Licensee employed by a Regulated Marijuana Business, who is granted Inventory Tracking System User account access for the purposes of performing inventory tracking functions in the Inventory Tracking System. Each Inventory Tracking System User must have been successfully trained by an Inventory Tracking System Trained Administrator in the proper and lawful use of Inventory Tracking System.

"Kief" means a subset of Physical Separation-Based Marijuana Concentrate that consists of the resinous crystal-like trichomes that have been physically separated from Regulated Marijuana flower, shake, or trim that results in a higher concentration of cannabinoids.

"License" means a license, permit, or registration pursuant to the Marijuana Code.

"Licensed Hospitality Business" means a Marijuana Hospitality Business or Retail Marijuana Hospitality and Sales Business.

"Licensed Premises" means the premises specified in an application for a license pursuant to the Marijuana Code that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, store, transport, or test Medical Marijuana, or to cultivate, manufacture, distribute, sell, store, transport, test, or allow the use or consumption of

Retail Marijuana, in accordance with the provisions of the Marijuana Code, and these rules. Not all areas of the Licensed Premises are Limited Access Areas or Restricted Access Areas.

“Licensee” means any Person licensed, registered, or permitted pursuant to the Marijuana Code including an Owner Licensee and an Employee Licensee.

“Limited Access Area” means a building, room, or other contiguous area upon the Licensed Premises where Regulated Marijuana and Regulated Marijuana Products are grown, cultivated, manufactured, stored, weighed, packaged, sold, possessed for sale, Transferred, or processed for Transfer, under control of the Licensee, with access limited to only those persons licensed by the State Licensing Authority and those visitors Escorted by a person licensed by the State Licensing Authority. All areas of ingress or egress to limited access areas must be clearly identified as such by a sign as designated by the State Licensing Authority.

“Limit of Detection” or “LOD” means the lowest quantity of a substance that can be distinguished from the absence of that substance (a blank value) within a stated confidence limit (generally 1%).

“Limit of Quantitation” or “LOQ” means the lowest concentration at which the analyte can not only be reliably detected but at which some predefined goals for bias and imprecision are met.

“Liquid Edible Medical Marijuana Product” means an Edible Medical Marijuana Product that is a liquid beverage or liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

“Liquid Edible Retail Marijuana Product” means an Edible Retail Marijuana Product that is a liquid beverage or liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

“Local Jurisdiction” means a locality as defined in section 16 (2)(e) of Article XVIII of the state constitution.

“Local Licensing Authority” means an authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, or the board of county commissioners of a county if no such authority is designated.

“Manager” means:

a. A member of a limited liability company in which management is not vested in managers rather than members;

b. A manager of a limited liability company in which management is vested in managers rather than members;

c. A member of a limited partnership association in which management is not vested in managers rather than members;

d. A manager of a limited partnership association in which management is vested in managers rather than members;

e. A general partner;

f. An officer or director of a corporation, a nonprofit corporation, a cooperative, or a limited partnership association; or

g. Any Person whose position with respect to an Entity, as determined under the constituent documents and organic statutes of the Entity, without regard to the Person's title, is the functional equivalent of any of the positions described in this definition.

"Manicure Batch" means a Harvest Batch or a part of a Harvest Batch of a specifically identified quantity of processed Regulated Marijuana that is uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals and harvested at the same time. A Manicure Batch consists of Regulated Marijuana that has been harvested from plants that have not yet been cut down and/or used in a Harvest Batch. A Manicure Batch may be considered a Harvest Batch by itself, or it may be combined with a Harvest Batch containing the same plant from which the Manicure Batch was created.

"Marijuana Code" means the Colorado Marijuana Code found at sections 44-10-101 *et seq.*, C.R.S.

"Marijuana Consumer Waste" means any component left after the consumption of a Regulated Marijuana Product, including but not limited to Containers, packages, cartridges, pods, cups, batteries, all-in-one disposable devices, and any other waste component left after the Regulated Marijuana is consumed.

"Marijuana Hospitality Business" means a facility, which may be mobile, licensed to permit the consumption of marijuana pursuant to article 10; rules promulgated pursuant to article 10; and the provisions of an enacted, initiated, or referred ordinance or resolution of the local jurisdiction in which the licensee operates.

"Marketing Layer" means packaging in addition to the Container that is the outermost layer visible to the consumer at the point of sale. The Marketing Layer is optional, but if used by a Licensee in addition to the required Container, it must be labeled according to the requirements in the 3-1000 Series Rules.

"Marijuana Research and Development Facility" means a Person that is licensed pursuant to the Marijuana Code to grow, cultivate, manufacture, and possess Medical Marijuana, and to Transfer Medical Marijuana to another Marijuana Research and Development Facility all for limited research purposes authorized pursuant to section 44-10-507, C.R.S.

"Material Change" means any change that would require a substantive revision to a Regulated Marijuana Business's standard operating procedures for the cultivation of Regulated Marijuana or the production of Regulated Marijuana Product.

"Medical Marijuana" means marijuana that is grown and sold pursuant to the provisions of article 10 and for a purpose authorized by section 14 of article XVIII of the state constitution but shall not be considered a nonprescription drug for purposes of section 12-42.5-102(21) or 39-26-717, or an over-the-counter medication for purposes of section 25.5-5-322. If the context requires, Medical Marijuana includes Medical Marijuana Concentrate and Medical Marijuana Products.

"Medical Marijuana Business" means any of the following entities licensed pursuant to article 10: A Medical Marijuana Store, a Medical Marijuana Cultivation Facility, a Medical Marijuana Product Manufacturer, a Medical Marijuana Testing Facility, a Marijuana Research and Development Licensee, a Medical Marijuana Business Operator, or a Medical Marijuana Transporter.

"Medical Marijuana Business Operator" means an entity or person that is not an owner and that is licensed to provide professional operational services to a medical marijuana business for direct remuneration from the Medical Marijuana Business(es). A Medical Marijuana Business Operator

is not, by virtue of its status as a medical marijuana business operator, a controlling beneficial owner or a passive beneficial owner of any medical marijuana business it operates.

"Medical Marijuana Concentrate" means a subset of Medical Marijuana that is separated from the medical marijuana plant and results in matter with a higher concentration of cannabinoids than naturally occur in the plant. Medical Marijuana Concentrate contains cannabinoids and may contain terpenes and other chemicals that are naturally occurring in medical marijuana plants that have been separated from medical marijuana. Medical Marijuana Concentrate may also include residual amounts of the types of solvents, as permitted by the marijuana rules. The State Licensing Authority may further define by rule subcategories of Medical Marijuana Concentrate and authorize limited ingredients based on the method of production of Medical Marijuana Concentrate. Unless the context otherwise requires, Medical Marijuana Concentrate is included when article 10 of the Colorado Revised Statutes refers to Medical Marijuana Product.

"Medical Marijuana Cultivation Facility" means a Person licensed pursuant to the Marijuana Code to operate a business as described in section 44-10-502, C.R.S.

"Medical Marijuana Product" means a product infused with Medical Marijuana and other Ingredients that is intended for use or consumption other than by smoking, including but not limited to edible product, ointments, and tinctures.

"Medical Marijuana Products Manufacturer" means a Person licensed pursuant to the Marijuana Code to operate a business as described in section 44-10-503, C.R.S.

"Medical Marijuana Store" means a Person licensed pursuant to the Marijuana Code to operate a business as described in section 44-10-501, C.R.S., and sells Medical Marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver.

"Medical Marijuana Testing Facility" means a public or private laboratory licensed and certified, or approved by the Division, to perform testing and research on Medical Marijuana.

"Medical Marijuana Transporter" means an entity or Person licensed to transport Medical Marijuana and Medical Marijuana Products from one Medical Marijuana Business to another Medical Marijuana Business and to temporarily store the transported Medical Marijuana and Medical Marijuana Products at its Licensed Premises, but is not authorized to sell Medical Marijuana or Medical Marijuana Products under any circumstances.

"Mobile Premises" means a Licensed Premises operated by a Marijuana Hospitality Business in a motor vehicle, which includes any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle; but does not include electrical assisted bicycles, electric scooters, low-power scooters, wheelchairs, or vehicles moved solely by human power. A Marijuana Hospitality Business operating a Mobile Premises must comply with all requirements in Rule 6-940.

"Monitoring" means the continuous and uninterrupted attention to potential alarm signals that could be transmitted from a Security Alarm System located at a Regulated Marijuana Business Licensed Premises, for the purpose of summoning a law enforcement officer to the premises during alarm conditions.

"Monitoring Company" means a person in the business of providing security system Monitoring services for the Licensed Premises of a Regulated Marijuana Business.

"Multiple-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing no more than 10 milligrams of active THC and no more than 100 milligrams of active THC. If the overall Edible Retail Marijuana Product unit for sale to the consumer consists of multiple pieces where each individual piece may contain less than 10 milligrams of active THC, yet in total all pieces combined within the unit for sale contain more than 10 milligrams of active THC, then the Edible Retail Marijuana Product shall be considered a Multiple-Serving Edible Retail Marijuana Product.

"Nonconformance" means a non-fulfillment of a requirement or departure from written procedures, work instructions, or quality system, as defined by the Licensee's written Corrective Action and Preventive Action procedures.

"Non-objecting Beneficial Owner" means a Beneficial Owner who gives permission to a financial intermediary to release their name and address to the company(ies) or issuer(s) in which they have bought Securities.

"Notice of Denial" means a written statement from the State Licensing Authority, articulating the reasons or basis for denial of a license application.

"Opaque" means that the packaging does not allow the product to be seen without opening the packaging material.

"Order to Show Cause" means a document from the State Licensing Authority alleging the grounds for imposing discipline against a Licensee's license.

"Owner's Interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

"Owner License" means a license issued to a natural person who is a Controlling Beneficial Owner of a Regulated Marijuana Business or who is a Passive Beneficial Owner electing to be subject to licensure.

"Passive Beneficial Owner" means any Person Acquiring any Owner's Interest in a Regulated Marijuana Business that is not otherwise a Controlling Beneficial Owner or in Control.

"Penny Stock" means any equity security other than a Security:

a. That is a National Market System stock, provided that:

i. The Security is registered, or approved for registration upon notice of issuance, on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992; and the national securities exchange has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004; or

ii. The Security is registered, or approved for registration upon notice of issuance, on a national securities exchange, or is listed, or approved for listing upon notice of issuance on, an automated quotation system sponsored by a registered national securities association, that:

A. Has established initial listing standards that meet or exceed the following criteria:

1. The issuer shall have: (a) stockholders' equity of $5,000,000; (b) market value of listed Securities of $50 million for 90 consecutive days prior to applying for a listing (market value means the closing bid price multiplied by the number of Securities listed); or (c) net income of $750,000 (excluding non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

2. The issuer shall have an operating history of at least one year or a market value of listed Securities of $50 million (market value means the closing bid price multiplied by the number of Securities listed);

3. The issuer's stock, common or preferred, shall have a minimum bid price of $4 per share;

4. In the case of common stock, there shall be at least 300 round lot holders of the Security (a round lot holder means a holder of a normal unit of trading);

5. In the case of common stock, there shall be at least 1,000,000 publicly held shares and such shares shall have a market value of at least $5 million (market value means the closing bid price multiplied by the number of publicly held shares, and shares held directly or indirectly by an officer or director of the issuer and by any Person who is the Beneficial Owner of more than 10 percent of the total shares outstanding are not considered to be publicly held);

6. In the case of a convertible debt security, there shall be a principal amount outstanding of at least $10 million;

7. In the case of rights and warrants, there shall be at least 100,000 issued and the underlying security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this definition;

8. In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the company's common stock, at a specified price until a specified period of time), there shall be at least 100,000 issued and the underlying Security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this definition;

9. In the case of units (that is, two or more Securities traded together), all component parts shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraphs (a) or (e) of this definition; and

10. In the case of equity Securities (other than common and preferred stock, convertible debt securities, rights and warrants, put warrants, or units), including hybrid products and derivative products, the national securities exchange or registered national securities association shall establish quantitative listing standards that are substantially similar to those found in paragraph (a)(ii) of this definition; and

B. Has established quantitative continued listing standards that are reasonably related to the initial listing standards set forth in paragraph (a)(ii) of this definition, and that are consistent with the maintenance of fair and orderly markets;

b. That is issued by an investment company registered under the Federal Investment Company Act of 1940;

c. That is a put or call option issued by the Options Clearing Corporation;

d. That has a price of five dollars or more;

i. For purposes of this paragraph (d):

A. A Security has a price of five dollars or more for a particular transaction if the Security is purchased or sold in that transaction at a price of five dollars or more, excluding any broker or dealer commission, commission equivalent, mark-up, or mark-down; and

B. Other than in connection with a particular transaction, a Security has a price of five dollars or more at a given time if the inside bid quotation is five dollars or more; provided, however, that if there is no such inside bid quotation, a Security has a price of five dollars or more at a given time if the average of three or more interdealer bid quotations at specified prices displayed at that time in an interdealer quotation system, by three or more market makers in the Security, is five dollars or more.

C. The term “inside bid quotation” shall mean the highest bid quotation for the Security displayed by a market maker in the Security on an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Federal Securities Exchange Act of 1934, or such other automated interdealer quotation system designated by the Federal Securities Exchange Commission for purposes of this definition, at any time in which at least two market makers are

contemporaneously displaying on such system bid and offer quotation for the Security at specified prices.

ii. If a Security is a unit composed of one or more Securities, the unit price divided by the number of shares of the unit that are not warrants, options, rights, or similar Securities must be five dollars or more as determined in accordance with paragraph (d)(i), and any share of the unit that is a warrant, option, right, or similar security, or a convertible security, must have an exercise price or conversion price of five dollars or more;

e. That is registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available provided that:

i. Price and volume of information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the national securities exchange;

ii. The Security is purchased or sold in a transaction that is effected on or through the facilities of the national securities exchange, or that is part of the distribution of the Security; and

iii. The Security satisfies the requirements of paragraphs (a)(i) or (a)(ii);

f. That is a security futures product listed on a national securities exchange or an automated quotation system sponsored by a registered national securities association; or

g. Whose issuer has:

i. Net tangible assets in excess of $2,000,000, if the issuer has been in continuous operation for at least three years, or $5,000,000 if the issuer has been in continuous operation for less than three years; or

ii. Average revenue of at least $6,000,000 for the last three years.

“Permitted Economic Interest” means any unsecured convertible debt option, option agreement or warrant that establishes a right for a Person to obtain an interest that might convert to an ownership interest in a Regulated Marijuana Business issued prior to January 1, 2020 where the holder is a natural person who is a lawful United States resident and whose right to convert into an ownership interest is contingent on the holder qualifying as a Controlling Beneficial Owner or Passive Beneficial Owner under the Retail Code or Medical Code. This definition is repealed effective January 1, 2020.

“Person” means a natural person, an estate, a trust, an Entity, or a state or other jurisdiction.

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; except that the term “pesticide” does not include any article that is a “new animal drug” as designated by the United States Food and Drug Administration.

“Pesticide Manufacturer” means a Person who (1) manufactures, prepares, compounds, propagates, or processes any Pesticide or device or active ingredient used in producing a Pesticide; (2) who possesses an establishment registration number with the U.S. Environmental

Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; (3) who conducts research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Regulated Marijuana; (4) who has applied for and received any necessary license, registration, certifications, or permits from the Colorado Department of Agriculture, pursuant to the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S. and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.; (5) who is authorized to conduct business in the State of Colorado; and (6) who has physical possession of the location in the State of Colorado where its research activities occur. A Pesticide Manufacturer is neither a Regulated Marijuana Business, nor a Licensee.

"Physical Separation-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by separating Cannabinoids from Medical Marijuana through the use of physical separation by grinding, sifting, or a similar process and may use water, ice, or dry ice. Physical Separation-Based Medical Marijuana Concentrate does not include Solvent-Based Medical Marijuana Concentrate or Heat/Pressure-Based Medical Marijuana Concentrate.

"Physical Separation-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by separating Cannabinoids from Retail Marijuana through the use of physical separation by grinding, sifting, or a similar process and may use water, ice, or dry ice. Physical Separation-Based Retail Marijuana Concentrate does not include Solvent-Based Retail Marijuana Concentrate or Heat/Pressure-Based Retail Marijuana Concentrate.

"Pre-Rolled Marijuana" means Regulated Marijuana that was produced by rolling, filling, or stuffing Harvested Marijuana flower, shake, and/or trim into paper, leaves or an equivalent wrapper and is intended for consumption by inhalation.

"Pressurized Metered Dose Inhaler" means inhalable Regulated Marijuana Concentrate, which may be comprised of other Ingredients, and a pressurized propellant inside a device that administers a dose of an aerosolized composition.

"Preventive Action" means a proactive action implemented to eliminate the cause of a potential Nonconformance or other quality problem before it occurs.

"Production Batch" means (a) any amount of Regulated Marijuana Concentrate of the same category and produced using the same extraction methods, standard operating procedures and an identical group of Harvest Batch(es) of Medical Marijuana or Retail Marijuana; or (b) any amount of Regulated Marijuana Product of the same exact type, produced using the same Ingredients, standard operating procedures, and the same Harvest Batch(es) of Harvested Marijuana (single strain or multiple strain) and/or Production Batch(es) of Regulated Marijuana Concentrate; or (c) any amount of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana of the same exact type, produced using the same ingredients, standard operating procedures, and the same Harvest Batch(es) of Regulated Marijuana Concentrate.

"Professional Engineer" means a natural person who is licensed by the State of Colorado as a professional engineer pursuant to sections 12-25-101 *et seq.*, C.R.S.

"Proficiency Testing" means an assessment of the performance of a Medical Marijuana Testing Facility's or Retail Marijuana Testing Facility's methodology and processes. Proficiency Testing is also known as inter-laboratory comparison. The goal of Proficiency Testing is to ensure results are accurate, reproducible, and consistent.

"Propagation" means the reproduction of Regulated Marijuana plants by seeds, cuttings, or grafting.

"Public Institution," for purposes of the 5-700 Series Rules, means any entity established or controlled by the federal government, a state government, or a local government or municipality, including but not limited to an institution of higher education or a public higher education research institution.

"Public Money," for purposes of the 5-700 Serie Rules, means any funds or money obtained by the holder from any governmental entity, including but not limited to research grants.

"Publicly Traded Corporation" means any Person other than an individual that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia or another country that authorizes the sale of marijuana that:

a. Has a class of Securities registered pursuant to 15 U.S.C. sec. 77a et seq., that:

   i. Constitutes Covered Securities; or

   ii. Is qualified and quoted on the OTCQX or OTCQB tier of the OTC markets if:

      A. The Person is then required to file reports and is filing reports on a current basis with the Federal Securities Exchange Commission pursuant to 15 U.S.C. sec. 78a et seq., as if the Securities constituted Covered Securities; and

      B. The Person has established and is in compliance with corporate governance measures pursuant to corporate governance obligations imposed on Securities qualified and quoted on the OTCQX tier of the OTC markets.

b. Is an Entity that has a class of Securities listed on the Canadian Securities Exchange, Toronto Stock Exchange, TSX Venture Exchange, or NEO Exchange, if:

   i. The Entity constitutes a Foreign Private Issuer whose Securities are exempt from registration pursuant to 15 U.S.C. sec. 78a et seq., pursuant to 17 CFR 240.12g3-2; and

   ii. The Entity has been, for the preceding three hundred sixty-five days or since the formation of the Entity, in compliance with all governance and reporting obligations imposed by the relevant exchange on such Entity; or

c. Publicly Traded Corporation does not include:

   i. An Ineligible Issuer, unless such Publicly Traded Corporation satisfies the definition of Ineligible Issuer solely because it is one or more of the following, and the Person is filing reports on a current basis with the Federal Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78a et seq., as if the Securities constituted Covered Securities, and prior to becoming a Publicly Traded Corporation, the Person for at least two years was licensed by the State Licensing Authority as a Regulated Marijuana Business with a demonstrated history of operations in the state of Colorado, and during such time was not subject to suspension or revocation of the business license:

A. a Blank Check Company;

B. an issuer in an offering of Penny Stock; or

C. a Shell Company.

ii. A Person disqualified as a Bad Actor.

"Qualified Institutional Investor" means:

a. A bank as defined in 15 U.S.C. sec. 78c (a)(6), if the bank is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

b. A bank holding company as defined in 12 U.S.C. sec. 1841 (a)(1), if the bank holding company is registered and current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

c. An insurance company as defined in 15 U.S.C. sec. 80a-2 (a)(17), if the insurance company is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

d. An investment company registered and subject to 15 U.S.C. sec. 80a-1, et seq., if the investment company is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder;

e. An employee benefit plan or pension fund subject to 29 U.S.C. sec. 1001 et seq., excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary or holding company licensee which directly or indirectly owns ten percent or more of a licensee;

f. A state or federal government pension plan; or

g. A group comprised entirely of persons specified in (a) through (g) of this definition; or

h. Any other entity identified by rule by the state licensing authority.

"Qualified Private Fund" means an issuer that would be an investment company, as defined in section 3 of the Federal Investment Company Act of 1940, but for the exclusions provided under sections 3(c)(1) or 3(c)(7) of that Act, and that:

a. Is advised or managed by an investment adviser as defined and registered pursuant to 15 U.S.C. sec. 80b-1 et seq., and for which the registered investment adviser is current in all applicable reporting and record-keeping requirements under such act and rules promulgated thereunder; and

b. Satisfies one or more of the following:

i. Is organized under the law of a state or the United States;

ii. Is organized, operated, or sponsored by a U.S. person, as defined under subsection 17 CFR 230.902(k), as amended; or

iii. Sells Securities to a U.S. person, as defined under subsection 17 CFR 230.902(k), as amended.

"Reduced Testing Allowance" means the allowance for a Regulated Marijuana Business to conduct less testing than otherwise required by Rules 4-120 and 4-125 upon demonstrating that standard operating procedures and production practices result in consistent passing test results over a time frame established in Rules 4-120 and 4-125.

"R&D Co-Location Permit" means a permit issued to a Marijuana Research and Development Facility authorizing it to co-locate with a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility pursuant to Rule 5-705. A separate R&D Co-Location Permit is required for each location at which a Marijuana Research and Development Facility seeks to share a single Licensed Premises.

"Reasonable Cause" means just or legitimate grounds based in law and in fact to believe that the particular requested action furthers the purposes of the Marijuana Code or protects the public safety.

"Regulated Marijuana" means Medical Marijuana and Retail Marijuana. If the context requires, Regulated Marijuana includes Medical Marijuana Concentrate, Medical Marijuana Product, Retail Marijuana Concentrate, and Retail Marijuana Product.

"Regulated Marijuana Business" means Medical Marijuana Businesses and Retail Marijuana Businesses.

"Regulated Marijuana Concentrate" means Medical Marijuana Concentrate and Retail Marijuana Concentrate.

"Regulated Marijuana Cultivation Facility" means a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and Accelerator Cultivator.

"Regulated Marijuana Products Manufacturer" means a Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, and Accelerator Manufacturer.

"Regulated Marijuana Product" means Medical Marijuana Product and Retail Marijuana Product.

"Regulated Marijuana Store" means a Medical Marijuana Store, Retail Marijuana Store, and Accelerator Store.

"Regulated Marijuana Testing Facility" means a Medical Marijuana Testing Facility and Retail Marijuana Testing Facility.

"Remediation" means the process of neutralization or removal of dangerous substances or other contaminants from regulated marijuana while changing the product type of the regulated marijuana.

"Resealable" means that the Container maintains its Child-Resistant effectiveness for multiple openings.

"Research Project" means a discrete scientific endeavor to answer a research question or a set of research questions. A Research Project must include a description of a defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date. The description must demonstrate that the Research Project will comply with all requirements in the 5-700 Series Rules – Marijuana Research and Development Facility. All research and development

conducted by a Marijuana Research and Development Facility must be conducted in furtherance of an approved Research Project.

"Respondent" means a Person who has filed a petition for declaratory order that the State Licensing Authority has determined needs a hearing or legal argument, or a Licensee who is subject to an Order to Show Cause.

"Responsible Vendor Program Provider" means a Person offering an Approved Training Program, in accordance with section 44-10-1201, C.R.S., to Licensees seeking to be designated a responsible vendor.

"Restricted Access Area" means a designated and secure area within a Licensed Premises in a Medical Marijuana Store where Medical Marijuana is sold to patients, possessed for sale, and displayed for sale, and where no one without a valid patient registry card is permitted, and 2) in a Retail Marijuana Store or a Retail Marijuana Hospitality and Sales Business where Retail Marijuana is sold to consumers, possessed for sale, and displayed for sale, and where no one under the age of 21 is permitted.

"Retail Food Establishment" means a retail operation that stores, prepares, or packages food for human consumption or serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether such food is consumed on or off the premises or whether there is a charge for such food. "Retail food establishment" does not mean:

a. Any private home;

b. Private boarding house;

c. Hospital and health facility patient feeding operations licensed by the department;

d. Child care centers and other child care facilities licensed by the department of human services;

e. Hunting camps and other outdoor recreation locations where food is prepared in the field rather than at a fixed based of operation;

f. Food or beverage wholesale manufacturing, processing, or packaging plants, or portions thereof, that are subject to regulatory controls under state or federal laws or regulations;

g. Motor vehicles used only for the transport of food;

h. Establishments preparing and serving only hot coffee, hot tea, instant hot beverages, and non-potentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling;

i. Establishments that handle only non-potentially hazardous prepackaged food and operations serving only commercially prepared, prepackaged foods requiring no preparation other than the heating of the food within its original container or package;

j. Farmers markets and roadside markets that offer only uncut fresh fruit and vegetables for sale;

k. Automated food merchandising enterprises that supply only prepackaged non-potentially hazardous food or drink in bottles, cans, or cartons only, and

operations that dispense only chewing gum or salted nuts in their natural protective covering;

l. The donation, preparation, sale, or service of food by a nonprofit or charitable organization in conjunction with an event or celebration if such donation, preparation, sale, or service of food:

i. Does not exceed the duration of the event or celebration or a maximum of fifty-two days within a calendar year; and

ii. Takes place in the county in which such nonprofit or charitable organization resides or is principally located.

m. A home, commercial, private, or public kitchen in which a person produces food products sold directly to consumers pursuant to the "Colorado Cottage Foods Act," section 25-4-1614, C.R.S.

"Retail Marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including but not limited to Retail Marijuana Concentrate, that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Business. "Retail Marijuana" does not include industrial hemp, nor does it include fiber produced from stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other Ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product. If the context requires, Retail Marijuana includes Retail Marijuana Concentrate and Retail Marijuana Product.

"Retail Marijuana Business" means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturer, a Marijuana Hospitality Business, a Retail Marijuana Hospitality and Sales Business, a Retail Marijuana Testing Facility, a Retail Marijuana Business Operator, and a Retail Marijuana Transporter.

"Retail Marijuana Business Operator" means an entity or person that is not an owner and that is licensed to provide professional operational services to a Retail Marijuana Businesses for direct remuneration from the Retail Marijuana Business.

"Retail Marijuana Concentrate" means a subset of Retail Marijuana that is separated from the retail marijuana plant and results in matter with a higher concentration of cannabinoids than naturally occur in the plant. Retail Marijuana Concentrate contains cannabinoids and may contain terpenes and other chemicals that are naturally occurring in Retail Marijuana plants that have been separated from Retail Marijuana. Retail Marijuana Concentrate may also include residual amounts of the types of solvents, as permitted by the marijuana rules. The State Licensing Authority may further define by rule subcategories of Retail Marijuana Concentrate and authorize limited ingredients based on the method of production of Retail Marijuana Concentrate. Unless the context otherwise requires, Retail Marijuana Concentrate is included when article 10 of the Colorado Revised Statutes refers to Retail Marijuana Product.

"Retail Marijuana Cultivation Facility" means an entity licensed to cultivate, prepare, and package Retail Marijuana and sell Retail Marijuana to Retail Marijuana Stores, to Retail Marijuana Products Manufacturers, and to other Retail Marijuana Cultivation Facilities, but not to consumers.

"Retail Marijuana Hospitality and Sales Business" means a facility, which cannot be mobile, licensed to permit the consumption of only the retail marijuana or retail marijuana products it has

sold pursuant to the provisions of an enacted, initiated, or referred ordinance or resolution of the local jurisdiction in which the licensee operates.

“Retail Marijuana Product” means a product that is comprised of Retail Marijuana and other Ingredients and is intended for use or consumption, such as, but not limited to, edible product, ointments and tinctures.

“Retail Marijuana Products Manufacturer” means an entity licensed to purchase Retail Marijuana; manufacture, prepare, and package Retail Marijuana Product; and Transfer Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product only to other Retail Marijuana Products Manufacturers, Retail Marijuana Stores, Retail Marijuana Hospitality and Sales Businesses and Pesticide Manufacturers.

“Retail Marijuana Store” means an entity licensed to purchase Retail Marijuana and Retail Marijuana Concentrate from a Retail Marijuana Cultivation Facility and to purchase Retail Marijuana Product and Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer, and to Transfer Retail Marijuana to Retail Marijuana Hospitality and Sales Businesses and to consumers.

“Retail Marijuana Testing Facility” means an entity licensed to analyze and certify the safety and potency of marijuana.

“Retail Marijuana Transporter” means a Person licensed to transport Retail Marijuana from one Retail Marijuana Business to another Retail Marijuana Business or to a Pesticide Manufacturer, and to temporarily store the transported Retail Marijuana at its Licensed Premises, but is not authorized to sell, give away, buy, or receive complimentary Retail Marijuana under any circumstances. A Retail Marijuana Transporter does not include a Licensee that transports and distributes its own Retail Marijuana.

“RFID” means Radio Frequency Identification.

“Sample Increment” means a single portion or unit that is removed from a Harvest Batch or Production Batch by a Designated Test Batch Collector for the creation of a Test Batch. For Harvest Batches, a Sample Increment shall be 500 milligrams of flower or trim. For Regulated Marijuana Products, Audited Products, and Alternative Use Products, a Sample Increment shall be a single serving of the product as defined by the Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer, but shall contain no more than 10 milligrams of active THC per serving for Edible Retail Marijuana Products. For Regulated Marijuana Concentrate, a Sample Increment shall be 250 milligrams of concentrate.

“Sample Increment Collection” means the gathering of Sample Increments to combine into a larger, composite Test Batch.

“Sampling Manager” means an Owner Licensee or management personnel holding an Employee Licensee designated by a Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Cultivation Facility, or Retail Marijuana Products Manufacturer to receive Transfers of Sampling Units pursuant to Rules 5-230, 5-320, 6-225, and 6-320.

“Sample Plan” means a written, documented plan generated by Designated Test Batch Collector(s) in line with the Regulated Marijuana Business' Standard Operating Procedure for Sample Increment Collection.

“Sampling Unit” means a unit of Regulated Marijuana Transferred to a Sampling Manager for purposes of quality control and product development pursuant to Rules 5-230 and 5-320, sections

44-10-502(4) and 44-10-503(10), C.R.S., and Rules 6-225 and 6-320, and sections 44-10-602(6) and 44-10-603(10), C.R.S.

"Security(ies)" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

"Security Alarm System" means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

"Shell Company" means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB, that has:

a. No or nominal operations; and

b. Either:

i. No or nominal operations;

ii. Assets consisting solely of cash and cash equivalents; or

iii. Assets consisting of any amount of cash and cash equivalents and nominal other assets.

"Shipping Container" means a hard-sided container with a lid or other enclosure that can be secured in place. A Shipping Container is used solely for the transport of Regulated Marijuana between Regulated Marijuana Businesses or a Pesticide Manufacturer.

"Single-Serving Edible Retail Marijuana Product" means an Edible Retail Marijuana Product unit for sale to consumers containing no more than 10mg of active THC.

"Social Equity Licensee" means a natural person who meets the criteria established pursuant to section 44-10-308(4), C.R.S. A person qualified as a Social Equity Licensee may participate in the accelerator program established pursuant to the Marijuana Code or may hold a Regulated Marijuana Business License or permit issued pursuant to the Marijuana Code.

"Solvent-Based Medical Marijuana Concentrate" means a Medical Marijuana Concentrate that was produced by extracting Cannabinoids from Medical Marijuana through the use of a solvent approved by the Division pursuant to Rule 5-315.

"Solvent-Based Retail Marijuana Concentrate" means a Retail Marijuana Concentrate that was produced by extracting Cannabinoids from Retail Marijuana through the use of a solvent approved by the Division pursuant to Rule 6-315.

"Standardized Graphic Symbol" means a graphic image or small design adopted by a Licensee to identify its business.

"Standardized Serving of Marijuana" means a standardized single serving of active THC in Retail Marijuana. The size of a Standardized Serving of Marijuana shall be no more than 10mg of active THC.

"State Licensing Authority" means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale, and testing of Regulated Marijuana in Colorado, pursuant to section 44-10-201, C.R.S.

"Target Potency" means the potency that a Medical Marijuana Products Manufacturer intends for an individual Medical Marijuana Product, or a Retail Marijuana Products Manufacturer intends for an individual Retail Marijuana Product, prior to testing, which is also outlined in the Licensee's standard operating procedures.

"Temporary Appointee Registration" means a registration issued to a Court Appointee pursuant to section 44-10-401(3)(a), C.R.S.

"THC" means tetrahydrocannabinol.

"THCA" means tetrahydrocannabinolic acid.

"Test Batch" means a group of Samples that are derived from a single Harvest Batch, Production Batch, or Inventory Tracking System package, and that are collectively submitted to a Regulated Marijuana Testing Facility for testing purposes.

"Total THC" means the following:

The sum of the percentage by weight of Delta-9-tetrahydrocannabinolic acid (D9-THCA) multiplied by 0.877,

Plus the percentage by weight of Delta-8-tetrahydrocannabinol (D8-THC),

Plus the percentage by weight of Delta-9-tetrahydrocannabinol (D9-THC),

Plus the percentage by weight of Exo-tetrahydrocannabinol (Exo-THC),

Plus the percentage by weight of Delta-10-tetrahydrocannabinol (D10-THC).

i.e. Total THC = (% D9-THCA * 0.877) + % D8-THC + % D9-THC + % Exo-THC + % D10-THC.

"Transfer(s)(ed)(ing)" means to grant, convey, hand over, assign, sell, exchange, donate, or barter, in any manner or by any means, with or without consideration, any Regulated Marijuana from one Licensee to another Licensee, to a patient, or to a consumer. A Transfer includes the movement of Regulated Marijuana from one Licensed Premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual Transfer that is reflected in the Inventory Tracking System, even if no physical movement of the Regulated Marijuana occurs.

"Universal Symbol" means the image established by the Division and made available to Licensees through the Division's website indicating the Regulated Marijuana contains marijuana.

"Unrecognizable" means Regulated Marijuana that has been rendered indistinguishable from any other plant material.

"U.S. Person" means:

a. Any natural person resident in the United States;

b. Any partnership or corporation organized or incorporated under the laws of the United States;

c. Any estate of which any executor or administrator is a U.S. natural person;

d. Any trust of which any trustee is a U.S. natural person;

e. Any agency or branch of a foreign entity located in the United States;

f. Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. natural person;

g. Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if a natural person) resident in the United States; and

h. Any partnership or corporation if:

i. Organized or incorporated under the laws of any foreign jurisdiction; and

ii. Formed by a U.S. natural person principally for the purpose of investing in Owner's Interests not registered under the Securities Act of 1933, unless it is organized or incorporated, and owned, by accredited investors (as defined in § 230.501(a)) who are not natural persons, estates or trusts.

"Vaporizer Delivery Device" means inhalable Regulated Marijuana Concentrate, which may be comprised of other Ingredients inside a device that uses a heating element to create a vapor including, but not limited to, vaporizer cartridges and vaporizer pens.

"Vegetative" means the state of the *Cannabis* plant during which plants do not produce resin or flowers and are bulking up to a desired production size for Flowering.

Basis and Purpose – 1-120

The statutory authority for this rule includes but is not limited to sections 24-4-105(11) and 44-10-201, C.R.S. The purpose of this rule is to establish a system by which a Licensee may request the Division to issue a formal statement of position and, subsequently, petition the State Licensing Authority for a declaratory order. Typically, a position statement or declaratory order would address matters that are likely to be applicable to other Licensees. The approach is similar to that utilized by other divisions within the Department of Revenue. This Rule 1-120 was previously Rules M and R 104, 1 CCR 212-1 and 1 CCR 212-2.

1-120 – Declaratory Orders Concerning the Marijuana Code

A. Who May Request a Statement of Position. Any person as defined in section 24-4-102(12), C.R.S., may request the Division to issue a statement of position concerning the applicability to the petitioner of any provision of the Marijuana Code, or any regulation of the State Licensing Authority.

B. Division Response. The Division will determine, in its sound discretion, whether to respond with a written statement of position. Following receipt of a proper request, the Division will respond by issuing a written statement of position or by declining to issue such a statement.

C. Petition for Declaratory Order. Any person who has properly requested a statement of position, and who is dissatisfied with the Division's response, may petition the State Licensing Authority for a declaratory order pursuant to section 24-4-105(11), C.R.S. The petition shall be filed within 30 days of the Division's response, or may be filed at any time before the Division's response if the Division has not responded within 60 days of receiving a proper request for a statement of position, and shall set forth the following:

1. The name and address of the petitioner.

2. Whether the petitioner is licensed pursuant to the Marijuana Code, and if so, the type of license and address of the Licensed Premises.

3. Whether the petitioner is involved in any pending administrative hearings with the State Licensing Authority or relevant Local Jurisdiction.

4. The statute, rule, or order to which the petition relates.

5. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule, or order to which the petition relates.

6. A concise statement of the legal authorities, if any, and such other reasons upon which petitioner relies.

7. A concise statement of the declaratory order sought by the petitioner.

D. State Licensing Authority Retains Discretion Whether to Entertain Petition. The State Licensing Authority will determine, in its discretion without prior notice to the petitioner, whether to entertain any petition. If the State Licensing Authority decides it will not entertain a petition, it shall notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. The petitioner failed to properly request a statement of position from the Division, or the petition for declaratory order was filed with the State Licensing Authority more than 30 days after the Division's response to the request for a statement of position.

2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule, or order in question.

3. The petition involves a subject, question or issue that is relevant to a pending hearing before the state or any Local Licensing Authority, an on-going investigation conducted by the Division, or a written complaint previously filed with the State Licensing Authority.

4. The petition seeks a ruling on a moot or hypothetical question.

5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo. R. Civ. Pro. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.

E. State Licensing Authority May Adopt Division Position Statement. The State Licensing Authority may adopt the Division Position Statement as a Final Agency Action subject to judicial review pursuant to section 24-4-106, C.R.S.

F. If State Licensing Authority Entertains Petition. If the State Licensing Authority determines that it will entertain the petition for declaratory order, it shall so notify the petitioner within 30 days, and any of the following procedures may apply:

1. The State Licensing Authority may expedite the matter by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing.

2. In the event the State Licensing Authority determines that an evidentiary hearing is necessary to a ruling on the petition, a hearing shall be conducted in accordance with Rules 8-220 – Administrative Hearings, 8-225 – Administrative Subpoenas, and 8-230 – Administrative Hearing Appeals. The petitioner will be identified as Respondent.

3. The parties to any proceeding pursuant to this Rule shall be the petitioner/Respondent and the Division. Any other interested person may seek leave of the State Licensing Authority to intervene in the proceeding and such leave may be granted if the State Licensing Authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.

4. The declaratory order shall constitute a Final Agency Order subject to judicial review pursuant to section 24-4-106, C.R.S.

G. Public Inspection. Files of all requests, petitions, statements of position, and declaratory orders will be maintained by the Division. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

H. Posted on Website. The Division shall post a copy of all statements of position and all declaratory orders on the Division's website.

Basis and Purpose – 1-125

The statutory authority for this rule includes but is not limited to section 44-10-202(1)(c), C.R.S. The purpose of this rule is to clarify that any reference to days means calendar days. This Rule 1-125 was previously Rules M and R 105, 1 CCR 212-1 and 1 CCR 212-2.

1-125 – Computation of Time

The word "days" as used in these rules means calendar days.

Basis and Purpose – 1-130

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c) and 44-10-801(4), C.R.S. The purpose of this rule is to establish the basic fees that must be paid at the time of service of any subpoena (including a subpoena for testimony and/or a subpoena duces tecum) upon the State Licensing Authority, and for production of documents pursuant to any such subpoena. This rule also establishes additional fees for meals, mileage, and each day's testimony. The service fee is not applicable

when a subpoena is served by a governmental agency. This Rule 1-130 was previously Rules M and R 106, 1 CCR 212-1 and 1 CCR 212-2.

1-130 – Subpoena Fees

A. Required Fees for Subpoenas. The following fees must be paid at the time of service of any subpoena on the Division or State Licensing Authority:

1. Subpoenas for records only (*subpoenas duces tecum*):

a. Responsive records - $0.25/page. The Division and State Licensing Authority may use discretion when electronic copies are requested.

b. The Division or State Licensing Authority may charge $30/hour to retrieve and review voluminous records.

2. Subpoenas requiring any Division or State Licensing Authority employee to attend any proceeding:

a. $200/day attendance;

b. Current state mileage reimbursement fee; and

c. Current state meal reimbursement fee.

B. When Subpoena-Related Fees Are Due.

1. Subpoenas duces tecum fees must be paid before the Division or State Licensing Authority will release the records.

2. All other subpoena-related fees are due at the time of service of the subpoena.

C. Service Complete Only When Fees Are Paid. The Division or State Licensing Authority will not consider service to be complete unless all applicable fees are paid.

D. State Employees and Private Litigation. Division and State Licensing Authority employees will not serve as expert witnesses in private litigation. In addition, the Division and State Licensing Authority may move to quash any subpoena that seeks fact testimony from Division or State Licensing Authority employees in private litigation.

E. Not Applicable to Government-Issued Subpoenas. This Rule does not apply to subpoenas issued by any governmental agency.

Basis and Purpose – 1-135

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(f), 44-10-203(1)(g), and 44-10-301, C.R.S. This rule gives general instructions regarding Regulated Marijuana Business administrative matters to local jurisdictions and clarifies for such entities what the Division and State Licensing Authority will do in certain instances. The rule also reaffirms that local law enforcement's authority to investigate and take any necessary action with regard to Regulated Marijuana Businesses remains unaffected by the Marijuana Code or any rules promulgated pursuant to it. This Rule 1-135 was previously Rules M and R 1401(A) through (D), 1 CCR 212-1 and 1 CCR 212-2.

1-135 – Instructions for Local Licensing Authorities and Local Jurisdictions

A. Division Protocol for Regulated Marijuana Businesses.

1. The Division shall forward a copy of all new Regulated Marijuana Business applications to the relevant Local Licensing Authority or Local Jurisdiction.

2. The Division shall forward half of the total application fee with the copy of the Retail Marijuana Business application to the relevant Local Jurisdiction.

3. The Division shall notify the relevant Local Licensing Authority or Local Jurisdiction when an application for a Regulated Marijuana Business is either approved or denied. This includes new business applications, renewal business applications, change of location applications, change of owner applications, premises modification applications, and off-premises storage permit applications.

4. Conditioned on Local Approval. Any License issued or renewed by the Division for a Regulated Marijuana Business shall be conditioned upon relevant Local Licensing Authority or Local Jurisdiction approval of the application.

B. Local Licensing Authority/Local Jurisdiction Protocol for Regulated Marijuana Businesses.

1. As soon as practicable, a Local Licensing Authority or Local Jurisdiction that has prohibited the operation of a Regulated Marijuana Business License authorized by the Marijuana Code shall inform the Division, in writing, of such prohibition and shall include a copy of the applicable ordinance or resolution.

2. If a Local Licensing Authority or Local Jurisdiction will authorize the operation of a Regulated Marijuana Business License authorized by the Marijuana Code, it shall inform the Division of the local point-of-contact on Regulated Marijuana regulatory matters. The Local Jurisdiction shall include, at minimum, the name of the division or branch of local government, the mailing address of that entity, and telephone number.

3. Local Licensing Authorities or Local Jurisdictions may impose separate local licensing requirements related to the time, place, and manner of Regulated Marijuana Businesses, and shall otherwise determine if an application meets all those local requirements.

4. The relevant Local Licensing Authority or Local Jurisdiction shall notify the Division, in writing, of whether an application for a Regulated Marijuana Business complies with local restrictions and requirements, and whether the application is approved or denied based on that review. If a Local Licensing Authority or Local Jurisdiction makes any written findings of fact, a copy of those written findings shall be included with the notification.

C. Local Licensing Authority Inspections. The relevant Local Licensing Authorities or Local Jurisdiction and their investigators may inspect Regulated Marijuana Businesses during all business hours and other times of apparent activity, for the purpose of inspection or investigation.

D. Local Licensing Authority Powers. Nothing in these rules shall be construed to limit the authority of Local Licensing Authorities or Local Jurisdictions as established by the Marijuana Code or otherwise by law.

Basis and Purpose – 1-140

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(f) 44-10-203(1)(g), and 44-10-301(1), C.R.S. This rule gives general instructions regarding Regulated Marijuana Business administrative matters to local jurisdictions and clarifies for such entities what the Division and State Licensing Authority will do in certain instances. The rule also reaffirms that local law

enforcement's authority to investigate and take any necessary action with regard to Regulated Marijuana Businesses remains unaffected by the Marijuana Code or any rules promulgated pursuant to it. This Rule 1-140 was previously Rules M and R 1401(E), 1 CCR 212-1 and 1 CCR 212-2.

1-140 – Local Law Enforcement's Authority Not Impaired by Marijuana Code

Nothing in the Marijuana Code or any rules promulgated pursuant to it shall be construed to limit the ability of local police departments, sheriffs, or other state or local law enforcement agencies to investigate unlawful activity in relation to a Regulated Marijuana Business and such agencies shall have the ability to run a Colorado Crime Information Center criminal history check of an Applicant or Licensee during an investigation of unlawful activity related to Regulated Marijuana or a Regulated Marijuana Business to ensure they are in compliance with all Local Licensing Authority regulations related to time, place, and manner.

Part 2 – Applications and Licenses

2-200 Series – Applications and Licenses Rules

Basis and Purpose – 2-205

The statutory basis for this rule includes but is not limited to sections 44-10-103, 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(b), 44-10-203(2)(h), 44-10-203(2)(q), 44-10-203(2)(w), 44-10-203(2)(dd)(XII), 44-10-303(2)(b), 44-10-310(7), 44-10-313, 44-10-401, 44-10-801, 44-10-802, 44-10-803, 44-10-1201, 44-10-1202, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(II). The purpose of this rule is to establish fees required for applications, renewals, licenses fees, permits, and other fees required to accompany applications and submissions to the Division. The Division anticipates evaluating all fees in connection with a fee analysis. Any recommendations from the fee analysis will be considered during subsequent rulemaking proceedings. This Rule 2-205 was previously Rules M 207, 208, 209, 210, 235, and 236, 1 CCR 212-1, and Rules R 207, 208, 209, 210, 234, and 235, 1 CCR 212-2.

2-205 – Fees

A. Regulated Marijuana Business Initial Application and License Fees.

1. Medical Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Medical Marijuana Store	$5,000.00	$2,440.00	$7,440.00
Medical Marijuana Products Manufacturer	$1,000.00	$1,830.00	$2,830.00
Medical Marijuana Cultivation Facility Class 1 (1-500 plants)	$1,000.00	$1,830.00	$2,830.00
Medical Marijuana Testing Facility	$1,000.00	$1,830.00	$2,830.00
Medical Marijuana Transporter	$1,000.00	$5,368.00	$6,368.00
Medical Marijuana Business Operator	$1,000.00	$2,684.00	$3,684.00

Marijuana Research and Development Facility	$1,000.00	$1,830.00	$2,830.00

2. Retail Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Retail Marijuana Store	$5,000.00	$2,440.00	**Separate Checks** $4,940.00 State $2,500.00 Local
Retail Marijuana Products Manufacturer	$5,000.00	$1,830.00	**Separate Checks** $4,330.00 State $2,500.00 Local
Retail Marijuana Cultivation Facility Tier 1 (1-1,800 plants)	$5,000.00	$1,830.00	**Separate Checks** $4,330.00 State $2,500.00 Local
Retail Marijuana Testing Facility	$1,000.00	$1,830.00	**Separate Checks** $2,330.00 State $500.00 Local
Retail Marijuana Transporter	$1,000.00	$5,368.00	**Separate Checks** $5,868.00 State $500.00 Local
Retail Marijuana Business Operator	$1,000.00	$2,684.00	**Separate Checks** $3,184.00 State $500.00 Local
Marijuana Hospitality Business (Eff. Jan. 1, 2020)	$1,000.00	$1,220.00	**Separate Checks** $1,720.00 State $500.00 Local
Retail Marijuana Hospitality and Sales Business (Eff. Jan. 1, 2020)	$5,000.00	$2,440.00	**Separate Checks** $4,940.00 State $2,500.00 Local

B. Regulated Marijuana Business Renewal Application and License Renewal Fees.

1. Medical Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at**

			Application
Medical Marijuana Store	$300.00	$1,830.00	$2,130.00
Medical Marijuana Products Manufacturer	$300.00	$1,830.00	$2,130.00
Medical Marijuana Cultivation Facility Class 1 (1-500 plants)	$300.00	$1,830.00	$2,130.00
Class 2 (501-1,500 plants)		$2,806.00	$3,106.00
Class 3 (1,501-3,000 plants)		$4,270.00	$4,570.00
Expanded Production Management (for each class of 3,000 plants over Class 3)		$4,270.00 [Plus $976.00 for each additional class of 3,000 plants over Class 3]	$4,570.00 [Plus $976.00 for each additional class of 3,000 plants over Class 3]
Medical Marijuana Testing Facility	$300.00	$1,830.00	$2,130.00
Medical Marijuana Transporter	$300.00	$5,368.00	$5,668.00
Medical Marijuana Business Operator	$300.00	$2,684.00	$2,984.00
Marijuana Research and Development Facility	$300.00	$1,830.00	$2,130.00

2. Retail Marijuana Businesses.

License Type	**Application Fee**	**License Fee**	**Total Due at Application**
Retail Marijuana Store	$300.00	$1,830.00	$2,130.00
Retail Marijuana Products Manufacturer	$300.00	$1,830.00	$2,130.00
Retail Marijuana Cultivation Facility Tier 1 (1-1,800 plants)	$300.00	$1,830.00	$2,130.00
Tier 2 (1,801-3,600 plants)		$2,806.00	$3,106.00
Tier 3 (3,601-6,000 plants)		$3,660.00	$3,960.00
Tier 4 (6,001-10,200 plants)		$5,490.00	$5,790.00
Tier 5 (10,201-13,800 plants)		$7,930.00	$8,230.00

Expanded Production Management (for each additional tier of 3,600 plants over Tier 5)			
		$7,930.00 [Plus $976.00 for each additional tier of 3,600 plants over Tier 5]	$8,230.00 [Plus $976.00 for each additional tier of 3,600 plants over Tier 5]
Retail Marijuana Testing Facility	$300.00	$1,830.00	$2,130.00
Retail Marijuana Transporter	$300.00	$5,368.00	$5,668.00
Retail Marijuana Business Operator	$300.00	$2,684.00	$2,984.00
Marijuana Hospitality Business (Eff. Jan. 1, 2020)	$300.00	$915.00	$1,215.00
Retail Marijuana Hospitality and Sales Business (Eff. Jan. 1, 2020)	$300.00	$1,830.00	$2,130.00

C. Owner Request for a Finding of Suitability, Owner License, and Owner Identification Badge – Initial Application and Renewal Fees.

1. Controlling Beneficial Owner Request for a Finding of Suitability Fee.

   a. $800.00 per Natural Person

   b. $400.00 per Natural Person in possession of a valid Owner's License who is an Accelerator-Endorsed Licensee and seeking to have the existing Owner's License designated as a Social Equity Licensee.

   c. $800.00 for an Entity that is not a Publicly Traded Corporation, plus the fee in paragraph (C)(1)(a) and (C)(1)(b), for each associated natural person subject to suitability

   d. $5,000.00 for a Publicly Traded Corporation, plus the fee in paragraph (C)(1)(a) and (C)(1)(b), for each associated natural person or Entity subject to suitability.

2. Passive Beneficial Owner Request for Finding of Suitability Fee. A Passive Beneficial Owner may, but is not required to, apply for an Owner License and Identification Badge, and if the Passive Beneficial Owner chooses to do so, must submit the fees required by subparagraph (C)(1).

3. Renewal Fee for an Owner License. All Controlling Beneficial Owners and licensed Passive Beneficial Owners - $500.00.

D. Employee License – Initial Fees and Renewal Fees.

1. Employee License Initial Application and License Fee – $105.00

a. Of the total Employee License application and license fee, $75.00 is the application fee and $30.00 is the license fee. An individual submitting an application for an Employee License may submit the total fee of $105.00 in one form of payment.

2. Employee License Renewal Fee – $80.00

a. Of the total Employee License Renewal fee, $50.00 is the application fee and $30.00 is the license fee. An individual submitting an application for an Employee License renewal may submit the total fee of $80.00 in one form of payment.

b. All Key Licenses and Support Licenses issued before January 1, 2020 will be converted to an Employee License upon the first license renewal following January 1, 2020.

3. Conditional Employee License Fee - $200.00

E. Temporary Appointee Registration – Request for Finding of Suitability Fees.

1. Natural Person – $274.00

2. Entity – $976.00

F. Other Fees. The following other fees apply:

1. Permits.

a. Off Premises Storage Permit – $1,830.00

b. Transporter Off Premises Storage Permit – $2,684.00

c. Centralized Distribution Permit – $24.00

d. R&D Co-Location Permit – $61.00

e. Delivery Permit:

i. Initial Fee if the Store or Transporter Business License will expire in 6 months or less - $2,440.00.

ii. Initial Fee if the Store or Transporter Business License will expire in more than 6 months - $4,880.00.

iii. All Renewals - $2,440.00

f. Transition Permit – $305.00

2. Regulated Marijuana Business Changes. The following fees apply per license:

a. Change of Controlling Beneficial Owner – $1,952.00

b. Changes Exempt from Change of Owner Application Requirement – $976.00

c. Change of Trade Name – $61.00

d. Change of Location – $610.00

e. Modification of Licensed Premises – $122.00

3. Marijuana Research and Development Facility Research Project Proposal – $610.00

4. Responsible Vendor Provider Applications.

a. Responsible Vendor Program Provider Initial Application – $1,037.00

b. Responsible Vendor Program Provider Renewal Application – $427.00

5. Duplicate License, Identification Badge, Certificate, Regulated Marijuana Business License Reinstatement.

a. Duplicate Business License – $24.00

b. Duplicate Owner or Employee Identification Badge – $24.00

c. Responsible Vendor Program Provider Duplicate Certificate – $61.00

d. Reinstatement of Regulated Marijuana Business License - $305.00

6. Outdoor Contingency Plan Review - $1,200.00

G. When Fees are Due. All fees in this Rule are due at the time the application or request is submitted.

Basis and Purpose – 2-210

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(w), 44-10-305, 44-10-901(2), and 24-4-105(2) C.R.S. The purpose of this rule is to clarify the duties that Applicants and Licensees have when reporting to the State Licensing Authority information that is necessary for the issuance of a state license. These duties include but are not limited to reporting and keeping a mailing address current, reporting a felony conviction or other disqualifying event, cooperating with the State Licensing Authority and his or her employees, and notifying the State Licensing Authority of any change of registered agent in the State of Colorado. This rule further provides that all communications or notifications that the State Licensing Authority or Division send an Applicant or Licensee will be sent to the last known address. The Applicant's or Licensee's failure to notify the Division of a change of address does not relieve the Applicant or Licensee from timely responding to any correspondence or notification.

2-210 – Duties of All Applicants and Licensees

A. Duty to Keep Mailing Address Current: All Applicants and Licensees.

1. Timing of Notification. An Applicant or Licensee must provide a physical mailing address to the Division and may provide an electronic mailing address to the Division. A Licensee must inform the Division in writing of any change to its physical mailing address and/or electronic mailing address within 28 days of the change. The Division will not change a Licensee's information without written notice from the Licensee or its authorized agent.

2. State Licensing Authority and Division Communications. The State Licensing Authority and Division will send any formal notifications or determinations regarding any application

or an administrative action to the last mailing address and to the last electronic mailing address, if any, furnished to the Division by the Applicant or Licensee.

3. Failure to Change Address Does Not Relieve Applicant's or Licensee's Obligations. An Applicant's or Licensee's failure to notify the Division of a change of physical or electronic mailing address does not relieve the Applicant or Licensee from the obligation of responding to a Division communication or a State Licensing Authority communication.

B. Duty to Report Felony - Convictions, Deferred Sentences and Judgments. An Applicant or Licensee must notify the Division in writing of any felony conviction or deferred sentence or judgment regarding a felony against him or her within seven days of the conviction or deferred sentence or judgment. The notification must include disposition documents. Failure to make required notification to the Division may be grounds for administrative action.

C. Duty to Report Any Disqualifying Event. Applicants and Licensees must notify the Division within seven days of any change of fact that would result in the Applicant or Licensee being disqualified from holding a license, permit, or registration pursuant to the Marijuana Code, or these Rules.

D. Duty to Cooperate. Applicants and Licensees must cooperate in any investigation conducted by the Division. Failure to cooperate with a Division investigation may be grounds for denial of an application or for administrative action against a Licensee.

E. Duty to Report Change of Registered Agent. A Regulated Marijuana Business must disclose any change of its registered agent in the State of Colorado within seven days of the change.

Basis and Purpose – 2-215

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(k), 44-10-203(2)(w), 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, 44-10-314 and 44-10-316, C.R.S. The purpose of this rule is to establish requirements for all applications including: required application fees; complete, accurate and truthful applications; notification of the applicable local licensing authority or local jurisdiction; that the Applicant or Licensee establish he, she or it is not a person prohibited from licensure; submission of additional information or documents upon request by the Division; and notification that all application material may be disclosed consistent with the Marijuana Code.

2-215 – All Applications Requirements

A. Applicability. This Rule 2-215 applies to all applications submitted to the Division for a license, permit, or registration provided by the Marijuana Code.

B. Division Forms Required. All applications for licenses, registrations, or permits authorized by subsections 44-10-401(2) and (3), C.R.S., must be made on current Division forms.

C. Application Fees Required. Applications must be accompanied by full remittance of the required application and license fees. *See* Rule 2-205.

D. Complete, Accurate, and Truthful Applications Required. Applications must be complete, accurate, and truthful and include all attachments and supplemental information. Incomplete applications may not be accepted by the Division.

E. Local Licensing Authority/Local Jurisdiction.

1. Each application must identify the applicable Local Licensing Authority or Local Jurisdiction.

2. If the Local Licensing Authority or Local Jurisdiction requires a physical copy of the application, the Applicant or Licensee must submit the original application and one identical copy to the Division. Otherwise the Applicant or Licensee must submit only the original application to the Division.

F. Applicant Not Prohibited From Licensure. Applicants must provide information establishing the Applicant is not a Person prohibited from licensure by section 44-10-307, C.R.S. Each natural person required to obtain an Owner License or an Employee License must provide proof of lawful presence or citizenship, and Colorado residency, if required.

G. Additional Information and Documents May Be Required.

1. Upon request by the Division, an Applicant must provide additional information or documents required to process and investigate the application. The additional information or documents must be provided within seven days of the request, however, this deadline may be extended for a period of time commensurate with the scope of the request.

2. An Applicant's failure to provide requested information or documents by the deadline may be grounds for denial of the application.

H. Application Forms Accessible. All application forms provided by the Division and filed by an Application for a license, registration, or permit, including attachments and any other documents associated with the investigation, may be used for a purpose authorized by the Marijuana Code, for investigation or enforcement of any international, federal, state, or local securities law or regulation, for any other state or local law enforcement purpose, or as otherwise required by law.

Basis and Purpose – 2-220

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(j), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-301, 44-10-305, 44-10-307, 44-10-308, 44-10-309, 44-10-310, 44-10-311, 44-10-312, 44-10-313, and 44-10-316, C.R.S. The purpose of this rule is to establish the general requirements and processes for submission of an initial application for a Regulated Marijuana Business to the State Licensing Authority.

2-220 – Initial Application Requirements for Regulated Marijuana Businesses

A. Documents and Information Requested. Every initial application for a Regulated Marijuana Business license must include all required documents and information including, but not limited to:

1. A copy of the local license application, if required, for a Regulated Marijuana Business.

2. Certificate of Good Standing from the jurisdiction in which the Entity was formed, which must be one of the states of the United States, territories of the United States, District of Columbia, or another country that authorizes the sale of marijuana.

3. If the Applicant is an Entity, the identity and physical address of its registered agent in the state of Colorado.

4. Organizational Documents. Articles of Incorporation, by-laws, and any shareholder agreement for a corporation; articles of organization and operating agreement for a limited liability company; or partnership agreement for a partnership.

5. Corporate Governance Documents.

a. A Regulated Marijuana Business that is a Publicly Traded Corporation must maintain corporate governance documents as required by the securities exchange on which its securities are listed and traded, and section 44-10-103(50), C.R.S., and must provide those corporate governance documents with each initial application.

b. A Regulated Marijuana Business that is not a Publicly Traded Corporation is not required to maintain any corporate governance documents. However, if the Regulated Marijuana Business that is not a Publicly Traded Corporation voluntarily maintains corporate governance documents, the Division encourages inclusion of such documents with each initial application.

6. The deed, lease, sublease, rental agreement, contract, or any other document(s) establishing the Applicant is, or will be, entitled to possession of the premises for which the application is made.

7. Legible and accurate diagram for the facility. The diagram must include a plan for the Licensed Premises and a separate plan for the security/surveillance plan including camera location, number and direction of coverage. If the diagram is larger than 8.5 x 11 inches, the Applicant must also provide a copy of the diagram in a portable document format (.pdf).

8. All required findings of suitability issued by the Division.

9. If the Applicant is a Publicly Traded Corporation:

a. Documents establishing the Publicly Traded Corporation qualifies to hold a Regulated Marijuana Business license including but not limited to disclosure of securities exchange(s) on which its Securities are listed and traded, the stock symbol(s), the identity of all regulators with regulatory oversight over its Securities; and

b. Divestiture plan for any Controlling Beneficial Owner that is a Person prohibited by the Marijuana Code, has had her or his Owner License revoked, or has been found unsuitable.

10. Financial Statements. Consolidated financial statements (which may be prepared on either a calendar or fiscal year basis) that were prepared in the preceding 365 days, and which must include a balance sheet, an income statement, and a cash flow statement. If the Applicant or Regulated Marijuana Business is required to have audited financial statements by another regulator (e.g. United States Securities and Exchange Commission or the Canadian Securities Administrators) the financial statements provided to the Division must be audited and must also include all footnotes, schedules, auditors' report(s), and auditor's opinion(s). If the financial statements are publicly available on a website (e.g. EDGAR or SEDAR), the Applicant or Regulated Marijuana Business may provide notification of the website link where the financial statements can be accessed in lieu of hardcopy submission.

11. Tax Documents. Documentation establishing compliant return filing and payment of taxes related to any Regulated Marijuana Business in which the Person is, or was, required to file and pay taxes.

B. Local Licensing/Approval Required.

1. Regulated Marijuana Business Local Licensing Authority Approval Required.

a. If the Division grants a license to a Regulated Marijuana Business before the Local Licensing Authority or Local Jurisdiction approves the application or grants a local license, the state license will be conditioned upon local approval. If the Local Licensing Authority denies the application, the state license will be revoked.

b. An Applicant is prohibited from operating a Regulated Marijuana Business prior to obtaining all necessary licenses, registrations, permits, or approvals from both the State Licensing Authority and the Local Licensing Authority or Local Jurisdiction.

2. Retail Marijuana Business One Year to Obtain Local Jurisdiction Approval Required.

a. The Applicant has one year from the date of licensing by the State Licensing Authority to obtain approval or licensing from the Local Jurisdiction. If the Applicant fails to obtain Local Jurisdiction approval or licensing within one year from grant of the state license, the state license expires and may not be renewed.

C. Social Equity License Qualification.

1. A natural person who can establish he or she qualifies as a Social Equity Licensee may apply for either a Regulated Marijuana Business License or an Accelerator License.

2. Qualifications. To qualify as a Social Equity Licensee, the Applicant must be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules, and must meet the following minimum eligibility requirements:

a. The Applicant is a Colorado Resident and has established Colorado residency by providing the items required by Rule 2-265(H).

b. The Applicant has not been the Beneficial Owner of a License subject to administrative action issued by the State Licensing Authority resulting in the revocation of a license issued pursuant to the Marijuana Code;

c. The Applicant has demonstrated at least one of the following:

i. The Applicant has resided for at least fifteen years between the years 1980 and 2010 in a census tract designated by the office of economic development and international trade as an opportunity zone or a census tract designated as a Disproportionate Impacted Area;

ii. The Applicant or the Applicant's parent, legal guardian, sibling, spouse, child, or minor in their guardianship was arrested for a marijuana offense, convicted of a marijuana offense, or was subject to civil asset forfeiture related to a marijuana investigation; or

iii. The Applicant's household income in the year prior to application did not exceed 50% of the state median income as measured by the number of people who reside in the Applicant's household.

d. The Social Equity Licensee, or collectively one or more Social Equity Licensees, holds at least fifty-one percent of the Beneficial Ownership of the Regulated Marijuana Business License.

3. Information Required to Establish Qualification as a Social Equity Licensee.

a. To demonstrate qualification as a Social Equity Licensee based on residence during the relevant time period, the Applicant must demonstrate the Applicant's residency which may include either:

i. Provide information or documents including but not limited to a copy of school records, rental agreements, lease agreements, utility bills, mortgage statements, loan documents, bank records, tax returns, or any other document which proves the Applicant's place of residence; or

ii. Affirm, under penalty of perjury, the Applicant's place of residence and provide the name(s) and contact information for at least one individual who can verify the Applicant's place of residence during the time period at issue.

b. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on a prior marijuana conviction of a family member, the Applicant must provide affirmation of the familial relationship and court or other documents demonstrating the family member's arrest or conviction for a marijuana offense or that the family member was subject to a civil asset forfeiture related to a marijuana investigation.

c. To demonstrate that an Applicant qualifies as a Social Equity Licensee based on the Applicant's income, the Applicant must provide the Applicant's tax return for the prior year. If an Applicant applies between January 1 and April 15 but has not yet filed a tax return, the application may be delayed or denied until the tax return is filed and provided to the Division. The Division cannot accept tax returns for previous years.

4. Denial of an Application on the Basis of a Marijuana Conviction. The State Licensing Authority will not deny an application for a Social Equity License or a related request for a finding of suitability on the sole basis of a marijuana conviction.

D. Accelerator License Application and Qualification.

1. License Issuance.

a. Beginning January 1, 2021, a Social Equity Licensee may apply for an Accelerator License. The application shall be made on Division forms and in accordance with the 2-200 Series Rules.

b. An Accelerator Licensee may exercise the privileges of a Retail Marijuana Cultivation Facility License, Retail Marijuana Products Manufacturer License, or Retail Marijuana Store License on the Licensed Premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store that has been approved as an Accelerator-Endorsed Licensee or on a Licensed Premises under the control of the Accelerator-Endorsed Licensee.

2. Qualifications. To qualify for an Accelerator License, an Applicant must:

a. Be found suitable for licensure pursuant to Rule 2-235, unless otherwise exempted by these Rules; and

b. Be approved as a Social Equity Licensee pursuant to this Rule.

3. Information Required to Establish Qualification as an Accelerator Licensee. To establish that an Applicant qualifies as an Accelerator Licensee, he or she must establish:

   a. Qualification as a Social Equity Licensee; and

   b. An affirmation that the Applicant has not been the Beneficial Owner of a Regulated Marijuana Business License issued pursuant to the Marijuana Code.

Basis and Purpose – 2-225

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(2)(a), 44-10-203(2)(c), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-307, 44-10-308, 44-10-309, 44-10-313, 44-10-314, and 44-10-316 C.R.S. The purpose of this rule is to establish the requirements and procedures for the license renewal process, including the circumstances under which an expired license may be reinstated.

2-225 – Renewal Application Requirements for All Licensees

A. License Periods.

   1. Regulated Marijuana Business and Owner Licenses are valid for one year from the date of issuance.

   2. Medical Marijuana Transporters, Retail Marijuana Transporters, and Employee Licenses are valid for two years from the date of issuance.

B. Division Notification Prior to Expiration.

   1. The Division will send a notice of license renewal 90 days prior to the expiration of an existing Regulated Marijuana Business or Owner License by first class mail to the Licensee's physical address of record.

   2. Failure to receive the Division notification does not relieve the Licensee of the obligation to timely renew the license.

C. Renewal Deadline.

   1. A Licensee must apply for the renewal of an existing license prior to the License's expiration date.

   2. A renewal application submitted to the Division prior to the license's expiration date shall be deemed timely pursuant to subsection 24-4-104(7), C.R.S., and the Licensee may continue to operate until Final Agency Order on the renewal application.

D. If License Not Renewed Before Expiration. A license is immediately invalid upon expiration if the Licensee has not filed a renewal application and remitted all of the required application and license fees prior to the license expiration date. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date must not operate unless it first obtains a new state license and any required local license.

   1. Reinstatement of Expired Regulated Marijuana Business License. A Regulated Marijuana Business that fails to file a renewal application and remit all required application and license fees prior to the license expiration date may request that the Division reinstate an expired license only in accordance to the following:

a. The Regulated Marijuana Business license expired within the previous 30 days;

b. The Regulated Marijuana Business License has submitted an initial application pursuant to Rule 2-220. The initial application must be submitted prior to, or concurrently with, the request for reinstatement;

c. The Regulated Marijuana Business has paid the reinstatement fee in Rule 2-205; and

d. Any license or approval from the Local Licensing Authority or Local Jurisdiction is still valid or has been obtained.

2. Reinstatement Not Available for Surrendered or Revoked Licenses. A request for reinstatement cannot be submitted and will not be approved for a Regulated Marijuana Business license that was surrendered or revoked.

3. Reinstatement Not Available for Owner Licenses or Employee Licenses. A request for reinstatement cannot be submitted and will not be approved for expired, surrendered, or revoked Owner Licenses or Employee Licenses.

4. Denial of Request for Reinstatement or Administrative Action. If the Licensee requesting reinstatement of a Regulated Marijuana Business license operated during a period that the license was expired, the request may be subject to denial and the Licensee may be subject to administrative action as authorized by the Marijuana Code or these Rules.

5. Approval of Request for Reinstatement. Upon approval of any request for reinstatement of an expired Regulated Marijuana Business License, the Licensee may resume operations until the final agency action on the Licensee's initial application for a Regulated Marijuana Business license.

a. Approval of a request for reinstatement of an expired Regulated Marijuana Business license does not guarantee approval of the Regulated Marijuana Business Licensee's initial application; and

b. Approval of a request for reinstatement of an expired license does not waive the State Licensing Authority's authority to pursue administrative action on the expired license or initial application for a Regulated Marijuana Business license.

6. Final Agency Order on Initial Application for Regulated Marijuana Business.

a. If the initial application for a Regulated Marijuana Business license submitted pursuant to this Rule is approved, the new Regulated Marijuana Business license will replace the reinstated license.

b. If the initial application for a Regulated Marijuana Business license submitted pursuant to this Rule is denied, the Licensee must immediately cease all operations including but not limited to, Transfer of Regulated Marijuana. *See* Rule 2-270 – Application Denial and Voluntary Withdrawal; 8-115 – Disposition of Unauthorized Regulated Marijuana; 8-130 – Administrative Warrants.

E. Voluntarily Surrendered or Revoked Licenses Not Eligible for Renewal. Any license that was voluntarily surrendered or that was revoked by a Final Agency Order is not eligible for renewal. Any Licensee who voluntarily surrendered its license or has had its license revoked by a Final Agency Order may only submit an initial application. The State Licensing Authority will consider

the voluntary surrender or the Final Agency Order and all related facts and circumstances in determining approval of any subsequent initial application.

F. Licenses Subject to Ongoing Administrative Action. Licenses subject to an administrative action are subject to the requirements of this Rule. Licenses that are not timely renewed expire and cannot be renewed.

G. Documents Required at Renewal. A Regulated Marijuana Business and all Controlling Beneficial Owner-Entities must provide the following documents with every renewal application:

1. Any document required by Rule 2-220(A)(1) through (9) that has changed since the document was last submitted to the Division. It is a license violation affecting public safety to fail to submit any document that changed since the last submission for the purpose of circumventing the requirements of the Marijuana Code, or these Rules;

2. A copy of the Local Licensing Authority or Local Jurisdiction approval, licensure, and/or documentation demonstrating timely submission of pending local license renewal application;

3. A list of any sanctions, penalties, assessments, or cease and desist orders imposed by any securities regulatory agency, including but not limited to the United States Securities and Exchange Commission or the Canadian Securities Administrators;

4. A Regulated Marijuana Business operating under a single Entity name with more than one license may submit the following documents only once each calendar year on the first license renewal in lieu of submission with every license renewal in the same calendar year:

    a. Tax documents and financial statements required by Rule 2-220(A)(10) and (11);

    b. If the Regulated Marijuana Business is a Publicly Traded Corporation, the most recent list of Non-Objecting Beneficial Owners possessed by the Regulated Marijuana Business;

    c. A copy of all management agreement(s) the Regulated Marijuana Business has entered into regardless of whether the Person is licensed or unlicensed; and

    d. Contracts, agreements, royalty agreements, equipment leases, financing agreement, or security contract for any Indirect Financial Interest Holder that is required to be disclosed by Rule 2-230(A)(3).

H. Controlling Beneficial Owner Signature. At least one Controlling Beneficial Owner shall sign the renewal application. However, other Controlling Beneficial Owners may be required to sign authorizations and/or requests to release information.

I. Accelerator Program Renewal Application Requirements.

1. Accelerator License Renewal. Accelerator Cultivator, Accelerator Manufacturer, and Accelerator Store licenses are required to be renewed annually. In addition to the documents and information required to be submitted with a renewal application, an Accelerator Licensee must also disclose to the Division copies of any agreements between the Accelerator Licensee and the Accelerator-Endorsed Licensee under which it operated during the previous year.

2. Accelerator-Endorsed Licensee Additional Renewal Requirements.

a. An endorsement issued to an Accelerator-Endorsed Licensee is required to be renewed annually.

b. At the time of submitting a renewal application for the endorsement, an Accelerator-Endorsed Licensee must submit the following:

i. The name and license number of any Accelerator Licensee for which it served as an Accelerator-Endorsed Licensee during the previous year;

ii. The equity assistance proposal if there have been any updates or amendments since the proposal was last submitted to the Division;

iii. Copies of any agreements between the Accelerator-Endorsed Licensee and the Accelerator Licensee(s), including the equity partnership agreement; and

iv. Any required Local Jurisdiction approvals.

c. In addition to any other basis for denial of a renewal application, the State Licensing Authority may also consider the following facts and circumstances as additional bases for denial of an endorsement renewal application:

i. The Accelerator-Endorsed Licensee violated the terms of any equity partnership agreement it entered into with an Accelerator Licensee;

ii. The Accelerator-Endorsed Licensee ended the equity partnership agreement with an Accelerator Licensee prematurely; and

iii. The Accelerator-Endorsed Licensee provided false or misleading statements, records, or information to an Accelerator Licensee.

Basis and Purpose – 2-230

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(t), 44-10-203(2)(u), 44-10-203(2)(w), 44-10-203(2)(ee), 44-10-203(7), 44-10-308, 44-10-309, and 44-10-316, C.R.S. Section 44-10-309, C.R.S., establishes varying disclosure requirements for Applicants and Licensees regarding disclosure of financial interests and ownership in a Regulated Marijuana Business. The purpose of this rule is to clarify information an Applicant or Licensee must disclose to the State Licensing Authority at the various levels, which include mandatory disclosure, disclosure in the State Licensing Authority's discretion, and disclosure for reasonable cause. This rule also provides factors that will be considered in determining whether a Regulated Marijuana Business exercised reasonable care and whether a Person is in control of a Regulated Marijuana Business.

2-230 – Disclosure of Financial Interests in a Regulated Marijuana Business

A. Mandatory Disclosures. Information required to be disclosed by section 44-10-309, C.R.S., must be identified in every initial, renewal, and change of owner application. Mandatory disclosures include, but are not limited:

1. All Regulated Marijuana Businesses (including Publicly Traded Corporations and Entities that are not Publicly Traded Corporations) must disclose an organizational chart including the identity and ownership percentages of all Controlling Beneficial Owners;

2. All Controlling Beneficial Owners.

a. For any Controlling Beneficial Owner that is an Entity (including Publicly Traded Corporations and entities that are not Publicly Traded Corporations):

i. The Controlling Beneficial Owner's Executive Officers; and

ii. Beneficial Owners of ten percent or more of the Controlling Beneficial Owner.

b. Natural persons:

i. Name;

ii. Address;

iii. Date of birth;

iv. Social Security Number or other Federal Government-issued identification number.

c. Qualified Private Fund: Organizational chart reflecting the identity and ownership percentages of the Qualified Private Fund's Executive Officers, investment advisers, investment adviser representatives, any trustee or equivalent, and any other Person that controls the investment in, or management or operations of, a Regulated Marijuana Business.

d. Trust: A copy of any documents required to establish the trust, a certification of the trust, and any additional documents necessary to demonstrate the type of trust, the identity and age of the trustee and all beneficiaries of the trust.

3. Any Person that is an Indirect Financial Interest Holder that:

a. Holds two or more indirect financial interests;

b. Is also a Passive Beneficial Owner; or

c. That is contributing debt financing, secured or unsecured, that has not previously been disclosed and exceeds fifty percent of the operating capital of the Regulated Marijuana Business or if the calculation yields a negative number. Operating capital is defined as total current and fixed assets less total liabilities (as presented on the balance sheet consistent with the business's past practices), measured as of the nearest month's end prior to the date of the applicable loan document(s).

B. Discretionary Disclosure. In his or her reasonable discretion, the State Licensing Authority may require disclosure following an initial or renewal application for a Regulated Marijuana business as follows:

1. For a Regulated Marijuana Business or a Controlling Beneficial Owner, neither of which is a Publicly Traded Corporation, its:

a. Affiliates;

b. Beneficial Owners of a Controlling Beneficial Owner;

2. Qualified Private Fund's Affiliates; and

3. Managers of a Controlling Beneficial Owner.

C. Reasonable Cause Disclosure. An Applicant will be notified by the State Licensing Authority of Reasonable Cause to require additional disclosure. The State Licensing Authority's notification will identify the facts and law supporting Reasonable Cause for the disclosure and the deadline for disclosure. The following may be required to be disclosed by the State Licensing Authority's notification:

1. An updated list of all Non-objecting Beneficial Owners in a Publicly Traded Corporation that is either a Regulated Marijuana Business or a Controlling Beneficial Owner reflecting ownership as of the date of request;

2. All Passive Beneficial Owners in a Regulated Marijuana Business that is not a Publicly Traded Corporation. If the Passive Beneficial Owner is not a natural person, the members of the board of directors, general partners, managing members, or Managers or Executive Officers and Beneficial Owners of ten percent or more of the Passive Beneficial Owner;

3. A list of all Beneficial Owners of a Qualified Private Fund;

4. All Indirect Financial Interest Holders of a Regulated Marijuana Business, and, for any Indirect Financial Interest Holder that is an Entity, the Beneficial Owners of ten percent or more of the Indirect Financial Interest Holder.

D. Affirmation of Reasonable Care.

1. Reasonable Care Affirmation for a Regulated Marijuana Business That is Not a Publicly Traded Corporation. A Regulated Marijuana Business that is not a Publicly Traded Corporation must affirm it exercised reasonable care to confirm its Passive Beneficial Owner(s), including any Qualified Institutional Investor(s), and Indirect Financial Interest Holder(s) are not Persons prohibited from holding a license under these Rules or the Marijuana Code. A Regulated Marijuana Business exercises reasonable care if it:

a. Receives documentation from each Passive Beneficial Owner, including any Qualified Institutional Investor, and each Indirect Financial Interest Holder affirming each is not a Person prohibited from holding a license by these Rules or the Marijuana Code; and

b. The Regulated Marijuana Business does not know or reasonably should not know facts that would contradict the Passive Beneficial Owner or Indirect Financial Interest Holder's affirmation.

2. Reasonable Care Affirmation for a Regulated Marijuana Business That is a Publicly Traded Corporation. A Regulated Marijuana Business that is a Publicly Traded Corporation must affirm it exercised reasonable care to confirm its Passive Beneficial Owners, including any Qualified Institutional Investor(s), both of which are Non-Objecting Beneficial Owners, and Indirect Financial Interest Holder(s) are not Person prohibited from holding a license by these Rules and the Marijuana Code. A Regulated Marijuana Business that is a Publicly Traded Corporation exercises reasonable care if it:

a. At least annually, checks a list of its Passive Beneficial Owners, including any Qualified Institutional Investor(s), both of which are Non-Objecting Beneficial Owners, against the Specially Designated Nationals and Blocked Persons List (SDN List) on the United States Treasury Office of Foreign Assets Control

(OFAC) website and the Financial Industry Regulatory Authority (FINRA) website for Persons Barred by FINRA to determine if there are any prohibited Persons;

b. Receives documentation from its Indirect Financial Interest Holder(s) affirming each is not a Person prohibited from holding a license by these Rules or the Marijuana Code; and

c. The Regulated Marijuana Business does not know or reasonably should not know facts that would contradict the Indirect Financial Interest Holder's affirmation.

E. Control. The State Licensing Authority will consider all facts and circumstances in determining whether a Person has Control of a Regulated Marijuana Business or is a Controlling Beneficial Owner by virtue of common control.

1. Non-Exhaustive Factors. Non-exhaustive facts and circumstances that will be considered when evaluating Control include, but are not limited to:

a. The Person's percentage of ownership, if any;

b. The Person's ability to influence the decision of the Regulated Marijuana Business;

c. The Person is a Manager of the Regulated Marijuana Business;

d. The Person has a close relationship, familial tie, or common purpose or motive with one or more Persons in Control of the Regulated Marijuana Business;

e. The Person has substantial business relationship(s) with the Regulated Marijuana Business;

f. The Person has the ability to control the proxy machinery or to win a proxy contest;

g. The Person is a primary creditor of the Regulated Marijuana Business; or

h. The Person is the original incorporator of the Regulated Marijuana Business.

2. Totality of the Evidence. The State Licensing Authority may consider the totality of the evidence when determining whether a Person has Control of a Regulated Marijuana Business or is a Controlling Beneficial Owner by virtue of common control.

Basis and Purpose – 2-235

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(2)(c), 44-10-203(2)(ee), 44-10-309, 44-10-310, and 44-10-312(4), C.R.S. Section 44-10-310, C.R.S., requires that persons disclosed or who should have been disclosed to the State Licensing Authority obtain a finding of suitability from the State Licensing Authority. The purpose of this rule is to explain the conditions under which a Person is subject to either a mandatory finding of suitability or a finding of suitability for reasonable cause, to identify exemptions from an otherwise required finding of suitability and to identify the information and documents that, at a minimum, must be submitted in connection with any Person's request for a finding of suitability.

2-235 – Suitability

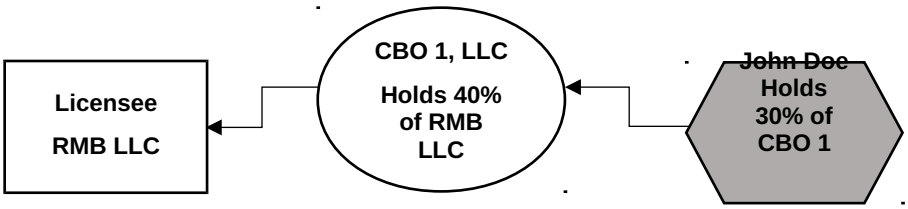
A. Persons Subject to a Mandatory Finding of Suitability for Regulated Marijuana Businesses That Are Not Publicly Traded Corporations.

1. Except as provided in subparagraph (A)(1)(a), any Person intending to become a Controlling Beneficial Owner by submitting an initial application for any Regulated Marijuana Business that is not a Publicly Traded Corporation must first obtain a finding of suitability from the State Licensing Authority.

a. Members of the Board of Directors and Executive Officers of a Regulated Marijuana Business. An individual who is a Controlling Beneficial Owner because he or she is a member of the board of directors or an Executive Officer of a Regulated Marijuana Business or is Controlling a Regulated Marijuana Business but who does not possess ten percent or more of the Owner's Interest in a Regulated Marijuana Business must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming such a Controlling Beneficial Owner.

2. Indirect Ownership of Ten-Percent or More Owner's Interests in an Entity.

a. For a Controlling Beneficial Owner that is an Entity, the Entity's request for finding of suitability must include all information necessary for the State Licensing Authority to determine whether that Entity's Executive Officers and any Person that directly or indirectly owns ten percent or more of the Owner's Interest in the Regulated Marijuana Business are suitable. For example, assuming the scenario depicted below, Licensee RMB LLC has one-thousand outstanding ownership interests and CBO 1, LLC owns 400 of those ownership interests. John Doe owns 30% of CBO 1, LLC. Therefore, John Doe indirectly owns 12% of the outstanding ownership interests of Licensee RMB LLC, and must apply to the State Licensing Authority for a finding of suitability.



3. Any Person that has not received a finding of suitability and who intends to become a Controlling Beneficial Owner of a Regulated Marijuana Business that is not a Publicly Traded Corporation must submit their request for a finding of suitability prior to or contemporaneously with the change of owner application, unless exempt from the change of owner application requirement under Rule 2-245(C).

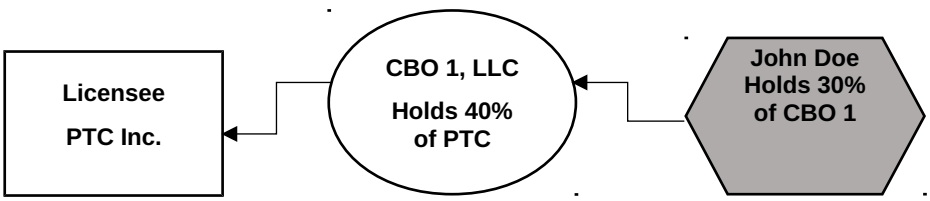
4. For a Controlling Beneficial Owner that is a trust, the trust's request for a finding of suitability must include all documents and information required or requested by the State Licensing Authority to permit a determination of whether or not the trustee and any beneficiary who may exercise control over the trust is suitable. A trust will not be found suitable if any person prohibited by section 44-10-307 is the trustee, otherwise controls the trust, or is positioned to receive distributions from the trust while a person prohibited.

B. Persons Subject to a Mandatory Finding of Suitability for Regulated Marijuana Businesses That Are Publicly Traded Corporations.

1. The following Persons must apply to the State Licensing Authority for a finding of suitability:

    a. Any Person that becomes a Controlling Beneficial Owner of any Regulated Marijuana Business that is a Publicly Traded Corporation; and

    b. Any Person that indirectly Beneficially Owns ten percent or more of the Regulated Marijuana Business that is a Publicly Traded Corporation through direct or indirect ownership of its Controlling Beneficial Owner. For example, assuming the scenario depicted below, Licensee PTC Inc. has one-million shares of outstanding Securities and CBO 1 owns 400,000 of those securities. John Doe owns 30% of CBO 1. Therefore, John Doe indirectly owns 12% of the outstanding securities of Licensee PTC Inc., and must apply to the State Licensing Authority for a finding of suitability.



2. For a Controlling Beneficial Owner that is an Entity, the Entity's request for finding of suitability must include all information necessary for the State Licensing Authority to determine whether its Executive Officers and any Person that indirectly owns ten percent or more of the Owner's Interest in the Regulated Marijuana Business are suitable.

3. Timing of Request for Finding of Suitability Involving Publicly Traded Corporation.

    a. Unless exempted under Rule 2-235(E), all Persons that will be a Controlling Beneficial Owner in a Regulated Marijuana Business that is entering into a Publicly Traded Corporation transaction described in Rule 2-245(C)(1) must first obtain a finding of suitability by the State Licensing Authority before the transaction can close or the public offering can occur.

    b. A Person who becomes a Controlling Beneficial Owner in a Regulated Marijuana Business that is a Publicly Traded Corporation must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming a Controlling Beneficial Owner.

    c. An individual who is a Controlling Beneficial Owner because he or she is a member of the board of directors or an Executive Officer of a Regulated Marijuana Business or is Controlling a Regulated Marijuana Business but who does not possess ten percent or more of the Owner's Interest in a Regulated Marijuana Business must submit a request for a finding of suitability to the State Licensing Authority within 45 days of becoming such a Controlling Beneficial Owner.

C. Finding of Suitability for Reasonable Cause. For Reasonable Cause, any other Person that was disclosed or should have been disclosed pursuant to subsections 44-10-309(1) or (2) or that was required to be disclosed based on previous notification of Reasonable Cause must submit a request to the State Licensing Authority for a finding of suitability. Any Person required to submit a

request for a finding of suitability pursuant to this Rule must submit such request within 45 days from notice of the State Licensing Authority's determination of Reasonable Cause for the finding of suitability.

D. Information Required in Connection with a Request for a Finding of Suitability. When determining whether a Person is suitable or unsuitable for licensure, the State Licensing Authority may consider the Person's criminal character or record, licensing character or record, or financial character or record. To consider a Person's criminal character or record, licensing character or record, and financial character or record, all requests for a finding of suitability must, at a minimum, be accompanied by the following information:

1. Criminal Character or Record:

    a. A set of the natural person's fingerprints for purposes of a fingerprint-based criminal history record check.

2. Licensing Character or Record:

    a. Affirmation that the Person is not prohibited from holding a license under section 44-10-307, C.R.S.

    b. A list of all Colorado Department of Revenue-issued business licenses held in the three years prior to submission of the request for a finding of suitability;

    c. A list of all Department of Regulatory Agencies business, professional, or occupational licenses held in the three years prior to submission of the request for a finding of suitability;

    d. A list of any marijuana business or personal license(s) held in any other state or territory of the United States or District of Columbia or another country, where such license is or was at any time subject to a denial, suspension, revocation, surrender, or equivalent action by the licensing agency, commission, board, or similar authority; and

    e. Disclosure of any civil lawsuits in which the Person was named a party where pleadings included allegations involving any Regulated Marijuana Business.

3. Financial Character or Record:

    a. Disclosure of any sanctions, penalties, assessments, or cease and desist orders imposed by any securities regulatory agency other than the United States Securities Exchange Commission;

    b. If the Person's request for a finding of suitability is for purposes of acquiring ten percent or more of the Owner's Interest in the Regulated Marijuana Business, copies of the Person's financial account statements for the preceding one-hundred eighty days for any accounts serving as a source of funding used to acquire the Owner's Interest in the Regulated Marijuana Business; or, if the Person is contributing one or more asset(s) to the Regulated Marijuana Business in exchange for the Owner's Interests, documents establishing the Person has owned such asset(s) for the preceding one-hundred eighty days.

E. Exemptions from a Finding of Suitability.

1. The following Persons are exempt from an otherwise required finding of suitability:

a. Any Person that currently possesses an approved Owner License issued by the State Licensing Authority and such Owner License has not, in the preceding 365 days, been subject to suspension or revocation.

2. Exemptions from an otherwise required finding of suitability are limited to those listed in this Rule. The State Licensing Authority will consider other factors that may inform amendments to this Rule through the Department's formal rulemaking session.

F. Timing to Approve or Deny a Request for Finding of Suitability. Absent Reasonable Cause, the State Licensing Authority must approve or deny a request for a finding of suitability within 120 days from the date of submission of the request for such finding, where such request was accompanied by all information required under subsection (D) of this Rule.

G. Executive Officer Considerations. Whether an individual is an Executive Officer subject to a mandatory finding of suitability is based on the definition in these rules and the facts and circumstances. In determining whether an individual is an Executive Officer, the State Licensing Authority will consider the following, non-exhaustive factors:

1. Title is not dispositive, however, the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, president, the General Counsel, and any individual with similar policy making authority are Executive Officers;

2. The level of decision-making authority the individual possesses;

3. The Controlling Beneficial Owner and/or Regulated Marijuana Business's organizational chart; and

4. Any relevant guidance from the United States Securities and Exchange Commission or similar securities regulator, securities rules or securities case law.

H. Finding of Suitability Valid for One Year. A finding of suitability is valid for one year from the date it is issued by the State Licensing Authority. If more than one year has passed since the State Licensing Authority issued a finding of suitability to a Person and such Person has not during that time applied to become a Controlling Beneficial Owner of a Regulated Marijuana Business pursuant to an initial business license application or change of owner application, then such Person shall submit a new request for finding of suitability to the State Licensing Authority and obtain a new finding of suitability before submitting any application to become a Controlling Beneficial Owner of a Regulated Marijuana Business.

Basis and Purpose – 2-240

The statutory basis for this rule includes but is not limited to sections 44-10-103(53), 44-10-203(2)(ee)(C), 44-10-309(3), and 44-10-310(10), C.R.S. The purpose of this rule is to clarify factors the State Licensing Authority will consider when determining whether reasonable cause exists to require disclosure, to require a finding of suitability or to extend the 120-day deadline for granting or denying a request for a finding of suitability.

2-240 – Factors Considered in Determining Reasonable Cause for Disclosure, Finding of Suitability, and Extension of 120 Day Deadline for Finding of Suitability

A. Non-Exhaustive Factors Informing Reasonable Cause Considerations. The State Licensing Authority may consider the following non-exhaustive factors when evaluating whether Reasonable Cause exists for disclosure, requiring a reasonable cause finding of suitability or extension of time to provide a finding of suitability:

1. The Person provided materially inaccurate or incomplete documents to the Division;

2. The Person failed to provide required documents to the Division;

3. The request for a finding of suitability is sufficiently complex such that a determination cannot be completed within the 120-day deadline specified;

4. Information that an undisclosed Person is controlling or has the ability to control the Regulated Marijuana Business;

5. Information indicating one or more Persons prohibited holds an interest in the Regulated Marijuana Business;

6. Inability to obtain documents or information expected to be available from third-parties or publicly available sources;

7. The Person interfered with, obstructed, or impeded a Division investigation; or

8. The Person failed to make any filing required by a securities regulator or securities exchange that has regulatory oversight over the Person.

Basis and Purpose – 2-245

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(1)(d), 44-10-203(1)(k), 44-10-203(2)(ee)(I)(A) and (E), 44-10-203(7), 44-10-308(3)(b), 44-10-309, 44-10-310, 44-10-311, and 44-10-312, C.R.S. The purpose of this rule is to define the application process and conditions an Applicant or Licensee must meet when changing Beneficial Ownership in a Regulated Marijuana Business. This rule further describes requirements in the event of a dispute between the Controlling Beneficial Owners of a Regulated Marijuana Business.

2-245 – Change of Controlling Beneficial Owner Application or Notification

A. Application for Change of Controlling Beneficial Owner(s) – Not a Publicly Traded Corporation.

1. Division Approval Required Prior to Transfer of Owner's Interest. Unless excepted pursuant to subparagraph (C) of this Rule, a Regulated Marijuana Business that is not a Publicly Traded Corporation must obtain Division approval before it transfers the Owner's Interests of any Controlling Beneficial Owner(s) or before a trust that is a Controlling Beneficial Owner changes its trustee.

2. Documents Required. Any change of owner application regarding a Controlling Beneficial Owner of a Regulated Marijuana Business that does not involve a Publicly Traded Corporation must include the following documents:

a. Asset purchase agreement, merger, sales contract, agreement, or any other document necessary to effectuate the change of owner;

b. Request for a finding of suitability for each proposed Controlling Beneficial Owner(s) who has not already submitted a request for a finding of suitability, who has not already been found suitable, or who does not already hold an Owner License;

c. Operating agreement, by-laws, partnership agreement, or other governing document(s) as will apply to the Regulated Marijuana Business if the change of owner application is approved;

d. Request for voluntary surrender form of the Owner License of any Controlling Beneficial Owner that will not remain a Controlling Beneficial Owner, or Passive Beneficial Owner electing to hold an Owner License in a Regulated Marijuana Business if the change of owner application is approved; and

e. Copy of current Medical Marijuana or Retail Marijuana State Sales Tax or Wholesale license and any other documents necessary to verify tax compliance.

3. Licensee Initiates Change of Owner for Permitted Economic Interests Issued Prior to January 1, 2020. All natural persons holding a Permitted Economic Interest who seek to become a Controlling Beneficial Owner are subject to this Rule. The Regulated Marijuana Business must initiate the change of owner process for a natural person holding a Permitted Economic Interest who seeks to convert its interest and become a Controlling Beneficial Owner in a Regulated Marijuana Business. Prior to submitting a change of owner application, the Permitted Economic Interest holder must obtain a finding of suitability pursuant to Rule 2-235 including any required criminal history record check. Permitted Economic Interest holders who fail to obtain a finding of suitability to become a Controlling Beneficial Owner may remain as a Permitted Economic Interest holder.

B. Change of Owner Involving a Publicly Traded Corporation. This Rule applies to transactions involving any Publicly Traded Corporation.

1. Publicly Traded Corporation Transactions. A Regulated Marijuana Business may transact with a Publicly Traded Corporation in the following ways:

a. Merger with a Publicly Traded Corporation. A Regulated Marijuana Business or a Controlling Beneficial Owner that intends to receive, directly or indirectly, an investment from a Publicly Traded Corporation, or that intends to merge or consolidate with a Publicly Traded Corporation, whether by way of merger, combination, exchange, consolidation, reorganization, sale of assets or otherwise, including but not limited to any shell company merger.

b. Investment by a Publicly Traded Corporation. A Regulated Marijuana Business that intends or that has a Controlling Beneficial Owner that intends to transfer, directly or indirectly, ten percent or more of the Securities in the Regulated Marijuana Business to a Publicly Traded Corporation, whether by sale or other transfer of outstanding Securities, issuance of new Securities, or otherwise.

c. Public Offering. A Regulated Marijuana Business that intends or that has a Controlling Beneficial Owner that intends to become, directly or indirectly, a Publicly Traded Corporation, whether by effecting a primary or secondary offering of its Securities, uplisting of outstanding Securities, or otherwise.

2. Required Finding(s) of Suitability.

a. Pre-Transaction Findings of Suitability Required. Any Person intending to become a Controlling Beneficial Owner in a Regulated Marijuana Business in connection with any transaction identified in subparagraph (B)(1)(a) through (c) above, must obtain a finding of suitability prior to the Publicly Traded Corporation transaction closing or becoming effective.

b. Ongoing Suitability Requirements. Any Person who becomes a Controlling Beneficial Owner of a Publicly Traded Corporation that is a Regulated Marijuana

Business must apply to the State Licensing Authority for a finding of suitability or an exemption from a finding of a suitability pursuant to Rule 2-235 within forty-five days of becoming a Controlling Beneficial Owner. A Publicly Traded Corporation that is a Regulated Marijuana Business must notify any Person that becomes a Controlling Beneficial Owner of the suitability requirements as soon as the Regulated Marijuana Business becomes aware of the ownership subjecting the Person to this requirement; however, the Controlling Beneficial Owner's obligation to timely request the required finding of suitability is independent of, and unaffected by, the Regulated Marijuana Business's failure to make the notification.

3. Change of Owner Application Required. A Licensee entering into a transaction permitted in subparagraph (B)(1)(a)-(c) above with Publicly Traded Corporation must submit any required change of owner application to the Division prior to the transaction closing. The change of owner application may be submitted simultaneously with the requests for finding(s) of suitability required by subparagraph (B)(2) or after the request(s) for findings of suitability were submitted to the Division.

4. Mandatory Disclosure of Required, United States Securities and Exchange Commission, Canadian Securities Administrators and/or Securities Exchange Filings. A Regulated Marijuana Business and any Controlling Beneficial Owner that is required to file any document with the United States Securities and Exchange Commission, the Canadian Securities Administrators, any other similar securities regulator or any securities exchange regarding any change of owner in subparagraphs (B)(1)(a) through (c) above must also provide a notice to the Division at the same time as the filing with the United States Securities and Exchange Commission, the Canadian Securities Administrators or the securities exchange.

5. Ordinary Broker Transactions. Resales or transfers of Securities of a Publicly Traded Corporation that is a Regulated Marijuana Business or Controlling Beneficial Owner or Passive Beneficial Owner in ordinary broker transactions through an established trading market do not require a change of owner application or prior approval from the State Licensing Authority.

C. Exemptions to the Change of Owner Application Requirement.

1. Entity Conversions or Change of Legal Name. A Regulated Marijuana Business or a Controlling Beneficial Owner may combine with or convert, including but not limited to under sections 7-90-201 et seq., C.R.S., for the exclusive purpose of changing its Entity jurisdiction to one of the states or territories of the United States or the District of Columbia, its Entity type or change the legal name of an Entity without filing a change of owner application. These exemptions apply only if the Controlling Beneficial Owners and their Owner's Interests will remain the same after the combination, conversion, or change of legal name, and there will not be any new Controlling Beneficial Owners (individuals or Entities). Within fourteen days of the combination, conversion, or change of legal name the Regulated Marijuana Business must submit the following to the Division:

   a. A copy of the transaction documents;

   b. Documents submitted to the Colorado Secretary of States;

   c. Any document submitted to the secretary of state or similar regulator if the Entity is organized under the laws of a state of the United States other than Colorado, a territory of the United States, or the District of Columbia;

d. Identification of the Regulated Marijuana Business's or Controlling Beneficial Owner's registered agent;

e. Identification of any Passive Beneficial Owner and Indirect Financial Interest Holder for which disclosure is required by Rule 2-230; and

f. The fee required by Rule 2-205(F)(2)(b).

2. Reallocation of Owner's Interests Among Controlling Beneficial Owners. A Regulated Marijuana Business may reallocate Owner's Interests among existing Controlling Beneficial Owners holding valid Owner Licenses if it provides notification of the reallocation to the Division with its next application submission as long as there are no new Controlling Beneficial Owners. A reallocation under this rule is subject to the following requirements:

a. All Owner's Interests of a Controlling Beneficial Owner may be reallocated to other existing Controlling Beneficial Owners;

b. Only consensual reallocations where all Controlling Beneficial Owners whose ownership percentages will change agree to the reallocation are permitted under this Rule. Proof that the transfer was consensual may include affirmation from all Controlling Beneficial Owners for which the Owner's Interests were reallocated in the required disclosure at the next application submission.

c. If any Controlling Beneficial Owner will not hold any Owner's Interest in a Regulated Marijuana Business following the reallocation, that Controlling Beneficial Owner shall voluntarily surrender his or her Owner's License and identification badge within 30 days of the reallocation;

d. All Controlling Beneficial Owners remain responsible for all actions of the Regulated Marijuana Business while they were a Controlling Beneficial Owner and are subject to administrative action based on the same regardless of the reallocation; and

e. Disclosure and submission of the fee required by Rule 2-205(F)(2)(b) at the next application submission which shall not be longer than 365 days.

3. Passive Beneficial Owner Licensed Prior to August 1, 2019. A Passive Beneficial Owner who was issued an Owner License prior to August 1, 2019, and who has continuously maintained that license, is not required to submit a change of owner application if he or she becomes a Controlling Beneficial Owner in the business license(s) with which the Owner License is associated but must disclose and submit the fee required by Rule 2-205(F)(2)(b) at the next application submission, which shall not be longer than 365 days.

4. Change of Executive Officer or Member of the Board of Directors. A change of owner application is not required for a change of an Executive Officer or member of the board of directors of a Regulated Marijuana Business or an Entity Controlling Beneficial Owner of a Regulated Marijuana Business so long as the new Executive Officer or member of the board of directors does not possess ten percent or more of the Owner's Interest in the Regulated Marijuana Business or is otherwise Controlling the Regulated Marijuana Business. However, a change of Executive Officer or member of the board of directors is subject to the following requirements:

a. Any such Executive Officer or member of the board of directors of the Regulated Marijuana Business must submit a request for a finding of suitability as required

by Rule 235-1 or, if exempt from a finding of suitability pursuant to Rule 235-1(E), the Regulated Marijuana Business subject to any such change of the Executive Officer or members of their board of directors must provide notice to the Division of the new Controlling Beneficial Owner within forty-five days.

b. The fee required by Rule 2-205(F)(2)(b).

5. Change of Passive Beneficial Owner. Persons are not required to submit an application or obtain prior approval of their ownership if: (1) the person was not a Direct Beneficial Interest Owner prior to November 1, 2019, (2) the Person will remain a Passive Beneficial Owner after the acquisition of Owner's Interests is complete, (3) the transfer will not create any previously undisclosed Controlling Beneficial Owner, and (4) disclosure is not otherwise required by section 44-10-309, C.R.S., or Rule 2-230.

D. Change of Owner Requirements, Restrictions and Procedures Applicable to All Regulated Marijuana Businesses.

1. Application Signature Requirements. All applications for change of Controlling Beneficial Owner(s) must be executed by every Controlling Beneficial Owner whose Owner's Interests are proposed to change and any Person proposed to become a Controlling Beneficial Owner(s). Controlling Beneficial Owners whose Owner's Interest will not change are not required to execute the change of owner application; however, at least one Controlling Beneficial Owner and all Persons proposed to become a Controlling Beneficial Owner must execute every change of owner application.

2. Process for Approval. Upon completion of the investigation of a change of owner application, the State Licensing Authority will issue a contingent approval letter. However, the State Licensing Authority will not issue the state license until:

a. Local Approval Required. If local approval is required, the proposed Controlling Beneficial Owner(s) demonstrates to the State Licensing Authority that local approval has been obtained and notifies the State Licensing Authority of the date by which the change of owner will be completed, which must be within thirty days of the notification. The proposed Controlling Beneficial Owner's notification to the Division must be within 365 days of the issuance of the Division's contingent approval letter.

i. If a Local Licensing Authority or Local Jurisdiction requires a change of owner application and that application is denied, the State Licensing Authority will deny the State change of owner application;

b. No Local Approval Required. If local approval is not required, the proposed Controlling Beneficial Owner(s) demonstrates that such approval is not required and notifies the State Licensing Authority of the date by which the change of owner will be completed, which must be within thirty days of the of the notification. However, the proposed Controlling Beneficial Owner's notification to the Division must be made within 365 days of issuance of the Division's contingent approval letter.

3. Operational Restrictions Pending All Required Approvals. Unless otherwise provided under these Rules, any proposed new Controlling Beneficial Owner cannot operate the Regulated Marijuana Business for which it intends to become a Controlling Beneficial Owner until it receives any required finding of suitability and is issued all approvals and/or license(s) pursuant to any change of owner application required by this Rule. Controlling Beneficial Owners that have already been approved in connection with ownership of the

Regulated Marijuana Business may continue to operate the Regulated Marijuana Business. A violation of this requirement is grounds for denial of the change of owner application, may be a violation affecting public safety, and may result in disciplinary action against existing license(s).

4. Modifications to Change of Owner Applications. If anything in a change of owner application is modified or changed after the Division approves the application, the Licensee must submit a new change of owner application, unless exempted by the Division prior to completing the change of owner.

5. Regulated Marijuana Business Subject to Investigation or Administrative Action. If a Regulated Marijuana Business or any of its Controlling Beneficial Owner(s) apply for a change of owner and is involved in an administrative investigation or administrative action, the following may apply:

   a. The change of owner application may be delayed or denied until the administrative action is resolved; or

   b. If the change of owner application is approved by the Division, the transferor, the transferee, or both may be responsible for the actions of the Regulated Marijuana Business and its prior Controlling Beneficial Owner(s), and subject to discipline based upon the same.

6. Medical Marijuana Transporters and Retail Marijuana Transporters Not Eligible for Change of Owner. Medical Marijuana Transporters and Retail Marijuana Transporters are not eligible to transfer the entire Beneficial Ownership of their Regulated Marijuana Business.

E. Refundable and Nonrefundable Deposits Permitted. A proposed Controlling Beneficial Owner may provide a selling Controlling Beneficial Owner with a refundable or nonrefundable deposit in connection with a change of owner application.

F. Controlling Beneficial Owner Dispute.

1. In the event of a dispute between Controlling Beneficial Owner(s) not involving divestiture under Rule 2-275 and precluding or otherwise impeding the ability to comply with these Rules, a Regulated Marijuana Business that is not a Publicly Traded Corporation must submit a change of owner application, notification pursuant to subparagraph (C) of this Rule, or initiate mediation, arbitration, or a judicial proceeding within 90 days of the dispute. The 90-day period may be extended for an additional 90 days upon a showing of good cause by the Regulated Marijuana Business.

2. A Regulated Marijuana Business that is not a Publicly Traded Corporation must submit a change of owner application or notification pursuant to subparagraph (C) of this Rule within forty-five days of entry of a final court order, final arbitration award, or full execution of a settlement agreement altering the Controlling Beneficial Owner(s) of a Regulated Marijuana Business. Any change of owner application or notification based on a final court order, final arbitration award, or fully executed settlement agreement must include a copy of the order or settlement agreement and remains subject to approval by the Division. In this circumstance, the change of owner application or notification needs to be executed by at least one remaining Controlling Beneficial Owner.

3. If mediation, arbitration, or a judicial proceeding is not timely initiated, or if a change of owner application or notification pursuant to subparagraph (C) of this Rule is not timely submitted following entry of a final court order, final arbitration award, or full execution of

a settlement agreement altering the Controlling Beneficial Owner(s) of a Regulated Marijuana Business that is not a Publicly Traded Corporation, the Regulated Marijuana Business and its Owner Licensee(s) may be subject to fine, suspension, or revocation of their license(s).

Basis and Purpose – 2-250

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(e), 44-10-203(2)(ee)(I), 44-10-203(7), and 44-10-309(6), C.R.S. The purpose of this rule is to require notification to the State Licensing Authority of any filing with a securities regulator by an Applicant or Licensee.

2-250 – Regulated Marijuana Business that is a Publicly Traded Corporation – Notification of Non-Confidential Securities Filings

A. A Regulated Marijuana Business that is a Publicly Traded Corporation must provide notice on Division forms within two business days of any non-confidential filing with the United States Securities and Exchange Commission, the Canadian Securities Administrators, any other securities regulator, or any security exchange on which the Securities are listed or traded. The notice must identify the title of the document and include a hyperlink to the website where the document is publicly available (example EDGAR or SEDAR link for the Publicly Traded Corporation).

B. In addition to any other administrative or investigative requests or inquiries, the Division may contact a Regulated Marijuana Business that is a Publicly Traded Corporation to obtain clarification of a securities filing.

C. This Rule is currently limited to require notice of securities filings that are not confidential. However, this Rule may be evaluated during subsequent rulemaking proceedings and/or in connection with development of a policy regarding confidential securities filings.

Basis and Purpose – 2-255

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(e), 44-10-203(2)(w), 44-10-203(2)(cc), 44-10-305, 44-10-313(8), and 44-10-313(13), C.R.S. The purpose of this rule is to clarify the application process for changing location of a Licensed Premises. This rule also provides the requirements for a Medical Marijuana Cultivation Facility or a Retail Marijuana Cultivation Facility to obtain a transition permit.

2-255 – Change of Location of a Regulated Marijuana Business

A. Application Required Before Changing Location of Licensed Premises. A Regulated Marijuana Business must apply for and receive Division approval before changing the location of its Licensed Premises.

B. Application Requirements. A change of location application must include the following:

1. At least one signature of a Controlling Beneficial Owner and representation that the signing Controlling Beneficial Owner(s) is/are authorized to submit the application on behalf of the Regulated Marijuana Business.

2. Evidence the Local Licensing Authority and/or Local Jurisdiction in which the Regulated Marijuana Business proposes to move have approved the proposed new location.

3. The deed, lease, sublease, rental agreement, contract, or any other document(s) establishing the Licensee is, or will be, entitled to possession of the premises for which the application is made.

4. Legible and accurate diagram for the proposed licensed Premises that complies with the requirements of the 3-200 Series Rules. The diagram must include a plan for the proposed Licensed Premises and a separate plan for the security/surveillance plan including camera location, number and direction of coverage. If the diagram is larger than 8.5 inches x 11 inches, the Applicant must also provide the diagram in a portable document format (.pdf).

C. Change of Location Permit Required.

1. A Regulated Marijuana Business cannot change the location of its Licensed Premises until it receives a change of location permit from the Division.

2. The permit is effective on the date of issuance, and the Licensee must, within 120 days, change the location of its Regulated Marijuana Business to the place specified in the change of location permit and at the same time cease to operate a Regulated Marijuana Business at the former location. For good cause shown, the 120-day deadline may be extended an additional 120 days.

3. If the Regulated Marijuana Business does not change the location of its Licensed Premises within the time period granted by the Division, including any extension, the Regulated Marijuana Business must submit a new application, pay the change of location fee, and receive a new change of location permit prior to changing the location of its Licensed Premises.

4. A Regulated Marijuana Business cannot operate or exercise any of the privileges of its license(s) in both locations, unless a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility has received a transition permit.

D. Medical Marijuana Cultivation Facilities and Retail Marijuana Cultivation Facilities - Transition Permit. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility that has obtained an approved change of location from the State Licensing Authority may operate one License at two geographical locations for the purpose of transitioning operations from one location to the other, subject to the following requirements:

1. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility may apply for a transition permit and a change of location at the same time. The Division will not accept an application for a transition permit unless it is submitted prior to or concurrently with a change of location application. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility is prohibited from exercising the privileges of a transition permit until it has also received all required approvals for a change of location.

2. A Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility that has an approved change of location and a transition permit must comply with the following requirements:

a. The total plants cultivated at both locations do not exceed any plant count limit imposed on the Licensee by the Marijuana Code and these rules;

b. The Licensed Premises of both geographical locations comply with all surveillance, security, and inventory tracking requirements imposed by the Marijuana Code and these rules at the Rule 3-200 Series and 3-800 Series;

c. Both geographical locations shall track all Regulated Marijuana plants in transition in the Inventory Tracking System to ensure proper tracking for taxation purposes;

d. Operation at both geographical locations does not exceed 180 days, unless Licensee demonstrates good cause to extend the deadline an additional 180 days; and

e. The Licensee obtains a transition permit pursuant to this Rule and any local permit or license, as required by the Local Licensing Authority or Local Jurisdiction.

3. Change of Location in the Same Local Jurisdiction. If the change of location is within the same local jurisdiction, the Licensee must:

a. First obtain a transition permit pursuant to this Rule; and

b. If required by the Local Licensing Authority or Local Jurisdiction, obtain a transition permit or other form of approval from the Local Licensing Authority or Local Jurisdiction.

4. Change of Location to a Different Local Jurisdiction. If the change of location is to a different local jurisdiction, the Licensee must:

a. First obtain a license from the Local Licensing Authority or Local Jurisdiction where the Licensee intends to locate;

b. Obtain a transition permit pursuant to this Rule; and

c. If required by the Local Licensing Authority or Local Jurisdiction, obtain a transition permit or other form of approval from the Local Licensing Authority or Local Jurisdiction for the local jurisdiction where it intends to locate.

5. Conduct at either location may be basis for fine, suspension, revocation, or other sanction against the License.

E. Violation Affecting Public Safety. It is a violation affecting public safety if a Regulated Marijuana Business changes the location of its Licensed Premises without first obtaining a change of location permit from the Division, and any required approval(s) from the Local Licensing Authority and/or Local Jurisdiction.

Basis and Purpose – 2-260

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(e), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(h), 44-10-203(2)(w), 44-10-305, 44-10-313(8)(b), and 44-10-313(2) C.R.S. The purpose of this rule is to establish guidelines for changing, altering, modifying, or transitioning the Licensed Premises. This Rule 2-260 was previously Rules M and R 303, 1 CCR 212-1 and 1 CCR 212-2.

2-260 – Changing, Altering, or Modifying Licensed Premises

A. Application Required to Change, Alter, or Modify Licensed Premises. After obtaining a license, the Licensee shall make no physical change, alteration, or modification of the Licensed Premises that significantly alters the Licensed Premises or the usage of the Licensed Premises from the plans originally approved, without the Division's prior written approval and, written approval or written

acknowledgement from the relevant Local Licensing Authority or Local Jurisdiction. The Licensee whose Licensed Premises are to be significantly changed is responsible for filing an application for approval on current forms provided by the Division. Changes to the Licensed Premises which do not require an application must be disclosed on a floorplan submitted with the Licensee's renewal application.

1. Emergency Exemption. A Regulated Marijuana Business making temporary modifications to its Licensed Premises to effectuate social distancing measures in response to COVID-19 and applicable executive orders and public health orders in effect at the time of the temporary modifications, is exempt from State Licensing Authority application and prior-approval requirements in this Rule. The exemption provided under this subparagraph (A)(1) shall remain effective until repealed by the State Licensing Authority upon notice to the Secretary of State.

B. What Constitutes a Significant Change. This Rule does not exempt Licensees from complying with any Local Licensing Authority or Local Jurisdiction requirements regarding changes, alterations, or modifications to the Licensed Premises. Significant changes, alterations, or modifications requiring Division approval include, but are not limited to, the following:

1. Any increase or decrease in the total physical size or capacity of the Licensed Premises;

2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, walk-up window or drive-up window, when such common entryway, doorway, passage, walk-up or drive-up window alters or changes Limited Access Areas, such as the cultivation, harvesting, manufacturing, testing, or sale of Regulated Marijuana within the Licensed Premises; or

3. Any physical modification of the Licensed Premises which would require the installation of additional video surveillance cameras. *See* Rule 3-225 – Video Surveillance.

C. Attachments to Application. The Division and relevant Local Licensing Authority or Local Jurisdiction may grant approval for the types of changes, alterations, or modifications described herein upon the filing of an application by the Licensee and payment of any applicable fee. The Licensee must submit all information requested by the Division, including but not limited to, documents that verify the following:

1. The Licensee will continue to have possession of the Licensed Premises, as changed, by ownership, lease, or rental agreement; and

2. The proposed change conforms to any local restrictions related to the time, manner, and place of Regulated Marijuana Business regulation.

Basis and Purpose – 2-265

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(2)(b)-(c), 44-10-203(2)(e), 44-10-203(2)(t)-(u), 44-10-203(2)(w), 44-10-307, 44-10-308(2), 44-10-313(6), 44-10-401(2)(c), 44-10-901(1), and 24-76.5-101 et seq., C.R.S. Historically, natural persons who held an Owner's Interest in a Regulated Marijuana Business were required to hold an Associated Key License. This Rule transitions the Associated Key designation to an Owner License designation after August 1, 2019. The purpose of this rule is to clarify the requirements and procedures a Person must follow when applying for or possessing either an Owner License or an Employee License. This rule also identifies factors the State Licensing Authority will consider in determining whether a natural person is a resident and whether such person possess good moral character.

2-265 – Owner and Employee License: License Requirements, Applications, Qualifications, and Privileges

A. Associated Key Licenses. Associated Key licenses remain valid until the first renewal following August 1, 2019, after which such licenses will be renewed as an Owner License.

B. Owner Licenses Required.

1. Each Controlling Beneficial Owner must hold a valid Owner License.

2. If a Controlling Beneficial Owner is an Entity, then its Executive Officer(s) and any natural person who indirectly holds ten percent or more of the Owner's Interests in the Regulated Marijuana Business must also hold a valid Owner's License.

3. A Passive Beneficial Owner who is a natural person may elect to hold an Owner License and obtain an Owner Identification Badge provided that such Person agrees to be disclosed as holding an Owner's Interest in the Regulated Marijuana Business.

4. Only Controlling Beneficial Owners and Passive Beneficial Owners can obtain an Owner License.

C. Owner License and Identification Badge or Employee License and Identification Badge Required. The following natural persons must possess a valid Owner License and Identification Badge or an Employee License and Identification Badge:

1. Any natural person who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, or delivers Regulated Marijuana or Regulated Marijuana Products as permitted by privileges of a Regulated Marijuana Business license;

2. Any natural person who has access to the Inventory Tracking System or a Regulated Marijuana Business point-of-sale system; and

3. Any natural person with unescorted access in the Limited Access Area.

D. Escort or Monitoring Required.

1. Any natural person in a Limited Access Area that does not have a valid Owner License and Identification Badge or an Employee License and Identification Badge is a visitor and must be escorted at all times by a person who holds a valid Owner License and Identification Badge or Employee License and Identification Badge. Failure by a Regulated Marijuana Business to continuously escort an individual who does not have a valid Owner License and Identification Badge or an Employee License and Identification Badge in the Limited Access Area is a license violation affecting public safety.

2. Patients and consumers in a Restricted Access Area and third-party vendors in a Limited Access Area do not need to be escorted at all times but must be reasonably monitored to ensure compliance with these rules.

E. Employee License Required to Commence or Continue Employment. Any natural person required to obtain an Employee License by these rules must obtain such license before commencing activities permitted by an Employee License.

1. Conditional License. Applicants for an Employee License may be issued a conditional License and Identification Badge upon results of an initial investigation that demonstrates

the Applicant is qualified to hold such License in compliance with Rule 2-215, subject to the following requirements:

i. Applications for a conditional Employee License must be submitted in person to the Division to facilitate the issuance and physical transfer of the conditional License to the Applicant. Applications for a conditional Employee License must be accompanied by the Conditional Employee License Fee in Rule 2-205.

ii. The Employee's application remains subject to a Notice of Denial pending the complete results of the Applicant's initial fingerprint-based criminal history record check.

iii. If the Division issues the Applicant a Notice of Denial, the Employee License Applicant shall return the conditional License and Identification Badge within seven (7) days of the Division's mailing of the Notice of Denial.

F. Owner License and Employee License Identification Badges Are Property of the State Licensing Authority. All Owner Licenses and Employee Licenses, and all Identification Badges are property of the State Licensing Authority.

G. Owner and Employee Initial and Renewal Applications Required. Owner Licensees and Employee Licensees must submit initial license applications and renewal applications on Division forms and in accordance with this Rule and Rules 2-215, 2-220, and 2-225.

H. Licenses Requiring Proof of Residency. Where a license issued by the State Licensing Authority requires the Applicant to establish Colorado residency, an Applicant may demonstrate residency by the following methods including, but are not limited to:

1. Current valid Colorado driver's license or current Colorado identification card with a current address; or

2. A government issued photo identification and two of the following documents showing the Applicant's correct name, current date, and current Colorado address:

a. Utility bill or phone bill;

b. Car registration;

c. Voter registration card;

d. Statement from a major creditor;

e. Bank statement;

f. Recent County tax notice;

g. Recent contract/mortgage statement.

I. Owner License Qualifications and Privileges.

1. Owner License Qualifications. Each Controlling Beneficial Owner, or Passive Beneficial Owner who elects to be subject to disclosure and licensure, must meet the following criteria before receiving an Owner License:

a. The Applicant is not prohibited from licensure pursuant to section 44-10-307, C.R.S.;

b. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for Persons licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application;

c. The Division has not received notice that the Applicant has failed to comply with a court or administrative order for current child support, child support debt, retroactive child support, or child support arrearages. If the Division receives notice of the Applicant's noncompliance pursuant to sections 24-35-116 and 26-13-126, C.R.S., the application may be denied or delayed until the Applicant has established compliance with the order to the satisfaction of the state child support enforcement agency.

d. Each Controlling Beneficial Owner required to hold an Owner License, and any Passive Beneficial Owner that elects to hold an Owner License, must be fingerprinted at least once every two years, and may be fingerprinted more often at the Division's discretion.

i. [Emergency rule expired 05/11/2021]

e. An Owner Licensee who exercises day-to-day operational control on the Licensed Premises of a Regulated Marijuana Business must possess an Identification Badge and must establish and maintain Colorado residency. Proof of residency may be accomplished by submission of the documents identified in Rule 2-265(H). A Controlling Beneficial Owner will not be deemed to exercise day-to-day operational control by reason of holding a title defined as an Executive Officer.

2. Owner License Exercising Privileges of an Employee License. A natural person who holds an Owner License and Identification Badge may exercise the privileges of an Employee License in a Regulated Marijuana Business, subject to the following limitations:

a. If the Owner Licensee is not a Controlling Beneficial Owner of the Regulated Marijuana Business for which he or she is seeking to exercise the privileges of an Employee License, the Owner Licensee may exercise such Employee License privileges regardless of that Person's residency.

b. If the Owner Licensee is a Controlling Beneficial Owner of the Regulated Marijuana Business for which he or she is seeking to exercise the privileges of an Employee License, the Owner Licensee may only exercise such Employee License privileges if he or she is a Colorado resident.

3. Business License Required. A natural person cannot hold an Owner License without holding a Regulated Marijuana Business license, or without at least submitting an application for a Regulated Marijuana Business license.

J. Employee License Qualifications and Privileges.

1. Employee License Qualifications and Requirements. An Employee License Applicant must meet the following criteria before receiving an Employee License:

a. The Applicant is not prohibited from licensure pursuant to section 44-10-307, C.R.S.;

b. The Applicant has not been a State Licensing Authority employee with regulatory oversight responsibilities for Persons licensed by the State Licensing Authority in the six months immediately preceding the date of the Applicant's application.

c. The Division has not received notice that the Applicant has failed to comply with a court or administrative order for current child support, child support debt, retroactive child support, or child support arrearages. If the Division receives notice of the Applicant's noncompliance pursuant to sections 24-35-116 and 26-13-126, C.R.S., the application may be denied or delayed until the Applicant has established compliance with the order to the satisfaction of the state child support enforcement agency.

2. Medical and Retail Employee Licenses. A natural person who holds a current, valid Employee License and Identification Badge issued pursuant to the Marijuana Code may work in any Regulated Marijuana Business.

K. Owner Licensees and Employee Licensees Required to Maintain Licensing Qualification. An Owner Licensee or Employee Licensee's failure to maintain qualifications for licensure may constitute grounds for discipline, including but not limited to, suspension, revocation, or fine.

L. Evaluating a Natural Person's Good Moral Character Based on Criminal History.

1. In evaluating whether a Person is prohibited from holding a license pursuant to sections subsections 44-10-307(1)(b) or (c), C.R.S., based on a determination that the person's criminal history indicates she or he is not of Good Moral Character, the Division will not consider the following:

a. The mere fact a person's criminal history contains an arrest(s) or charge(s) of a criminal offense that is not actively pending;

b. A conviction of a criminal offense in which the Applicant/Licensee received a pardon;

c. A conviction of a criminal offense which resulted in the sealing or expungement of the record; or

d. A conviction of a criminal offense in which a court issued an order of collateral relief specific to the application for state licensure.

2. In evaluating whether a Person is prohibited from holding a license pursuant to subsections 44-10-307(1)(b) or (c), C.R.S., based on a determination that the person's criminal history indicates he or she is not of Good Moral Character, the Division may consider the following history:

a. Any felony conviction(s);

b. Any conviction(s) of crimes involving moral turpitude;

c. Pertinent circumstances connected with the conviction(s); and

d. Conduct underlying arrest(s) or charge(s) or a criminal offense for which the criminal case is not actively pending.

3. When considering criminal history in subparagraph (L)(2) above, the Division will consider:

a. Whether there is a direct relationship between the conviction(s) and the duties and responsibilities of holding a state license issued pursuant to the Marijuana Code;

b. Any information provided to the Division regarding the person's rehabilitation, which may include but is not limited to the following non-exhaustive considerations:

i. Character references;

ii. Educational, vocational, and community achievements, especially those achievements occurring during the time between the person's most recent criminal conviction and the application for a state license;

iii. Successful participation in an alcohol and drug treatment program;

iv. That the person truthfully and fully reported the criminal conduct to the Division;

v. The person's employment history after conviction or release, including but not limited to whether the person was vetted and approved to hold a state or out-of-state license for the purposes of employment in a regulated industry;

vi. The person's successful compliance with any conditions of parole or probation imposed after conviction or release; or

vii. Any other facts or circumstances tending to show the Applicant has been rehabilitated and is ready to accept the responsibilities of a law-abiding and productive member of society.

Basis and Purpose – 2-270

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l)-(m), 44-10-203(2)(w), 44-10-305, 44-10-306, 44-10-307, 44-10-313(8), 24-4-104, and 24-4-105, C.R.S. The purpose of this rule is to clarify the procedures and factors governing the denial process and voluntary withdrawal process for all licenses issued by the State Licensing Authority. This Rule 2-270 is similar to the previous Rules M and R 251, 1 CCR 212-1 and 1 CCR 212-2.

2-270 – Application Denial and Voluntary Withdrawal

A. Applicant Bears the Burden of Proving It Meets Licensure Requirements. A license, registration, or permit issued to a Person or a Regulated Marijuana Business is a revocable privilege. At all times during the application process, an Applicant must be capable of establishing it is qualified to hold a license.

B. Applicants Must Provide Information to the Division in a Full, Faithful, Truthful, and Fair Manner. An application may be denied where the Applicant made misstatements, omissions, misrepresentations, or untruths in the application or in connection with the Applicant's suitability investigation. Providing misstatements, misrepresentations, omissions, or untruths to the Division may be the basis for administrative action, or the basis of criminal charges against the Applicant.

C. Grounds for Denial.

1. The State Licensing Authority will deny an application for Good Cause.

2. The State Licensing Authority will deny an application from an Applicant that is statutorily disqualified from holding a license.

3. The State Licensing Authority will deny an application where the Applicant failed to provide all required information or documents, failed to obtain all required findings of suitability prior to submitting the application, provided inaccurate, incomplete, or untruthful information or documents, or failed to cooperate with the Division.

D. Voluntary Withdrawal of Application.

1. The Division and Applicant may mutually agree to allow the voluntary withdrawal of an application in lieu of a denial proceeding.

2. Applicants must first submit a form to the Division requesting the voluntary withdrawal of the application. Applicants will submit the form with the understanding that they were not obligated to request the voluntary withdrawal and that any right to a hearing in the matter is waived once the voluntary withdrawal is approved.

3. The Division will consider the request along with any circumstances at issue with the application in making a decision to accept the voluntary withdrawal. The Division may at its discretion grant the request with or without prejudice or deny the request.

4. The Division will notify the Applicant of its acceptance of the voluntary withdrawal and the terms thereof.

5. If the Applicant agrees to a voluntary withdrawal granted with prejudice, then the Applicant is not eligible to apply again for licensing or approval until after expiration of one year from the date of such voluntary withdrawal.

E. A Denied Applicant May Appeal a Denial. A Denied Applicant may appeal a denial pursuant to the Administrative Procedure Act.

Basis and Purpose – 2-275

The statutory basis for this rule includes but is not limited to sections 44-10-202(1)(b)-(c), 44-10-203(1)(k), 44-10-203(2)(q), 44-10-203(2)(t), 11-10-310, 44-10-401(3)(a)-(d), C.R.S. The purpose of this rule is to establish procedures and requirements for any Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person acting in accordance with sections 44-10-401(3)(a)-(d), C.R.S., and authorized by court order to take possession of, operate, manage, or control a Regulated Marijuana Business. This Rule 2-275 was previously Rules M and R 253, 1 CCR 212-1 and 1 CCR 212-2.

2-275 – Temporary Appointee Registrations for Court Appointees

A. Notice and Application Requirements for All Court Appointees.

1. Notice to the State and Local Licensing Authorities. Within seven days of accepting an appointment as a Court Appointee pursuant to sections 44-10-401(3), C.R.S., such Court Appointee must file a notice to the State Licensing Authority and the applicable Local Licensing Authority on a form required by the State Licensing Authority which must include at least:

a. A copy of the order appointing the Court Appointee;

b. A statement affirming the Court Appointee complied with the certification required by section 44-10-401(3)(a), C.R.S.;

c. If the Court Appointee is an entity, a list of all natural persons responsible for taking possession of, operating, managing, or controlling the Regulated Marijuana Business; and

d. A complete list of all Regulated Marijuana Businesses for which the Court Appointee was appointed and the respective dates during which the Court Appointee is currently serving, or has previously served, as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person.

2. Application for Finding of Suitability. Within 14 days of accepting an appointment as a Court Appointee pursuant to section 44-10-401(3), C.R.S., each Court Appointee must file an application for a finding of suitability with the State Licensing Authority on forms required by the State Licensing Authority. Each entity and natural person for whom a notice was filed pursuant to Rule 2-275(A) must file an application for a finding of suitability. The Division may in its discretion extend the 14-day deadline to file an application for a finding of suitability upon a showing of good cause. The Division may also in its discretion rely upon a recent licensing background investigation for Court Appointees that currently hold a license or Temporary Appointee Registration issued by the State Licensing Authority and may waive all or part of the application fee accordingly.

3. Effective Date. The Temporary Appointee Registration will be issued following the State Licensing Authority's receipt of the notice required by Rule 2-275(A)(1) and is effective as of the date of the court appointment.

B. Temporary Appointee Registration.

1. Entities. If the Court Appointee is an entity, the entity and all natural persons responsible for taking possession of, operating, managing, or controlling the Regulated Marijuana Business must receive a Temporary Appointee Registration. Every Court Appointee that is an entity must have at least one natural person with a Temporary Appointee Registration.

2. Temporary Appointee Registrations. Every Temporary Appointee Registration issued to a Person will be treated as an Owner License except where inconsistent with section 44-10-401(3), C.R.S., or this Rule.

3. Other employees. Any other person working under the direction of a Court Appointee who possesses, cultivates, manufactures, tests, dispenses, sells, serves, transports, researches, or delivers Regulated Marijuana as permitted by privileges granted under a Regulated Marijuana Business license must have a valid Employee License.

4. Licensed Premises. A Court Appointee cannot establish an independent Licensed Premises but is authorized to exercise the privileges of the Temporary Appointee Registration in the Licensed Premises of the Regulated Marijuana Business for which it is appointed.

5. Medical Marijuana Business Operators or Retail Marijuana Business Operators. A Court Appointee may retain a Medical Marijuana Business Operator or a Retail Marijuana Business Operator. If the Medical Marijuana Business Operator or Retail Marijuana Business Operator is the Court Appointee, see subparagraph E of this Rule.

6. Marijuana Code and Rules Applicable. Court Appointees are subject to the requirements of the Marijuana Code and the rules promulgated thereto. Except where inconsistent with section 44-10-401(3), C.R.S., or this Rule, the State Licensing Authority may take any action with respect to a Temporary Appointee Registration that it could take with respect to any license issued under the Marijuana Code. In any action involving a Temporary Appointee Registration, these rules will be read to include the terms "registered", "registration", "registrant", or any other similar terms in lieu of "licensed", "licensee", and any other similar terms as the context requires when applied to a Temporary Appointee Registration.

C. Administrative Actions.

1. Suspension, Revocation, Fine, or Other Administrative Action Regarding a Regulated Marijuana Business. In addition to any other basis for suspension, revocation, fine, or other administrative action, a Regulated Marijuana Business's license may, pursuant to subsections 44-10-202(1)(b), 44-10-401(3)(b), and 44-10-901(1), C.R.S., be suspended, revoked, fined, or subject to other administrative action based upon its Court Appointee's violations of the Marijuana Code, the rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Grounds for discipline include, but are not limited to, the Court Appointee's failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such administrative action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect.

2. Suspension, Revocation, Fine, or Other Administrative Action Regarding a Temporary Appointee Registration. In addition to any other basis for suspension, revocation, fine, or other administrative action, a Temporary Appointee Registration may, pursuant to subsections 44-10-202(1)(b), 44-10-401(3)(b), and 44-10-901(1), C.R.S., be suspended, revoked, or subject to other administrative action based upon the Court Appointee's violations of the Marijuana Code or the Rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration issued by the State Licensing Authority, or any order of the State Licensing Authority. Grounds for discipline include, but are not limited to, the Court Appointee's failure to timely notify the Division of the appointment or failure to timely apply for and obtain a finding of suitability. Such administrative action may occur even after the Temporary Appointee Registration is expired or surrendered, if the action is based upon an act or omission that occurred while the Temporary Appointee Registration was in effect. If a Person holding a Temporary Appointee Registration also holds any other Owner License or Employee License, the Owner License, the Employee License, and the Temporary Appointee Registration may be suspended, revoked, fined, or subject to other administrative action for any violations of the Marijuana Code or the rules promulgated pursuant to the Marijuana Code, the terms, conditions, or provisions of the Temporary Appointee Registration, Owner License, and/or Employee License issued by the State Licensing Authority, or any order of the State Licensing Authority.

3. Suitability. If the State Licensing Authority denies an application for a finding of suitability because the Court Appointee failed to timely apply for a finding of suitability, failed to timely provide all information requested by the Division in connection with an application for a finding of suitability, or was found unsuitable, the State Licensing Authority may also pursue administrative action as set forth in this Rule.

4. Court Appointee's Responsibility to Notify Appointing Court. The Court Appointee must notify the appointing court of any action taken against the Temporary Appointee Registration by the State Licensing Authority pursuant to sections 44-10-901 or 24-4-104,

C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Court Appointee must forward a copy of such notification to the Division at the same time the notification is made to the appointing court.

D. Expiration and Renewal.

1. Conclusion of Court Appointment. A Court Appointee's Temporary Appointee Registration expires upon the conclusion of a Court Appointee's court appointment. Each Court Appointee and each Regulated Marijuana Business that has a Court Appointee must notify the State Licensing Authority within two business days of the date on which a Court Appointee's court appointment ends, whether due to termination of the appointment by the court, substitution of another Court Appointee, closure of the court case, or otherwise. For a Court Appointee that is appointed in connection with multiple court cases, the notice must be filed with the State Licensing Authority with respect to each such case.

2. Annual Renewal. If it has not yet expired pursuant to Rule 2-270(D)(1), each Temporary Appointee Registration is valid for one year, after which it must be subject to annual renewal in accordance with the Marijuana Code and the rules promulgated pursuant to the Marijuana Code. If a Court Appointee is appointed in connection with multiple court cases, the Temporary Appointee Registration is subject to annual renewal unless all such appointments have ended, whether due to termination of the appointments by the courts, substitution of other Court Appointees, closure of the court cases, or otherwise.

3. Other Termination. A Temporary Appointee Registration may be valid for less than the applicable term if surrendered, revoked, suspended, or subject to similar action.

E. Medical Marijuana Business Operators and/or Retail Marijuana Business Operators as Court Appointees. By virtue of its privileges of licensure, a Medical Marijuana Business Operator, a Retail Marijuana Business Operator, and their respective Owner Licensees may serve as Court Appointees without a Temporary Appointee Registration subject to the following terms:

1. Notice to the State Licensing Authority of Appointment. The Medical Marijuana Business Operator or the Retail Marijuana Business Operator, and its Owner Licensee(s) are responsible for notifying the State Licensing Authority within seven days of any court appointment to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Regulated Marijuana Business. Such notice must be accompanied by a copy of the order making the appointment and must identify each Regulated Marijuana Business regarding which the Medical Marijuana Business Operator and/or Retail Marijuana Business Operator is appointed.

2. Notice to the Appointing Court of State Licensing Authority Action. The Medical Marijuana Business Operator or the Retail Marijuana Business, and its Owner Licensee(s) are responsible for notifying the appointing court of any action taken against the Medical Marijuana Business Operator license, the Retail Marijuana Business Operator license and/or the Owner License by the State Licensing Authority pursuant to sections 44-10-901 or 24-4-104, C.R.S., within two business days. Such actions include, without limitation, the issuance of an Order to Show Cause, the issuance of an Administrative Hold, the issuance of an Order of Summary Suspension, the issuance of an Initial Decision by the Department's Hearings Division, or the issuance of a Final Agency Order by the State Licensing Authority. The Medical Marijuana Business Operator, the Retail Marijuana Business Operator and its Owner Licensee(s) must forward a copy of such

notification to the Division at the same time the notification is made to the appointing court.

Basis and Purpose – 2-280

The statutory basis for this rule includes but is not limited to sections 44-10-203(2)(c), 44-10-203(2)(l), 44-10-203(2)(t), 44-10-203(2)(ee)(D), 44-10-203(7), 44-10-307, 44-10-309(4)-(5), 44-10-310(5) and (11), 44-10-313(8)(a), and 44-10-901, C.R.S. The purpose of this rule is to clarify the conditions and procedures for divestiture of any Person prohibited from holding a license under section 44-10-307, C.R.S., or who is found unsuitable by the State Licensing Authority. This rule also requires that every Regulated Marijuana Business have at least one Controlling Beneficial Owner and provides what happens in the event of suspension of a Regulated Marijuana Business's Controlling Beneficial Owner(s). Finally, this rule provides that Licensees cannot have unlicensed persons take actions on their behalf or for their benefit that the Licensees themselves are prohibited from taking under these rules or the Marijuana Code.

2-280 – Controlling Beneficial Owners that are Persons Prohibited, Unsuitable, Revoked, or Suspended; At Least One Controlling Beneficial Owner Holding a Valid Owner License Required; and Prohibited Third-Party Acts

A. Controlling Beneficial Owners That Are Persons Prohibited, Unsuitable, or Revoked.

1. Less than 100% of all Controlling Beneficial Owners – Divestiture. If less than 100% of a Regulated Marijuana Business's Controlling Beneficial Owners are or become a Person prohibited from holding a license by these Rules or the Marijuana Code, have his or her Owner License revoked by a Final Agency Order, or are found unsuitable, the Regulated Marijuana Business must divest all of the Beneficial Ownership of that Controlling Beneficial Owner.

a. Unless extended for good cause, within 90 days of a Controlling Beneficial Owner becoming a Person prohibited from holding a license, having his or her Owner License revoked, or being found unsuitable, the Regulated Marijuana Business must either:

i. Submit a change of owner application, where required, and any document(s) necessary to transfer all of that Controlling Beneficial Owner's Interests to one or more Persons that are not prohibited from holding a license or unsuitable. Any required change of owner application is subject to approval by the Division; or

ii. Where a change of owner application is not required, transfer all of that Controlling Beneficial Owner's Interests to one or more Persons that are not a Person prohibited from holding a license or unsuitable.

b. In determining whether good cause for an extension exists, the Division will consider whether there is any Owner Interest buy-back provision with the Controlling Beneficial Owner. If mediation, arbitration, or a legal proceeding has been initiated regarding the required divestiture, the 90-day deadline is extended until 90 days following execution of a settlement agreement, arbitration order, or final judgment concluding the mediation, arbitration, or legal proceeding.

c. A Regulated Marijuana Business that is a Publicly Traded Corporation must have a divestiture plan with its Controlling Beneficial Owners which must be disclosed to the Division pursuant to Rule 2-220(A).

d. A Regulated Marijuana Business that fails to divest a Controlling Beneficial Owner as required by this Rule may be subject to denial, fine, suspension, or revocation of its license(s). The State Licensing Authority may consider aggravating and mitigating factors surrounding measures taken to divest the unsuitable or Person prohibited from holding a license when determining the imposition of a penalty. However, a Regulated Marijuana Business that is unable to divest a Controlling Beneficial Owner that is a Person prohibited from holding a license or found unsuitable is prohibited from being issued or holding a license.

2. All Controlling Beneficial Owners are Unsuitable, Revoked, or Persons Prohibited From Holding a License. A Regulated Marijuana Business's License may be revoked if 100% of its Controlling Beneficial Owners are found unsuitable, have his or her Owner's License revoked, or are Persons prohibited from holding a license by these Rules or the Marijuana Code.

B. Suspension of Controlling Beneficial Owners.

1. Suspension of Less than 100% of the Controlling Beneficial Owner(s) of a Regulated Marijuana Business. In the event of the suspension of the Owner License of a Controlling Beneficial Owner, either (i) the Regulated Marijuana Business must comply with all requirements of rule 8-210 – Disciplinary Process: Summary Suspensions, or (ii) the non-suspended Owner Licensee(s) must control the Regulated Marijuana Business without participation from the suspended Controlling Beneficial Owner(s).

2. Suspension of 100% of the Controlling Beneficial Owners of a Regulated Marijuana Business. A Regulated Marijuana Business cannot operate or Transfer Regulated Marijuana if all Controlling Beneficial Owners are suspended.

C. At Least One Controlling Beneficial Owner Holding a Valid Owner License Required. No Regulated Marijuana Business may operate or be licensed unless it has at least one Controlling Beneficial Owner who holds a valid Owner License.

D. Loss Of Owner License As A Controlling Beneficial Owner Of Multiple Businesses. If an Owner License is suspended, revoked, or found unsuitable as to one Regulated Marijuana Business, that Owner License is automatically suspended, revoked, or found unsuitable as to any other Regulated Marijuana Business in which that Person is a Controlling Beneficial Owner.

E. Prohibited Third-Party Acts. No Licensee may employ, contract with, hire, or otherwise retain any Person, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit if the Licensee is prohibited by law or these rules from engaging in such conduct itself.

1. A Licensee may be held responsible for all actions and omissions of any Person the Licensee employs, contracts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

2. A Licensee may be subject to license denial or administrative action, including but not limited to fine, suspension, or revocation of its license(s), based on the act and/or omissions of any Person the Licensee employs, contracts with, hires, or otherwise retains, including but not limited to an employee, agent, or independent contractor, to perform any act or conduct on the Licensee's behalf or for the Licensee's benefit.

Basis and Purpose – 2-285

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), 44-10-401(2)(b)(I), 44-10-401(2)(b)(VII), 44-10-401(2)(b)(VIII), 44-10-607, 44-10-608, 44-10-611 C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees participating in the accelerator program.

2-285 – Accelerator Endorsement Application, Qualification, and Eligibility

A. Beginning January 1, 2021, Retail Marijuana Store Licensees, Retail Marijuana Cultivation Facility Licensees, and Retail Marijuana Products Manufacturers Licensees may apply for an endorsement to participate in the accelerator program. The application shall be made on Division forms and in accordance with the 2-200 Series Rules.

B. Qualifications and Eligibility. The State Licensing Authority may consider the following facts and circumstances for purposes of determining a Licensees' qualifications and eligibility to be an Accelerator-Endorsed Licensee.

1. The Applicant has not, in the previous two years, been subject to a license revocation or active suspension issued by the State Licensing Authority, any Local Licensing Authority or Local Jurisdiction, or any other state in which it operated.

2. Information demonstrating the Applicant operated its license for at least two years prior to the date of application; or if the Applicant is unable to demonstrate operations for a period of at least two years, it must satisfy at least one of the following:

a. The Applicant possesses a valid commercial marijuana license issued in another state and has operated such license for the preceding two years;

b. For the preceding two years the Applicant has participated in an accelerator, incubator, or social equity program that may, but is not required to be, associated with the commercial marijuana industry;

c. The Applicant has at least two years of regulated cannabis industry experience at a managerial or executive level; or

d. The Applicant has at least two years of business experience in a highly regulated industry other than the marijuana industry.

C. Application Requirements. In addition to all other application requirements outlined in the 2-200 Series Rules, an application to become an Accelerator-Endorsed Licensee must include the Applicant's equity assistance proposal, containing the information required by the 3-1100 Series Rules.

D. The Division will maintain a list of Accelerator-Endorsed Licensees on its website. By submitting an application to become an Accelerator-Endorsed Licensee, the Applicant authorizes the State Licensing Authority to publish the Applicant's name on the Division's website.

Part 3 – Regulated Marijuana Business Operations

3-100 Series – General Privileges and Limitations

Basis and Purpose – 3-105

The statutory authority for this rule includes but is not limited to sections 44-10-102(2), 44-10-102(3), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-401(2), 44-10-701(2)(a), 44-10-701(2)(c), and 44-10-701(3)(e), C.R.S. The purpose of this rule is to establish that it is unlawful for any Regulated Marijuana Business Licensee to exercise any privileges other than those granted to it by the State Licensing Authority.

3-105 – Regulated Marijuana Businesses: Privileges Granted

A Regulated Marijuana Business shall only exercise those privileges granted to it by the State Licensing Authority.

Basis and Purpose – 3-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-401(2), 44-10-701(1)(a), 44-10-701(3)(d), and 44-10-701(3)(f), C.R.S. The purpose of this rule is to clarify that, except for in a Licensed Hospitality Business, it is unlawful for a Regulated Marijuana Business to allow consumption on the Licensed Premises.

3-110 – Regulated Marijuana Businesses: General Restrictions

A. Consumption Prohibited.

1. Applicability. This subparagraph (A) applies to all Regulated Marijuana Businesses, except Licensed Hospitality Businesses.

2. Licensees shall not permit the consumption of marijuana or marijuana product on the Licensed Premises or in transport vehicles, including any Sampling Units Transferred to a Sampling Manager.

B. Alcohol Beverage License Prohibited. A Person may not operate a license issued pursuant to the Marijuana Code and these rules at the same Licensed Premises as a license or permit issued pursuant to article 3, 4 or 5 of Title 44.

Basis and Purpose – 3-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2), and 44-10-701(2)(a), C.R.S. The purpose of this rule is to clarify those acts that are limited or prohibited in some way and to make clear that a Regulated Marijuana Business shall not offer or receive complimentary Regulated Marijuana from a licensed transporter.

3-115 – Transporter Transfer Restriction

A Licensee shall not sell or give away Regulated Marijuana to a Medical Marijuana Transporter or Retail Marijuana Transporter, and shall not buy, or receive, complimentary Regulated Marijuana from a Medical Marijuana Transporter or Retail Marijuana Transporter.

3-200 Series – Licensed Premises

Basis and Purpose – 3-205

The statutory authority for this rule includes but is not limited to sections 44-10-103(14), 44-10-103(26), 44-10-202(1)(c), 44-10-202(1)(e), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(p), and 44-10-203(2)(t), C.R.S. The purpose of this rule is to establish Limited Access Areas for Licensed Premises under the control of the Licensee to only individuals licensed by the State Licensing Authority. In addition, this rule

clarifies that businesses and individuals cannot use the visitor system as a means to employ an individual who does not possess a valid and current Employee License. This Rule was previously Rules M and R 301, 1 CCR 212-1 and 1 CCR 212-2.

3-205 – Limited Access Areas

A. Proper Display of Identification Badge. All Persons in a Limited Access Area as provided for in section 44-10-103(26) C.R.S., shall be required to hold and properly display a current Identification Badge issued by the Division at all times. Proper display of the Identification Badge shall consist of wearing the badge in a plainly visible manner, at or above the waist, and with the photo of the Licensee visible. The Licensee shall not alter, obscure, damage, or deface the badge in any manner.

B. Visitors in Limited Access Areas.

1. Prior to entering a Limited Access Area, all visitors, including outside vendors, contractors or others, must obtain a visitor identification badge from management personnel of the Licensee that shall remain visible while in the Limited Access Area.

2. Visitors shall be escorted by the Regulated Marijuana Business's licensed personnel at all times. No more than five visitors may be escorted by a single employee. Except that trade craftspeople not normally engaged in the business of cultivating, processing, or selling Regulated Marijuana need not be accompanied on a full-time basis, but only reasonably monitored.

3. A Regulated Marijuana Business and all Licensees employed by the Regulated Marijuana Business shall report to the Division any discovered plan or other action of any Person to (1) commit theft, burglary, underage sales, diversion of marijuana or marijuana product, or other crime related to the operation of the subject Regulated Marijuana Business; or (2) compromise the integrity of the Inventory Tracking System. A report shall be made as soon as possible after the discovery of the action, but not later than 14 days. Nothing in this paragraph (B) alters or eliminates any obligation a Regulated Marijuana Business or Licensee may have to report criminal activity to a local law enforcement agency.

4. The Licensee shall maintain a log of all visitor activity, for any purpose, within the Limited Access Area and shall make such logs available for inspection by the Division and relevant Local Licensing Authority or Local Jurisdiction.

5. All visitors admitted into a Limited Access Area must provide acceptable proof of age and must be at least 21 years of age. *See* Rule 3-405 – Acceptable Forms of Identification.

6. The Licensee shall check the identification for all visitors to verify that the name on the identification matches the name in the visitor log. *See* Rule 3-405 – Acceptable Forms of Identification.

7. A Licensee may not receive consideration or compensation for permitting a visitor to enter a Limited Access Area.

8. Use of a visitor badge to circumvent the Employee License requirements of Rule 2-265 is prohibited and may constitute a license violation affecting public safety.

C. Required Signage. All areas of ingress and egress to Limited Access Areas on the Licensed Premises shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Do Not Enter - Limited Access Area – Access Limited to Licensed Personnel and Escorted

Visitors." A Licensee may comply with this paragraph (C) when that sign is conspicuously placed immediately within an exterior entrance that is locked against public entry and only accessible to limited, licensed personnel and escorted visitors.

D. Diagram for Licensed Premises. All Limited Access Areas shall be clearly identified to the Division and relevant Local Licensing Authority or Local Jurisdiction and described in a diagram of the Licensed Premises reflecting walls, partitions, counters and all areas of ingress and egress. The diagram shall also reflect all Propagation, cultivation, manufacturing, testing, consumption, and Restricted Access Areas. *See* Rule 3-905 – Business Records Required.

E. Modification of Limited Access Area. A Licensee's proposed modification of designated Limited Access Areas must be approved by the Division, the Local Licensing Authority, and, if required, the relevant Local Jurisdiction prior to any modifications being made. *See* Rule 2-260 – Changing, Altering, or Modifying Licensed Premises.

F. Law Enforcement Personnel Authorized. Notwithstanding the requirements of subsection A of this Rule, nothing shall prohibit investigators and employees of the Division, authorities from relevant Local Jurisdiction or state or local law enforcement, for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, from entering a Limited Access Area upon presentation of official credentials identifying them as such.

Basis and Purpose – 3-210

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-311(1)(b), and 44-10-311(2), C.R.S. The purpose of this rule is to establish and clarify the means by which the Licensee has lawful possession of the Licensed Premises. This Rule 3-210 was previously Rules M and R 302, 1 CCR 212-1 and 1 CCR 212-2.

3-210 – Possession of Licensed Premises

A. Evidence of Lawful Possession. Persons licensed pursuant to sections 44-10-501, 44-10-502, 44-10-503, 44-10-504, 44-10-507, 44-10-601, 44-10-602, 44-10-603, 44-10-604, 44-10-607, 44-10-608, 44-10-609, 44-10-610 C.R.S., or those applying for such licenses, must demonstrate proof of lawful possession of the premises to be licensed or Licensed Premises. Evidence of lawful possession consists of properly executed deeds of trust, leases, or other written documents acceptable to state and local licensing authorities.

B. Relocation Prohibited. The Licensed Premises shall only be those geographical areas that are specifically and accurately described in executed documents verifying lawful possession. Licensees are not authorized to relocate to other areas or units within a building structure without first filing a change of location application and obtaining approval from the Division and the relevant Local Jurisdiction. Licensees shall not add additional contiguous units or areas, thereby altering the initially-approved premises, without filing an application and receiving approval to modify the Licensed Premises on current forms prepared by the Division, including any applicable processing fee. *See* Rule 2-260 - Changing, Altering, or Modifying Licensed Premises

C. Subletting Not Authorized. Licensees are not authorized to sublet any portion of Licensed Premises for any purpose, unless all necessary applications to modify the existing Licensed Premises to accomplish any subletting have been approved by the Division and the relevant Local Licensing Authority or Local Jurisdiction.

Basis and Purpose – 3-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-401, 44-10-501, 44-10-502, 44-10-503, 44-10-504, 44-10-601, 44-10-602,

44-10-603, 44-10-604, C.R.S. The purpose of this rule is to establish guidelines for the manner in which a Medical Marijuana Business may share its existing Licensed Premises with a Retail Marijuana Business, and to ensure the proper separation of Regulated Marijuana Business operation operations. This Rule 3-215 was previously Rules M and R 304.1, 1 CCR 212-1 and 1 CCR 212-2.

3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation

A. Shared Licensed Premises for Medical Marijuana Stores and Retail Marijuana Stores.

1. Medical Marijuana Store that authorizes only patients that are over the age of 21. A Medical Marijuana Store that authorizes only Medical Marijuana patients who are over the age of 21 years to be on the Licensed Premises may also hold a Retail Marijuana Store license and operate at the same location under the following circumstances:

    a. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

    b. The Medical Marijuana Store and Retail Marijuana Store are commonly owned;

    c. The Medical Marijuana Store and Retail Marijuana Store shall maintain physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory;

    d. The Medical Marijuana Store and Retail Marijuana Store shall maintain separate displays between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory, but the displays may be on the same sale floor;

    e. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Store and Retail Marijuana Store shall enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Store from the inventories and business transactions of the Retail Marijuana Store; and

    f. The Medical Marijuana Store shall post and maintain signage that clearly conveys that persons under the age of 21 years may not enter.

2. Medical Marijuana Store that authorizes patients under the age of 21. A Medical Marijuana Store that authorizes Medical Marijuana patients under the age of 21 years to be on the Licensed Premises may operate in the same location with a Retail Marijuana Store under the following conditions:

    a. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

    b. The Medical Marijuana Store and Retail Marijuana Store are commonly owned;

    c. The Medical Marijuana Store and Retail Marijuana Store maintain physical separation, including separate entrances and exits, between their respective Restricted Access Areas;

d. No point of sale operations occur at any time outside the physically separated Restricted Access Areas;

e. All Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Product in a Restricted Access Area must be physically separated from all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product in a Restricted Access Area, and such physical separation must include separate entrances and exits;

f. Any display areas shall be located in the physically separated Restricted Access Areas;

g. In addition to the physically separated sales and display areas, the Medical Marijuana Store and Retail Marijuana Store shall maintain physical or virtual separation for storage of Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory from storage of Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

h. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Store and Retail Marijuana Store shall enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Store from the inventories and business transactions of the Retail Marijuana Store.

B. Shared Licensed Premises For Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility. A Medical Marijuana Cultivation Facility and a Retail Marijuana Cultivation Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

2. The Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility are commonly owned;

3. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility shall maintain either physical or virtual separation between (i) Medical Marijuana and Medical Marijuana Concentrate and (ii) Retail Marijuana and Retail Marijuana Concentrate; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility must enable the Division and relevant Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Cultivation Facility from the Retail Marijuana Cultivation Facility.

C. Shared Licensed Premises For Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer. A Medical Marijuana Products Manufacturer and a Retail Marijuana Products Manufacturer may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit a dual operation at the same location;

2. The Medical Marijuana Products Manufacturer and the Retail Marijuana Products Manufacturer are commonly owned;

3. The Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory. Nothing in this Rule prohibits a Retail Marijuana Products Manufacturer and Medical Marijuana Products Manufacturer from sharing raw Ingredients in bulk, for example flour or sugar, except Retail Marijuana and Medical Marijuana may not be shared under any circumstances; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer must enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Products Manufacturer from the Retail Marijuana Products Manufacturer.

D. Shared Licensed Premises For Medical Marijuana Store, Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Store, Retail Marijuana Cultivation Facility, and Retail Marijuana Products Manufacturer. A Medical Marijuana Store, Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Store, Retail Marijuana Cultivation Facility, or Retail Marijuana Products Manufacturer may share the common areas of a Licensed Premises where the cultivation, manufacture, packaging, storing, or Transfers to patients and consumers of Regulated Marijuana does not occur. For example, the shared common areas may include hallways, break rooms, bathrooms, etc. Licensees must maintain physical separation of all Regulated Marijuana inventory. Nothing in this paragraph D prohibits Licensees sharing premises in accordance with paragraphs (B) and (C) of this Rule.

E. Shared Licensed Premises For Medical Marijuana Testing Facility and Retail Marijuana Testing Facility. A Medical Marijuana Testing Facility and a Retail Marijuana Testing Facility may share a single Licensed Premises and operate at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit dual operation at the same location;

2. The Regulated Marijuana Testing Facilities are identically owned;

3. The Regulated Marijuana Testing Facilities shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

4. Record-keeping, inventory tracking, packaging and labeling for the Regulated Marijuana Testing Facilities must enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Testing Facility from the Retail Marijuana Testing Facility.

F. Shared Licensed Premises Medical Marijuana Transporter and Retail Marijuana Transporter. A Medical Marijuana Transporter and a Retail Marijuana Transporter may share a single Licensed Premises and operate dual transporting, logistics, and temporary storage business operation at the same location under the following circumstances:

1. The relevant Local Licensing Authority and Local Jurisdiction permit dual operation at the same location;

2. The Medical Marijuana Transporter and Retail Marijuana Transporter are identically owned;

3. The Medical Marijuana Transporter and Retail Marijuana Transporter shall maintain either physical or virtual separation between (i) Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Products, and other Medical Marijuana-related inventory and (ii) Retail Marijuana, Retail Marijuana Concentrate, Retail Marijuana Products, and other Retail Marijuana-related inventory; and

4. Record-keeping, inventory tracking, packaging and labeling for the Medical Marijuana Transporter and Retail Marijuana Transporter must enable the Division and Local Licensing Authority or Local Jurisdiction to clearly distinguish the inventories and business transactions of the Medical Marijuana Transporter from the Retail Marijuana Transporter.

G. Shared Licensed Premises Marijuana Research and Development Facility. A Marijuana Research and Development Facility that has obtained an R&D Co-Location Permit pursuant to Rule 5-705(C) may share a single Licensed Premises and operate at the same location as another Regulated Marijuana Business to the extent permitted by the R&D Co-Location Permit and otherwise in compliance with all applicable rules. *See* 5-700 Series Rules.

H. Violation Affecting Public Safety. Violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose – 3-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c),44-10-203(1)(k), 44-10-203(2)(e), and 29-2-114(8)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IV). The purpose of this rule is to ensure adequate control of the Licensed Premises and Regulated Marijuana contained therein. This rule establishes the minimum guidelines for security requirements for alarm systems and commercial locking mechanisms for maintaining adequate security. This rule also establishes fencing and lighting requirements for outdoor cultivations. This Rule 3-220 was previously Rules M and R 305, 1 CCR 212-1 and 1 CCR 212-2.

3-220 – Security Alarm Systems and Lock Standards

A. Security Alarm Systems – Minimum Requirements. The following Security Alarm Systems and lock standards apply to all Regulated Marijuana Businesses, unless stated otherwise by these rules.

1. Each Licensed Premises shall have a Security Alarm System, installed by an Alarm Installation Company, on all perimeter entry points and perimeter windows.

2. Each Licensee must ensure that all of its Licensed Premises are continuously monitored. Licensees may engage the services of a Monitoring Company to fulfill this requirement.

3. A Licensee shall maintain up-to-date and current records and existing contracts on the Licensed Premises that describe the location and operation of each Security Alarm System, a schematic of security zones, the name of the Alarm Installation Company, and the name of any Monitoring Company. *See* Rule 3-905 – Business Records Required.

4. Upon request, Licensees shall make available to agents of the Division or relevant Local Licensing Authority or Local Jurisdiction or state or local law enforcement agency, for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, all information related to Security Alarm Systems, Monitoring, and alarm activity.

5. Any outdoor or Greenhouse Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility is a Limited Access Area and must meet all of the requirements for Security Alarm Systems described in this Rule. An outdoor or Greenhouse Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility must provide sufficient security measures to demonstrate that outdoor areas are not readily accessible by unauthorized individuals. It shall be the responsibility of the Licensee to maintain physical security in a manner similar to a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility located in an indoor Limited Access Area so it can be fully secured and alarmed. The fencing requirements shall include, at a minimum, perimeter fencing designed to prevent the general public from entering the Limited Access Areas and shall meet at least the following minimum requirements:

   a. The entire Limited Access Area shall be surrounded by a fence constructed of nine gauge or lower metal chain link fence or another similarly secure material. The fence shall measure at least eight feet from the ground to the top, or in the alternative, the fence may measure six feet from the ground to the top with a 1 foot barbed wire arm with at least three strands along the entire fence. All support posts shall be steel and securely anchored.

   b. All gates of ingress or egress shall measure at least eight feet from the ground to the top of the entry gate, or in the alternative, the gate may measure six feet from the ground to the top with a 1 foot barbed wire arm with at least three strands, and shall be constructed of nine gauge or lower metal chain link fence or a similarly secure material.

   c. The fence shall obscure the Limited Access Area so that it is not easily viewed from outside the fence.

   d. All areas of ingress and egress of the fence shall either:

      i. Be illuminated including a 20 foot radius from the point of ingress or egress. Lights may be, but are not required to be, motion sensing; or

      ii. Have cameras with night vision capacity capable of recording a 20 foot radius from the point of ingress or egress.

   e. A Licensee or Applicant for initial licensure may, in writing, request that the Division waive one or more of the security requirements described in these subparagraphs (a) through (d) of this Rule, by submitting on a form prescribed by the Division a security waiver request for Division approval. The Division may, in its discretion and on a case-by-case basis, approve the security waiver if it finds that the alternative safeguard proposed by the Licensee or Applicant for initial licensure meets the goals of the above security requirements or that the security requirements are in conflict with a local ordinance of general applicability. Approved security waivers expire at the same time as the underlying License and may be renewed at the time the License renewal application is submitted. The Licensee's or Applicant for initial licensure's request for a waiver shall include:

      i. The specific rules and subsections of a rule that are requested to be waived;

ii. The reason for the waiver;

iii. A description of an alternative safeguard the Licensee will implement in lieu of the requirement that is the subject of the waiver; and

iv. An explanation of how and why the alternative safeguard accomplishes the goals of the security rules, specifically public safety, prevention of diversion, accountability, and prohibiting access to minors.

B. Lock Standards – Minimum Requirement.

1. At all points of ingress and egress, the Licensee shall ensure the use of commercial-grade, non-residential door locks.

2. Any outdoor or Greenhouse Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility must meet all of the requirements for the lock standards described in this Rule.

Basis and Purpose – 3-225

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(h), 44-10-203(1)(k), 44-10-203(2)(e), and 44-10-1001, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VI). The purpose of this rule is to ensure adequate control of the Licensed Premises and Regulated Marijuana contained therein. This rule also establishes the minimum guidelines for security requirements for video surveillance systems for maintaining adequate security. This Rule 3-225 was previously Rules M and R 306, 1 CCR 212-1 and 1 CCR 212-2.

3-225 – Video Surveillance

A. Minimum Requirements. The following video surveillance requirements shall apply to all Regulated Marijuana Businesses, unless stated otherwise in these rules.

1. Prior to exercising the privileges of a Regulated Marijuana Business, an Applicant must install a fully operational video surveillance and camera recording system. The recording system must record in digital format and meet the requirements outlined in this Rule.

2. All video surveillance records and recordings must be stored in a secure area that is only accessible to a Licensee's management staff.

3. Video surveillance records and recordings must be made available upon request to the Division, the relevant Local Licensing Authority or Local Jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose.

4. Video surveillance records and recordings of point-of-sale areas shall be held in confidence by all employees and representatives of the Division, except that the Division may provide such records and recordings to the Local Licensing Authority or Local Jurisdiction, or any other state or local law enforcement agency for a purpose authorized by the Marijuana Code, or for any other state or local law enforcement purpose.

B. Video Surveillance Equipment.

1. Video surveillance equipment shall, at a minimum, consist of digital or network video recorders, cameras capable of meeting the recording requirements described in this

Rule, video monitors, digital archiving devices, and a color printer capable of delivering still photos.

2. All video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Licensee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.

3. Licensees are responsible for ensuring that all surveillance equipment is properly functioning and maintained, so that the playback quality is suitable for viewing and the surveillance equipment is capturing the identity of all individuals and activities in the monitored areas.

4. All video surveillance equipment shall have sufficient battery backup to support a minimum of four hours of recording in the event of a power outage. Licensee must notify the Division of any loss of video surveillance capabilities that extend beyond four hours.

C. Placement of Cameras and Required Camera Coverage.

1. Camera coverage is required for all areas identified as Restricted Access Areas or Limited Access Areas, point-of-sale areas, security rooms, all points of ingress and egress to Limited Access Areas, all areas where Regulated Marijuana is displayed for sale, and all points of ingress and egress to the exterior of the Licensed Premises.

2. Camera placement shall be capable of identifying activity occurring within 20 feet of all points of ingress and egress and shall allow for the clear and certain identification of any individual and activities on the Licensed Premises.

3. At each point-of-sale location, camera coverage must enable recording of the patients, caregivers or consumer(s), and employee(s) facial features with sufficient clarity to determine identity.

4. All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points.

5. The system shall be capable of recording all pre-determined surveillance areas in any lighting conditions. If the Licensed Premises has a Regulated Marijuana cultivation area, a rotating schedule of lighted conditions and zero-illumination can occur as long as ingress and egress points to Flowering areas remain constantly illuminated for recording purposes.

6. Areas where Regulated Marijuana is grown, tested, cured, manufactured, researched, or stored shall have camera placement in the room facing the primary entry door at a height which will provide a clear unobstructed view of activity without sight blockage from lighting hoods, fixtures, or other equipment.

7. Cameras shall also be placed at each location where weighing, packaging, transport preparation, processing, or tagging activities occur.

8. At least one camera must be dedicated to record the access points to the secured surveillance recording area.

9. All outdoor cultivation areas must meet the same video surveillance requirements applicable to any other indoor Limited Access Areas.

D. Location and Maintenance of Surveillance Equipment.

1. The surveillance room or surveillance area shall be a Limited Access Area.

2. Surveillance recording equipment must be housed in a designated, locked, and secured room or other enclosure with access limited to authorized employees, agents of the Division, and the relevant Local Licensing Authority or Local Jurisdiction, state or local law enforcement agencies for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, and service personnel or contractors.

3. Licensees must keep a current list of all authorized employees and service personnel who have access to the surveillance system and/or room on the Licensed Premises. Licensees must keep a surveillance equipment maintenance activity log on the Licensed Premises to record all service activity including the identity of the individual(s) performing the service, the service date and time and the reason for service to the surveillance system.

4. Off-site Monitoring and video recording storage of the areas identified in this Rule 3-225(C) by the Licensee or an independent third-party is authorized as long as standards exercised at the remote location meet or exceed all standards for on-site Monitoring.

5. Each Regulated Marijuana Business Licensed Premises located in a common or shared building, or commonly owned Regulated Marijuana Businesses located in the same Local Jurisdiction, must have a separate surveillance room/area that is dedicated to that specific Licensed Premises. Commonly-owned Regulated Marijuana Businesses located in the same Local Jurisdiction may have one central surveillance room located at one of the commonly owned Licensed Premises which simultaneously serves all of the commonly-owned Licensed Premises. The facility that does not house the central surveillance room is required to have a review station, printer, and map of camera placement on the premises. All minimum requirements for equipment and security standards as set forth in this section apply to the review station.

6. Licensed Premises that combine both a Medical Marijuana Business and a Retail Marijuana Business may have one central surveillance room located at the shared Licensed Premises. *See* Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation.

E. Video Recording and Retention Requirements.

1. All camera views of all Limited Access Areas must be continuously recorded 24 hours a day. The use of motion detection is authorized when a Licensee can demonstrate that monitored activities are adequately recorded.

2. All surveillance recordings must be kept for a minimum of 40 days and be in a format that can be easily accessed for viewing. Video recordings must be archived in a format that ensures authentication of the recording as legitimately captured video and guarantees that no alteration of the recorded image has taken place.

3. The Licensee's surveillance system or equipment must have the capabilities to produce a color still photograph from any camera image, live or recorded, of the areas identified in this Rule 3-225(C).

4. The date and time must be embedded on all surveillance recordings without significantly obscuring the picture. The date and time must be synchronized with any point-of-sale system.

5. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory at: http://www.time.gov.

6. After the 40 day surveillance video retention schedule has lapsed, surveillance video recordings must be erased or destroyed prior to: sale or transfer of the facility or business to another Licensee; or being discarded or disposed of for any other purpose. Surveillance video recordings may not be destroyed if the Licensee knows or should have known of a pending criminal, civil, or administrative investigation, or any other proceeding for which the recording may contain relevant information.

F. Other Records.

1. All records applicable to the surveillance system shall be maintained on the Licensed Premises. At a minimum, Licensees shall maintain a map of the camera locations, direction of coverage, camera numbers, surveillance equipment maintenance activity log, user authorization list, and operating instructions for the surveillance equipment.

2. A chronological point-of-sale transaction log must be made available to be used in conjunction with recorded video of those transactions.

Basis and Purpose – 3-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), and 44-10-203(2)(h), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish waste disposal requirements for Regulated Marijuana Businesses and to provide more sustainable options including for Regulated Marijuana waste including composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification. This Rule 3-230 was previously Rules M and R 307, 1 CCR 212-1 and 1 CCR 212-2.

3-230 – Waste Disposal

A. All Applicable Laws Apply. Regulated Marijuana waste must be stored, secured, locked, and managed in accordance with all applicable federal, state, and local statutes, regulations, ordinances, or other requirements, including but not limited to the “Regulations Pertaining to Solid Waste Sites and Facilities” (6 CCR 1007-2, Part 1) established by the Colorado Department of Public Health and Environment pursuant to the “Solid Wastes Disposal Sites and Facilities Act”, Title 30, Article 20, Part 1, C.R.S. and “Regulation No. 100 – Water and Wastewater Facility Operations Certification Requirements” (5 CCR 1003-2) established by the Colorado Department of Public Health and Environment pursuant to the Title 25, Article 9, Part 1, C.R.S.

B. Liquid Waste. Liquid waste from Regulated Marijuana Businesses shall be disposed of in compliance with all applicable federal, state and local laws, regulations, rules, and other requirements.

C. Chemical, Dangerous and Hazardous Waste. Disposal of chemical, dangerous, and hazardous waste must be conducted in a manner consistent with federal, state and local laws, statutes, regulations, rules, and other requirements. This may include, but is not limited to, the disposal of all Pesticide and other agricultural chemicals, certain solvents and other chemicals used in the production of Regulated Marijuana Concentrate and any Regulated Marijuana soaked in a Flammable Solvent for purposes of producing a Regulated Marijuana Concentrate.

1. Elemental Impurities Remediation. All post extraction plant material generated from the elemental impurities Remediation process, and other Regulated Marijuana waste products (including but not limited to, still bottoms, lipids removed during winterization)

generated from the Remediation process have the potential to be hazardous waste. Therefore, all such post extraction plant material must be subject to one of the following actions prior to leaving the Licensed Premises:

i. Treated as hazardous waste in regard to storage, labeling, and disposal; or

ii. Tested for elemental impurities content.

a. Materials that meet the definition of hazardous waste, as defined by the Resource Conservation and Recovery Act or other applicable federal, state, or local regulations, must be treated as hazardous waste. Accordingly, they must be properly labeled, contained, stored, and disposed of in accordance with the Environmental Protection Agency, the Resource Conservation and Recovery Act, and other applicable regulations for hazardous waste.

b. Materials that contain elemental impurities concentrations less than the allowable concentration limits specified in the Resource Conservation and Recovery Act, and are not designated hazardous waste by other applicable federal, state, or local regulations, may be disposed of in accordance with this rule.

D. Regulated Marijuana Waste Must Be Made Unusable and Unrecognizable. Unless expressly exempt by these rules, all Regulated Marijuana waste must be made unusable and Unrecognizable prior to leaving the Licensed Premises.

E. Methods to Make Waste Unusable and Unrecognizable. Regulated Marijuana waste shall be rendered unusable and Unrecognizable through one of the following methods:

1. Grind or Compact and Mix with Non-Marijuana Waste. A Regulated Marijuana Business may render its Regulated Marijuana waste unusable and Unrecognizable by grinding or compacting and incorporating the marijuana waste with non-consumable, solid wastes listed below such that the resulting mixture is at least 50 percent non-marijuana waste, and such that the resulting mixture cannot easily be separated and sorted:

a. Paper waste;

b. Plastic waste;

c. Cardboard waste;

d. Food waste;

e. Grease or other compostable oil waste;

f. Bokashi or other compost activators;

g. Soil;

h. Sawdust;

i. Manure; and

j. Other wastes approved by the Division that will render the Regulated Marijuana waste unusable and Unrecognizable.

2. Other Permitted and Sustainable Methods for Rendering Regulated Marijuana Waste Unusable and Unrecognizable. A Regulated Marijuana Business may render its Regulated Marijuana waste unusable and Unrecognizable through the following methods and subject to the following requirements and restrictions:

    a. The following methods are exempt from the 50/50 waste mixing requirement in subparagraph E(1) above and can be used to render Regulated Marijuana unusable and Unrecognizable:

        i. On-site composting;

        ii. Anaerobic digestion;

        iii. Pyrolyze into biochar; or

        iv. Biomass gasification.

    b. Requirements for Other Permitted and Sustainable Methods to Render Regulated Marijuana Waste Unusable and Unrecognizable. A Regulated Marijuana Business using other methods of rendering Regulated Marijuana waste unusable and Unrecognizable must comply with the requirements of this rule.

        i. A Regulated Marijuana Business may utilize on its own Licensed Premises or may Transfer Regulated Marijuana waste to another Regulated Marijuana Business for on-site composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification.

        ii. A Regulated Marijuana Business may transfer only the stalks, stems, fan leaves, and roots from Regulated Marijuana to an area outside the Licensed Premises that is under the Licensee's possession and control or to an unlicensed third-party that is registered and in good standing with the Colorado Secretary of State for composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification.

        iii. Regulated Marijuana waste that is transferred to a location under the Licensee's possession and control, to another Regulated Marijuana Business, or to a third-party pursuant to this rule is not required to comply with the 3-800 Series Rules - Inventory Tracking or the 3-1000 Series Rules - Labeling, Packaging, and Product Safety but must be recorded on the Transferring Regulated Marijuana Business' waste log.

        iv. A Regulated Marijuana Business or an unlicensed third-party providing composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification shall ensure that the organic composition of the Regulated Marijuana waste is permanently altered so that it is rendered unusable and Unrecognizable.

        v. Waste Management Plan. A Regulated Marijuana Business using on-site composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification to render Regulated Marijuana waste unusable and Unrecognizable must establish and maintain on its Licensed Premises a waste management plan that includes at least the following information: A description of the Regulated Marijuana Business's methods for on-site composting, anaerobic digestion, pyrolyzing into biochar or biomass

gasification and identification of the areas that will be used for these activities. The location of these activities may include areas used for other operational activities of the Regulated Marijuana Business or may be areas outside the Licensed Premises so long as such areas are within the Licensee's possession and control.

vi. Written Contract for Transfers to Unlicensed Third Parties. A Regulated Marijuana Business that is transferring stalks, stems, fan leaves, or roots from Regulated Marijuana to an unlicensed third-party for composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification must have a written contract with that third-party. The Regulated Marijuana Business must maintain on its Licensed Premises a copy of the written contract and copies of receipts and invoices related to such third-party services. The written contract with the third-party must document at least the following information:

A. The identity of the unlicensed third party receiving any transfer of Regulated Marijuana waste pursuant to this Rule;

B. A description of the services provided by the unlicensed third party and the agreed-upon methods for managing the Regulated Marijuana waste, including the end-use of such waste; and

C. A requirement that the third-party is registered with the Colorado Secretary of State and must remain in in good standing during the contract term.

F. Mobile Waste Rendering. A Licensee or a third party vendor may also render Regulated Marijuana waste unusable and Unrecognizable outside of the Licensed Premises, subject to the following requirements and restrictions:

1. The waste must be rendered unusable and Unrecognizable in accordance with subparagraph (E) of this Rule, and unless otherwise expressly exempt by this Rule 3-230, mobile waste rendering must occur on property under the control of the Licensee that is immediately adjacent to the Licensed Premises;

2. Unless otherwise expressly exempt by this Rule 3-230, the waste must be taken from the Licensed Premises by an Owner Licensee or Employee Licensee directly to the vehicle where the rendering will occur;

3. Unless otherwise expressly exempt by this Rule 3-230, an Owner Licensee or Employee Licensee must monitor and observe the rendering to ensure the waste is made unusable and Unrecognizable;

4. Unless otherwise expressly exempt by this Rule 3-230, the Licensee shall ensure the rendering of any Regulated Marijuana waste unusable and Unrecognizable by a third party is recorded on the Licensee's video surveillance system; and

5. Any other restrictions imposed by the Local Licensing Authority or Local Jurisdiction.

G. After Waste is Made Unusable and Unrecognizable. After Regulated Marijuana waste is made unusable and Unrecognizable, the rendered waste shall be disposed of or otherwise managed as follows:

1. Disposed of at a solid waste site and disposal facility that has a Certificate of Designation from the local governing authority; or

2. Deposited at a compost facility that is permitted or approved by the Colorado Department of Public Health and Environment; or

3. Regulated Marijuana waste that has been rendered unusable and Unrecognizable by composting, anaerobic digestion, pyrolyzing into biochar or biomass gasification and pursuant to the Licensee's waste management plan(s) may be transferred to a Regulated Marijuana Business or an unlicensed third-party for further processing or use.

4. A Regulated Marijuana Business with cultivation privileges may reintroduce its own or Regulated Marijuana waste obtained from another Regulated Marijuana Business that has been rendered unusable and Unrecognizable into its Regulated Marijuana cultivation operations subject to its standard operating procedures. For example, a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility may use such waste as a soil amendment, potting media, or fertilizer

H. Proper Disposal of Waste. A Licensee shall only dispose of Regulated Marijuana waste in a secured waste receptacle in possession and control of the Licensee.

I. Inventory Tracking Requirements.

1. In addition to all other tracking requirements set forth in these rules, a Licensee shall utilize the Inventory Tracking System to ensure its post-harvest waste and Fibrous Waste materials are identified, weighed, and tracked while on the Licensed Premises until disposed of.

2. All Regulated Marijuana waste must be weighed before leaving any Regulated Marijuana Business. A scale used to weigh Regulated Marijuana waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S. *See* Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System.

3. A Licensee is required to maintain accurate and comprehensive records regarding Regulated Marijuana waste that accounts for, reconciles, and evidences all waste activity related to the disposal of Regulated Marijuana. *See* Rule 3-905 – Business Records Required.

4. A Licensee is required to maintain accurate and comprehensive records regarding any waste material produced through the trimming or pruning of a Regulated Marijuana plant prior to harvest, which must include weighing and documenting all waste, including Fibrous Waste. Unless required by an Inventory Tracking System procedure, records of waste produced prior to harvest must be maintained on the Licensed Premises. Waste, excluding Fibrous Waste and Marijuana Consumer Waste, whether produced prior or subsequent to harvest, must be disposed of in accordance with this Rule and be made unusable and Unrecognizable. *See* Rule 3-235 – Transfers of Fibrous Waste and Rule 3-240 – Collection of Marijuana Consumer Waste.

Basis and Purpose – 3-235

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(1)(k), and 44-10-203(2)(x), C.R.S. The purpose of this rule is to establish conditions under which a Licensee is authorized to transfer Fibrous Waste to a Person for the

purpose of producing only Industrial Fiber Products. This Rule 3-235 was previously Rules M and R 307.5, 1 CCR 212-1 and 1 CCR 212-2.

3-235 – Transfers of Fibrous Waste

A. All Applicable Laws Apply. Fibrous Waste must be stored and managed in accordance with all applicable state and local statutes, regulations, ordinances, or other requirements, including but not limited to the "Regulations Pertaining to Solid Waste Sites and Facilities" (6 CCR 1007-2, Part 1) established by the Colorado Department of Public Health and Environment pursuant to the "Solid Wastes Disposal Sites and Facilities Act", Title 30, Article 20, Part 1, C.R.S. and "Regulation No. 100 – Water and Wastewater Facility Operations Certification Requirements" (5 CCR 1003-2) established by the Colorado Department of Public Health and Environment pursuant to the Title 25, Article 9, Part 1, C.R.S.

B. Regulated Marijuana Cultivation Facilities and Regulated Marijuana Manufacturers may transfer Fibrous Waste to an Industrial Fiber Products Producer in accordance with the requirements of this Rule 3-235.

C. Contract Requirements. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers that transfer Fibrous Waste to an Industrial Fiber Products Producer shall enter into a written contract prior to transferring any Fibrous Waste.

1. The written contract must be complete, and must fully incorporate all terms and conditions.

2. The written contract shall include the following terms:

    a. The identity of the Industrial Fiber Products Producer;

    b. A requirement that the Industrial Fiber Products Producer shall be and shall remain in good standing with the Colorado Secretary of State during the contract term; and

    c. A requirement that the Industrial Fiber Products Producer shall ensure the security of Fibrous Waste during transport from the Licensed Premises to the point of processing by the Industrial Fiber Products Producer.

3. The Licensee and Industrial Fiber Products Producer shall sign an affirmation that the Fibrous Waste is being transferred only for the purpose of producing Industrial Fiber Products. The affirmation may be incorporated into a purchase order, invoice, or manifest.

D. Business Records. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers that transfer Fibrous Waste to an Industrial Fiber Products Producer shall keep all contracts, receipts, and inventory records relating to the transfer of any Fibrous Waste in accordance with Rule 3-905, including but not limited to Rule 3-905(A)(2).

E. Security Measures.

1. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, and Retail Marijuana

Products Manufacturers, and Accelerator Manufacturers that transfer Fibrous Waste to an Industrial Fiber Products Producer shall comply with all security requirements pursuant to Rules 3-220 and 3-225.

2. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers preparing Fibrous Waste for transfer to an Industrial Fiber Products Producer must separate Fibrous Waste from other Regulated Marijuana plant material and waste within the Limited Access Area and on video surveillance.

3. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators Retail Marijuana Products Manufacturers, and Accelerator Manufacturers shall physically segregate all Fibrous Waste from other waste and Regulated Marijuana.

4. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers shall affix a label to all receptacles holding Fibrous Waste that has already been separated from other Regulated Marijuana plant material and waste within the Limited Access Area prior to transfer to an Industrial Fiber Products Producer. The label must identify the receptacle as “Contains Fibrous Waste.”

5. An Industrial Fiber Products Producer, or its employee or agent, must sign the visitor log, unless such individual has a valid Division-issued Employee License, to enter the Limited Access Area for any transfer of Fibrous Waste.

6. The Licensee remains responsible for all Fibrous Waste until the Industrial Fiber Products Producer takes possession and removes Fibrous Waste from the Licensed Premises.

7. The Licensee shall ensure that only Fibrous Waste and waste that has been made unusable and Unrecognizable pursuant to Rule 3-320 is transferred to the Industrial Fiber Products Producer.

F. Inventory Tracking Requirements.

1. A Licensee shall utilize the Inventory Tracking System to ensure its post-harvest Fibrous Waste materials are identified, weighed, and tracked while on the Licensed Premises until transferred.

2. A scale used to weigh Fibrous Waste prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S. *See* Rule 3-805 – Regulated Marijuana Business: Inventory Tracking System.

3. A Licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all Fibrous Waste transfers. *See* Rule 3-905 – Business Records Required.

G. Medical Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Accelerator Cultivators, Retail Marijuana Products Manufacturers and Accelerator Manufacturers shall not transfer contaminated Fibrous Waste to an Industrial Fiber Products Producer and shall handle contaminated Fibrous Waste using the same reasonable protocols used to handle waste.

H. Violation Affecting Public Safety. It may be considered a violation of public safety for a Licensee to transfer anything to an Industrial Fiber Products Producer other than in accordance with this Rule 3-235.

Basis and Purpose – 3-240

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), and 44-10-203(2)(bb), C.R.S. The purpose of this rule is to establish conditions under which Regulated Marijuana Businesses are permitted to collect Marijuana Consumer Waste for purposes of reuse and recycling.

3-240 – Collection of Marijuana Consumer Waste

A. All Applicable Laws Apply. Marijuana Consumer Waste must be stored and managed in accordance with all applicable state and local statutes, regulations, ordinances, or other requirements, including but not limited to the "Regulations Pertaining to Solid Waste Sites and Facilities" (6 CCR 1007-2, Part 1) established by the Colorado Department of Public Health and Environment pursuant to the "Solid Wastes Disposal Sites and Facilities Act", Title 30, Article 20, Part 1, C.R.S. and "Regulation No. 100 – Water and Wastewater Facility Operations Certification Requirements" (5 CCR 1003-2) established by the Colorado Department of Public Health and Environment pursuant to the Title 25, Article 9, Part 1, C.R.S.

B. Regulated Marijuana Businesses may collect, reuse, and recycle Marijuana Consumer Waste in accordance with the requirements of this Rule 3-240.

C. Collection, Separation, and Processes.

1. Collection. A Licensee must comply with the following requirements when collecting Marijuana Consumer Waste pursuant to this Rule:

a. Only Medical Marijuana Stores, Retail Marijuana Stores, and Licensed Hospitality Businesses may collect Marijuana Consumer Waste from patients and consumers. Medical Marijuana Stores, Retail Marijuana Stores, and Licensed Hospitality Businesses collecting Marijuana Consumer Waste pursuant to this Rule are not limited to collecting Marijuana Consumer Waste from patients or consumers who purchased Regulated Marijuana from the Medical Marijuana Store, Retail Marijuana Store, or Licensed Hospitality Business.

b. A Regulated Marijuana Business may collect Marijuana Consumer Waste from any of its Owner Licensees or Employee Licensees who purchased the Regulated Marijuana from the Regulated Marijuana Business, or may collect Marijuana Consumer Waste from other Regulated Marijuana Businesses pursuant to paragraph (E) of this Rule.

c. The Licensee must utilize receptacles that are locked, sealed and designed to require a key or specialized tools in order to open and access the contents of the receptacle used for collection of Marijuana Consumer Waste;

d. All receptacles used for collection of Marijuana Consumer Waste shall be located in a secured area on the Licensed Premises and shall be reasonably supervised by a Licensee to ensure any Marijuana Consumer Waste collected is only removed by a Licensee;

e. All receptacles used for collection of Marijuana Consumer Waste shall be recorded on video surveillance; and

f. All receptacles used for collection of Marijuana Consumer Waste shall be labeled. The label must at least identify the receptacle as "Contains Marijuana Consumer Waste." A Licensee may choose to include additional information on the receptacle label.

2. Separation. Regulated Marijuana Businesses collecting Marijuana Consumer Waste pursuant to this Rule must separate any electronic and battery components from the Marijuana Consumer Waste.

3. Processes. Regulated Marijuana Businesses collecting Marijuana Consumer Waste pursuant to this Rule must establish standard operating procedures that ensure at a minimum any remaining Regulated Marijuana in Marijuana Consumer Waste is removed and destroyed to the extent practicable.

D. Reuse of Marijuana Consumer Waste. Once any remaining Regulated Marijuana has been removed and destroyed pursuant to these rules, a Regulated Marijuana Business may reuse Marijuana Consumer Waste as follows and subject to the following requirements and restrictions:

1. Sanitizing. The Containers have been sanitized and disinfected either by a Regulated Marijuana Business or by a third-party to ensure that they do not contain any harmful residue or contaminants.

2. Child-Resistant Containers. Either the Containers can be reused with new child resistant packaging that complies with 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995); or if new child resistant packaging is not being used, based on a visual inspection, the existing Child-Resistant packaging appears to be in good working order and does not appear to pose a risk of unintended exposure or ingestion of Regulated Marijuana. The visual inspection must ensure such Containers are not brittle or have chips, cracks, or other imperfections that could compromise the child-resistant properties of the Container or otherwise pose a threat of harm to a patient or consumer.

E. Transfers of Marijuana Consumer Waste. Once any remaining Regulated Marijuana has been removed and destroyed pursuant to these rules, a Regulated Marijuana Business may transfer Marijuana Consumer Waste as follows:

1. A Licensee may Transfer Marijuana Consumer Waste to another Regulated Marijuana Business for purposes of further processing and recycling or for reuse pursuant to this Rule; or

2. A Licensee may transfer Marijuana Consumer Waste, excluding the electronic components and battery components, to a Person for purposes of recycling or for reuse pursuant to this Rule. To the extent required, such Person shall be registered as required by the Colorado Department of Public Health and Environment's regulations at 6 CCR 1007-2, Part 1, Section 8; or

3. A Licensee may transfer the electronic and battery components of Marijuana Consumer Waste to a Person for purposes of recycling in accordance with the Colorado Department of Public Health and Environment's regulations at 6 CCR 1007-3.

F. Business Records. Regulated Marijuana Businesses that collect and Transfer Marijuana Consumer Waste pursuant to this Rule 3-240 shall keep all contracts, standard operating procedures, and receipts relating to the collection and Transfer of any Marijuana Consumer Waste in accordance with Rule 3-905, including but not limited to Rule 3-905(A)(2).

G. Violation Affecting Public Safety. It may be considered a violation affecting public safety for a Licensee to Transfer Marijuana Consumer Waste that has remaining Regulated Marijuana and in a manner other than in accordance with this Rule 3-240.

Basis and Purpose – 3-245

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(dd)(XIII), 44-10-609(1), 44-10-610(1), and 44-10-301(3)(b) C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(f). The purpose of this rule is to establish hours of operation requirements for Regulated Marijuana Businesses. The State Licensing Authority modeled this rule after the Colorado Department of Revenue's liquor rules. This Rule 3-245 was previously Rules M and R 308, 1 CCR 212-1 and 1 CCR 212-2.

3-245 – Selling and Serving Regulated Marijuana – Hours of Operation

A. Hours of Operation.

1. Medical Marijuana Stores and Retail Marijuana Stores shall not sell or serve Regulated Marijuana between the hours of 12:00 a.m. and 8:00 a.m., Mountain Time, Monday through Sunday.

2. Retail Marijuana Hospitality and Sales Businesses shall not sell Retail Marijuana or permit the consumption or use of Retail Marijuana on its Licensed Premises, between the hours of 2:00 a.m. and 7:00 a.m., Mountain Time, Monday through Sunday.

3. Marijuana Hospitality Businesses shall not permit the consumption or use of marijuana on its Licensed Premises, between the hours of 2:00 a.m. and 7:00 a.m., Mountain Time, Monday through Sunday.

4. Regulated Marijuana Businesses with a valid delivery permit shall not make or complete deliveries of Regulated Marijuana at any time between the hours of 12:00 a.m. and 8:00 a.m., Mountain Time, Monday through Sunday. Regulated Marijuana Businesses with a valid delivery permit may accept orders for delivery 24 hours a day, Monday through Sunday.

B. Local Jurisdictions May Further Restrict Hours. Nothing in this Rule shall prohibit a Local Jurisdiction from further restricting hours of operation within its jurisdiction.

3-300 Series – Health and Safety Regulations

Basis and Purpose – 3-305

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(3)(f), and 44-10-1001(2), C.R.S. The purpose of this rule is to clarify the conditions under which a Regulated Marijuana Business may be subject to an inspection of its Licensed Premises by a county or municipal employee, specifically but not exclusively a fire safety inspection.

3-305 – Local Safety Inspections

A Regulated Marijuana Businesses may be subject to inspection of its Licensed Premises by the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present. The inspection could result in additional specific standards to meet Local Jurisdiction restrictions related to Regulated Marijuana or other local businesses. An annual fire safety inspection may result in the required installation of fire suppression devices, or other means necessary for adequate fire safety

Basis and Purpose – 3-310

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(h), and 44-10-203(2)(i), C.R.S. The purpose of this rule is to clarify the minimum health and sanitary conditions under which a Regulated Marijuana Business must maintain its Licensed Premises.

3-310 – General Sanitary Requirements

A. The Licensee shall take all reasonable measures and precautions to ensure the following:

1. That any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Regulated Marijuana shall be excluded from any operations which may be expected to result in contamination until the condition is corrected;

2. That hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Licensed Premises and where good sanitary practices require employees to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;

3. That all persons working in direct contact with Regulated Marijuana shall conform to hygienic practices while on duty, including but not limited to:

    a. Maintaining adequate personal cleanliness;

    b. Washing hands thoroughly in an adequate hand-washing area(s) before starting work, prior to engaging in the production of Regulated Marijuana Product, and at any other time when the hands may have become soiled or contaminated; and

    c. Refraining from having direct contact with Regulated Marijuana if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until such condition is corrected.

4. That litter and waste are properly removed and the operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where Regulated Marijuana are exposed;

5. That floors, walls, and ceilings are constructed in such a manner that they may be adequately cleaned, and each is kept clean and in good repair;

6. That there is adequate lighting in all areas where Regulated Marijuana is stored or sold, and where equipment or utensils are cleaned;

7. That the Licensee provides adequate screening or other protection against the entry of pests. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;

8. That any buildings, fixtures, and other facilities are maintained in a sanitary condition, including but not limited to the prevention of microorganism growth;

9. That toxic cleaning compounds, sanitizing agents, and other chemicals shall be identified, held, stored and disposed of in a manner that protects against contamination of Regulated Marijuana and in a manner that is in accordance with any applicable local, state or federal law, rule, regulation, or ordinance;

10. That all operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Regulated Marijuana shall be conducted in accordance with adequate sanitation principles;

11. That each Regulated Marijuana Business provides its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

12. That Regulated Marijuana that can support the rapid growth of undesirable microorganisms are held in a manner that prevents the growth of these microorganisms.

Basis and Purpose – 3-315

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(g), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), and 44-10-1001(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). It sets forth general standards and basic sanitary requirements for Retail Marijuana Stores. It covers the physical premises where the products are made as well as the individuals handling the products. This rule authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Regulated Marijuana Business. The purpose of this rule is to establish the conditions under an independent health and safety audit may be required. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Regulated Marijuana Businesses refusal to cooperate or pay for the audit. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department Revenue for Medical Marijuana and those adopted by the Colorado Department of Public Health and Environment. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

3-315 – Independent Health and Safety Audit

A. State Licensing Authority May Require A Health and Sanitary Audit.

1. When the State Licensing Authority determines a health and sanitary audit by an independent consultant is necessary, it may require a Regulated Marijuana Business to undergo such an audit. The scope of the audit may include, but need not be limited, to whether the Regulated Marijuana Business is in compliance with the requirements set forth in this Rule and other applicable health, sanitary, or food handling laws, rules, and regulations.

2. In such instances, the Division may attempt to mutually agree upon the selection of the independent consultant with a Regulated Marijuana Business. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

3. The Regulated Marijuana Business will be responsible for all costs associated with the independent health and sanitary audit.

B. When Independent Health and Sanitary Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent consultant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:

1. The Division has reasonable grounds to believe that the Regulated Marijuana Business is in violation of one or more of the requirements set forth in this Rule or other applicable public health or sanitary laws, rules, or regulations;

2. The Division has reasonable grounds to believe that the Regulated Marijuana Business was the cause or source of contamination of Regulated Marijuana;

3. A Regulated Marijuana Cultivation Facility does not provide requested records related to the use of Pesticide or other agricultural chemicals used in the cultivation process;

4. Multiple Harvest Batches or Production Batches produced by a Regulated Marijuana Cultivation Facility failed contaminant testing;

5. A Regulated Marijuana Products Manufacturer does not provide requested records related to the production of Regulated Marijuana Products, including but not limited to, certification of its Licensed Premises, equipment or standard operating procedures, food handling training required for Owner Licensees and Employee Licensees engaged in the production of Regulated Marijuana Products, or Production Batch specific records to the Division;

6. Multiple Production Batches of Regulated Marijuana Products produced by the Regulated Marijuana Products Manufacturer failed contaminant testing.

C. Compliance Required. A Regulated Marijuana Business must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent health and sanitary audit in accordance with this Rule.

D. Suspension of Operations.

1. If the State Licensing Authority has objective and reasonable grounds to believe and finds upon reasonable ascertainment of the underlying facts that the Licensee committed a deliberate and willful violation or there is a substantial danger to public health and safety and incorporates such findings into its order, it may order summary suspension of the Regulated Marijuana Business's license. *See* Rule 8-210 – Disciplinary Process: Summary Suspensions.

2. Prior to or following the issuance of such an order, the Regulated Marijuana Business may attempt to come to a mutual agreement with the Division to suspend its operations until the completion of the independent audit and the implementation of any required remedial measures.

a. If an agreement cannot be reached or the State Licensing Authority, in its sole discretion, determines that such an agreement is not in the best interests of the public health, safety, or welfare, then the State Licensing Authority will promptly institute license suspension or revocation procedures. *See* Rule 8-210 – Disciplinary Process: Summary Suspensions.

b. If an agreement to suspend operations is reached, then the Regulated Marijuana Business may continue to care for its inventory and conduct any necessary internal business operations, but it may not Transfer any Regulated Marijuana or

Regulated Marijuana Product to another Regulated Marijuana Business, a patient, or a consumer during the period of time specified in the agreement

Basis and Purpose – 3-320

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(dd)(X), and 44-10-203(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). This rule prohibits a Regulated Marijuana Business from Transferring any contaminated Regulated Marijuana or Regulated Marijuana Product to any Person or another Regulated Marijuana Business.

3-320 – Contaminated Product

A Regulated Marijuana Business shall not accept or Transfer to any Person any Regulated Marijuana that has failed required testing pursuant to Rule 4-120 or Rule 4-125, unless otherwise permitted in these rules. *See* Rule 4-135. If, despite the prohibitions in these rules, another Regulated Marijuana Business Transfers any Regulated Marijuana that has failed or subsequently fails required testing pursuant to Rule 4-120 or Rule 4-125, the receiving Regulated Marijuana Business shall ensure that all Regulated Marijuana that failed required testing are safely disposed of in accordance with Rule 3-230.

Basis and Purpose – 3-325

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(dd)(X), and 44-10-203(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to clarify that a Regulated Marijuana Business engaged in the cultivation of Regulated Marijuana is prohibited from using certain chemicals or pesticides that may cause harm to employees or consumers.

3-325 – Prohibited Chemicals

A. Applicability. This Rule 3-325 applies to Medical Marijuana Cultivation Facilities, Retail Marijuana Cultivation Facilities, Accelerator Cultivator and Marijuana Research and Development Licensees.

B. The following chemicals are prohibited and shall not be used in Regulated Marijuana cultivation. Possession of chemicals and/or containers from these chemicals upon the Licensed Premises shall be a violation of this Rule. Additionally, possession of Regulated Marijuana or Regulated Marijuana Concentrate on which any of the following chemicals is detected shall constitute a violation of this Rule.

1. Any Pesticide the use of which would constitute a violation of the Pesticide Act, section 35-9-101 *et seq*., C.R.S., the Pesticide Applicators' Act, section 35-10-101 et seq., C.R.S., or the rules and regulations pursuant thereto.

2. Other chemicals (listed by chemical name and CAS Registry Number (or EDF Substance ID)):

ALDRIN

309-00-2

ARSENIC OXIDE (3)

1327-53-3

ASBESTOS (FRIABLE)

1332-21-4

AZODRIN

6923-22-4

1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO-

118-75-2

BINAPACRYL

485-31-4

2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL

126-15-8

BROMOXYNIL BUTYRATE

EDF-186

CADMIUM COMPOUNDS

CAE750

CALCIUM ARSENATE [2ASH3O4.2CA]

7778-44-1

CAMPHECHLOR

8001-35-2

CAPTAFOL

2425-06-1

CARBOFURAN

1563-66-2

CARBON TETRACHLORIDE

56-23-5

CHLORDANE

57-74-9

CHLORDECONE (KEPONE)

143-50-0

CHLORDIMEFORM

6164-98-3

CHLOROBENZILATE

510-15-6

CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF-

183

COPPER ARSENATE

10103-61-4

2,4-D, ISOOCTYL ESTER

25168-26-7

DAMINOZIDE

1596-84-5

DDD

72-54-8

DDT

50-29-3

DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF-

187

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

96-12-8

1,2-DIBROMOETHANE

106-93-4

1,2-DICHLOROETHANE

107-06-2

DIELDRIN

60-57-1

4,6-DINITRO-O-CRESOL

534-52-1

DINITROBUTYL PHENOL

88-85-7

ENDRIN

72-20-8

EPN

2104-64-5

ETHYLENE OXIDE

75-21-8

FLUOROACETAMIDE

640-19-7

GAMMA-LINDANE

58-89-9

HEPTACHLOR

76-44-8

HEXACHLOROBENZENE

118-74-1

1,2,3,4,5,6-HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)

608-73-1

1,3-HEXANEDIOL, 2-ETHYL-

94-96-2

LEAD ARSENATE

7784-40-9

LEPTOPHOS

21609-90-5

MERCURY

7439-97-6

METHAMIDOPHOS

10265-92-6

METHYL PARATHION

298-00-0

MEVINPHOS

7786-34-7

MIREX

2385-85-5

NITROFEN

1836-75-5

OCTAMETHYLDIPHOSPHORAMIDE

152-16-9

PARATHION

56-38-2

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES (STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS

EDF-184

2,4,5-TRICHLOROPHENOL

95-95-4

VINYL CHLORIDE

75-01-4

C. DMSO. Except for R&D Licensees, the use of Dimethylsulfoxide (DMSO) in the production of Regulated Marijuana and the possession of DMSO upon the Licensed Premises is prohibited.

Basis and Purpose – 3-330

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(3)(c), 44-10-203(3)(e), and 44-10-1001, C.R.S. The purpose of this rule is to clarify the minimum health and safety requirements imposed on a Medical or Retail Marijuana Cultivation Facility. The State Licensing Authority has determined the cultivation of Medical or Retail Marijuana requires the application of processes and procedures, and the use of materials, chemicals, and pesticides which, if improperly used, may be potentially harmful to employees and consumers. Therefore, the cultivation of Medical or Retail Marijuana must be performed in a manner that reduces the likelihood of exposure to such materials, chemicals and pesticides, or other microbials or molds. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department Revenue for Medical Marijuana and those adopted by the Colorado Department of Public Health and Environment. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.

3-330 – Cultivation of Regulated Marijuana: Specific Health and Safety Requirements

A. Additional Sanitary Requirements. In addition to the general sanitary requirements in Rule 3-310, a Regulated Marijuana Cultivation Facility shall take all reasonable measure and precautions to ensure the following:

1. That all contact surfaces, including utensils and equipment used for the preparation of Regulated Marijuana, Physical Separation-Based Medical Marijuana Concentrate, or Physical Separation-Based Retail Marijuana Concentrate, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of

such material and workmanship as to be adequately cleanable and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used in a Regulated Marijuana Cultivation Facility;

2. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises' needs. Reclaimed water may also be used only for the cultivation of Regulated Marijuana to the extent authorized under the Reclaimed Water Control Regulations (5 CCR 1002-84), and subject to approval of the Water Quality Control Division of the Colorado Department of Public Health and Environment and the local water provider;

3. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable water, reclaimed water, and waste water lines; and

4. That any room used for the cultivation of Regulated Marijuana has measures to prevent the accumulation of dangerous levels of CO_2.

B. Pesticide Application. A Regulated Marijuana Cultivation Facility may only use Pesticide in accordance with the "Pesticide Act" sections 35-9-101 et seq., C.R.S., the "Pesticides Applicators' Act," sections 35-10-101 et seq., C.R.S., and all other applicable federal, state, and local laws, statutes, rules and regulations. This includes, but shall not be limited to, the prohibition on detaching, altering, defacing or destroying, in whole or in part, any label on any Pesticide. The Colorado Department of Agriculture's determination that the Licensee used any quantity of a Pesticide that would constitute a violation of the Pesticide Act or the Pesticide Applicators' Act shall constitute prima facie evidence of a violation of this Rule.

C. Application of Other Agricultural Chemicals. A Regulated Marijuana Cultivation Facility may only use agricultural chemicals, other than a Pesticide, in accordance with all applicable federal, state, and local laws, statutes, rules, and regulations.

D. Required Documentation.

1. Standard Operating Procedures. A Regulated Marijuana Cultivation Facility must establish written standard operating procedures for the cultivation, harvesting, drying, curing, trimming, packaging, storing, and sampling for testing of Regulated Marijuana, and the processing, packaging, storing, and sampling for testing of Regulated Marijuana Concentrate, and the processing, rolling, filling or similar process, packaging, storing and sampling for testing of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana made from Physical Separation-Based Concentrate. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Regulated Marijuana Cultivation Facility.

   a. The standard operating procedures must include when, and the manner in which, all Pesticide and other agricultural chemicals are to be applied during its cultivation process.

   b. The standard operating procedures must also include any methods and processes related to Decontamination of Harvest Batches.

c. If a Regulated Marijuana Cultivation Facility produces Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana made from Physical Separation-Based Concentrate, the standard operating procedures must include all methods and processes related to the creation of each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana product, including but not limited to, the strains used, where strains are sourced, which parts of Harvest Batches are used (e.g. flower, shake, trim), the size of the product (e.g. 1 gram pre-rolls), and how much and what type of Regulated Marijuana Concentrate is added (if applicable) for each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana it produces.

d. Provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

2. Material Change. If a Regulated Marijuana Cultivation Facility makes a Material Change to its cultivation procedures, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the relevant Licensed Premises.

3. Safety Data Sheet. A Regulated Marijuana Cultivation Facility must obtain a safety data sheet for any Pesticide or other agricultural chemical used or stored on its Licensed Premises. A Regulated Marijuana Cultivation Facility must maintain a current copy of the safety data sheet for any Pesticide or other agricultural chemical on the Licensed Premises where the product is used or stored.

4. Labels of Pesticide and Other Agricultural Chemicals. A Regulated Marijuana Cultivation Facility must have the original label or a copy thereof at its Licensed Premises for all Pesticide and other agricultural chemicals used during its cultivation process.

5. Pesticide Application Documentation. A Regulated Marijuana Cultivation Facility that applies any Pesticide or other agricultural chemical to any portion of a Regulated Marijuana plant, water, or feed used during cultivation or generally within the Licensed Premises must document, and maintain a record on its Licensed Premises of, the following information:

a. The name, signature, and Employee License number of the individual who applied the Pesticide or other agricultural chemical;

b. Applicator certification number if the applicator is licensed through the Department of Agriculture in accordance with the “Pesticides Applicators’ Act,” sections 35-10-101 et seq., C.R.S.;

c. The date and time of the application;

d. The EPA registration number of the Pesticide or CAS number of any other agricultural chemical(s) applied;

e. Any of the active ingredients of the Pesticide or other agricultural chemical(s) applied;

f. Brand name and product name of the Pesticide or other agricultural chemical(s) applied;

g. The restricted entry interval from the product label of any Pesticide or other agricultural chemical(s) applied;

h. The RFID tag number of the Regulated Marijuana plant(s) that the Pesticide or other agricultural chemical(s) was applied to or if applied to all plants, a statement to that effect; and

i. The total amount of each Pesticide or other agricultural chemical applied.

E. Adulterants. A Regulated Marijuana Cultivation Facility may not treat or otherwise adulterate Regulated Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight, or smell.

Basis and Purpose – 3-335

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-202(2)(y), 44-10-203(3)(b), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-203(3)(g), and 44-10-1001, C.R.S. The State Licensing Authority has determined the manufacturing of Medical or Retail Marijuana Infused Products involves the application of processes and procedures, materials, chemicals, and additives, which, if improperly applied, may cause harm to employees and consumers. Therefore, the purpose of this Rule is to clarify the minimum and specific health and safety requirements imposed on a Medical or Retail Marijuana Products Manufacturing Facility. This Rule clarifies which Edible Medical or Retail Marijuana Products, due to their specific composition, are *per se* practicable to mark with the Universal Symbol but exempts certain Liquid Products from the Universal Symbol requirements. Additionally, the Rule imposes manufacturing and production requirements (e.g. prohibiting products from being shaped like fruit or humans), identifies the standard THC portion, prohibits licensees from using commercial food products to remanufacture Medical or Retail Marijuana Products, and prohibits the use of toxic additives.

3-335 – Production of Regulated Marijuana Concentrate and Regulated Marijuana Products: Specific Health and Safety Requirements

A. Training.

1. Prior to engaging in the manufacture of any Edible Medical Marijuana Product or Edible Retail Marijuana Product each Owner Licensee or Employee Licensee must:

a. Have a currently valid ServSafe Food Handler Certificate obtained through the successful completion of an online assessment or print exam; or

b. Take a food safety course that includes basic food handling training and is comparable to, or is a course given by, the Colorado State University extension service or a state, county, or district public health agency, and must maintain a status of good standing in accordance with the course requirements, including attending any additional classes if necessary. Any course taken pursuant to this rule must last at least two hours and cover the following subjects:

i. Causes of foodborne illness, highly susceptible populations and worker illness;

ii. Personal hygiene and food handling practices;

iii. Approved sources of food;

iv. Potentially hazardous foods and food temperatures;

v. Sanitization and chemical use; and

vi. Emergency procedures (fire, flood, sewer backup).

2. A Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer must obtain documentation evidencing that each Owner Licensee or Employee Licensee has successfully completed the examination or course required by this Rule and is in good standing. A copy of the documentation must be kept on file at any Licensed Premises where that Owner Licensee or Employee Licensee is engaged in the manufacturing of an Edible Medical Marijuana Product or Edible Retail Marijuana Product.

B. Other State and Local Health and Safety Standards Apply. A Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer that manufactures Edible Medical Marijuana Products or Edible Retail Marijuana Products shall comply with all kitchen-related health and safety standards of the relevant Local Licensing Authority or Local Jurisdiction and, to the extent applicable, with all Colorado Department of Public Health and Environment health and safety regulations applicable to retail food establishments, as set forth in 6 CCR 1010-2.

C. Additional Sanitary Requirements. A Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer shall take all reasonable measures and precautions to ensure the following:

1. That there is sufficient space for placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations for production of Regulated Marijuana or Regulated Marijuana Products;

2. That all contact surfaces, including utensils and equipment used for the preparation of Regulated Marijuana or Regulated Marijuana Product, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable and shall be properly maintained. Only sanitizers and disinfectants registered with the Environmental Protection Agency shall be used by a Medical Marijuana Products Manufacturer, an Accelerator Manufacturer, or Retail Marijuana Products Manufacturer, and used in accordance with labeled instructions;

3. That the water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the Licensed Premises needs;

4. That plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water to required locations throughout the plant and that shall properly convey sewage and liquid disposable waste from the Licensed Premises. There shall be no cross-connections between the potable and waste water lines; and

5. That storage and transport of finished Regulated Marijuana Product shall be under conditions that will protect products against physical, chemical, and microbial contamination as well as against deterioration of any Container.

D. Product Safety.

1. A Regulated Marijuana Products Manufacturer that manufactures Edible Regulated Marijuana Product shall create and maintain standard production procedures and detailed manufacturing processes for each Edible Medical Marijuana Product or Edible Retail Marijuana Product it manufactures. These procedures and processes must be documented and made available on the Licensed Premises for inspection by the Division, the Colorado Department of Public Health & Environment, and local licensing authorities.

2. Universal Symbol Marking Requirements.

    a. The following categories of Edible Medical Marijuana Products and Edible Retail Marijuana Products are considered to be per se practicable to mark, and shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on the Regulated Marijuana Product:

        i. Chocolate;

        ii. Soft confections;

        iii. Hard confections or lozenges;

        iv. Consolidated baked goods (e.g. cookie, brownie, cupcake, granola bar);

        v. Pressed pills and capsules.

    b. The Universal Symbol marking shall:

        i. Be marked, stamped, or otherwise imprinted in its entirety on at least one side of the Edible Medical Marijuana Product or Edible Retail Marijuana Product. The shape of the product shall not be included or take place of any part of the Universal Symbol;

        ii. Be centered either horizontally or vertically on the Edible Medical Marijuana Product or Edible Retail Marijuana Product;

        iii. If centered horizontally on the Edible Medical Marijuana Product or Edible Retail Marijuana Product, the height and width of the Universal Symbol shall be of a size that is at least 25% of the product's height, but not less than ¼ inch by ¼ inch.

        iv. If centered vertically on the Edible Medical Marijuana Product or Edible Retail Marijuana Product, the height and width of the Universal Symbol shall be of a size that is at least 25% of the product's height, but not less than ¼ inch by ¼ inch.

    c. The following categories of Edible Medical Marijuana Product and Edible Retail Marijuana Product are considered to be per se impracticable to mark with the Universal Symbol marking requirements, provided that they comply with labeling and Container requirements of 3-1000 Series Rules.

        i. Loose bulk goods (e.g. granola, cereals, popcorn);

        ii. Powders;

        iii. Liquid Edible Medical Marijuana Products;

iv. Liquid Edible Retail Marijuana Products.

3. Medical Marijuana Products Manufacturer Specific Requirements.

a. Standard Portion of THC. A Medical Marijuana Products Manufacturer may determine a standard portion of THC for each Edible Medical Marijuana Product it manufactures. If a Medical Marijuana Products Manufacturer determines a standard portion for an Edible Medical Marijuana Product, that information must be documented in the product's standard production procedure.

b. Documentation. For each Edible Medical Marijuana Product, the total amount of active THC contained within the product must be documented in the standard production procedures.

c. If a Medical Marijuana Products Manufacturer elects to determine standard portions for an Edible Medical Marijuana Product, then the Universal Symbol shall be applied to each portion in accordance with the requirements of subparagraph (D)(2)(b) of this Rule 3-335. Except that the size of the Universal Symbol marking shall be determined by the size of the portion instead of the overall product size and shall not be less than ¼ inch by ¼ inch.

d. Medical Marijuana Concentrate Recommended Serving Size and Visual Representation.

i. The recommended serving size for Medical Marijuana Concentrate in Vaporized Delivery Devices should not exceed one (1) inhalation lasting two (2) seconds per serving.

ii. The recommended serving size for Medical Marijuana Concentrate intended to be inhaled in any manner other than a Vaporizer Delivery Device is a sphere identified in the tangible educational resource required to be provided to a patient pursuant to Rule 5-125(D) and Rule 5-115(C.5).

4. Retail Marijuana Products Manufacturer Specific Requirements.

a. Standardized Serving of Marijuana. The size of a Standardized Serving of Marijuana shall be no more than 10mg of active THC. A Retail Marijuana Products Manufacturer or an Accelerator Manufacturer that manufactures Edible Retail Marijuana Product shall determine the total number of Standardized Servings of Marijuana for each product that it manufactures. No individual Edible Retail Marijuana Product unit packaged for Transfer to a consumer shall contain more than 100 milligrams of active THC.

b. Documentation. The following information must be documented in the standard production procedures for each Edible Retail Marijuana Product: the amount in milligrams of Standardized Serving of Marijuana, the total number of Standardized Servings of Marijuana, and the total amount of active THC contained within the product.

c. Notwithstanding the requirement of subparagraph (D)(2)(b), an Edible Retail Marijuana Product shall contain no more than 10 mg of active THC per Container and the Retail Marijuana Products Manufacturer or an Accelerator Manufacturer must ensure that the product is packaged in accordance with the Rules 3-1005(C)(1) and 1010(D)(1), when:

i. The Edible Retail Marijuana Product is of the type that is impracticable to mark, stamp, or otherwise imprint with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable; or

ii. The Edible Retail Marijuana Product is of the type that is impracticable to clearly demark each Standardized Serving of Marijuana or to make each Standardized Serving of Marijuana separable.

d. Liquid Edible Retail Marijuana Product.

i. Pursuant to 44-10-603(4)(b), C.R.S., Liquid Edible Retail Marijuana Products are impracticable to mark with the Universal Symbol and are exempt from the provision in subparagraph (D)(4)(c) of this Rule 3-335 that requires Edible Retail Marijuana Products that are impracticable to mark with the Universal Symbol to contain 10mg or less active THC per Container.

ii. This exemption permits the manufacture and Transfer of Multi-Serving Liquid Edible Retail Marijuana Products so long as the product is packaged in accordance with Rules 3-1005(C)(1) and 3-1010(D)(1)(c)(ii).

e. Multiple-Serving Edible Retail Marijuana Product.

i. A Retail Marijuana Products Manufacturer or an Accelerator Manufacturer must ensure that each single Standardized Serving of Marijuana of a Multiple-Serving Edible Retail Marijuana Product is physically demarked in a way that enables a reasonable person to intuitively determine how much of the product constitutes a single serving of active THC.

ii. Each demarked Standardized Serving of Marijuana must be easily separable in order to allow an average person 21 years of age and over to physically separate, with minimal effort, individual servings of the product.

iii. Each single Standardized Serving of Marijuana contained in a Multiple-Serving Edible Retail Marijuana Product shall be marked, stamped, or otherwise imprinted with the Universal Symbol directly on the product in a manner to cause the Universal Symbol to be distinguishable and easily recognizable. The Universal Symbol marking shall comply with the requirements of subparagraph (D)(2)(b) of this Rule 3-335.

iv. A Multiple-Serving Edible Retail Marijuana Product that is a Liquid Edible Retail Marijuana Product shall comply with the requirements in subparagraph (D)(4)(d)(ii) of this Rule 3-335 and is exempt from subparagraphs (i)-(iii) of this subparagraph (D)(4)(e)(iv).

f. Retail Marijuana Concentrate Recommended Serving Size and Visual Representation.

i. The recommended serving size for Retail Marijuana Concentrate in Vaporized Delivery Devices should not exceed one (1) inhalation lasting two (2) seconds per serving.

ii. The recommended serving size for Retail Marijuana Concentrate intended to be inhaled in any manner other than a Vaporizer Delivery Device is a sphere identified in the tangible educational resource required to be provided to a patient pursuant to Rule 6-110(C.5) and Rule 6-1110(C.5).

E. Remanufactured Products Prohibited. A Regulated Marijuana Products Manufacturer shall not utilize a commercially manufactured food product as its Edible Medical Marijuana Product or Edible Retail Marijuana Product. The following exceptions to this prohibition apply:

1. A food product that was commercially manufactured specifically for use by a Regulated Marijuana Products Manufacturer to infuse with Regulated Marijuana shall be allowed. The Licensee shall have a written agreement with the commercial food product manufacturer that declares the food product's exclusive use by the Regulated Marijuana Products Manufacturer.

2. Commercially manufactured food products may be used as Ingredients in an Edible Medical Marijuana Product or Edible Retail Marijuana Product so long as: (1) they are used in a way that renders them unrecognizable as the commercial food product in the final Edible Medical Marijuana Product or Edible Retail Marijuana Product, and (2) the Regulated Marijuana Products Manufacturer does not state or advertise to the consumer that the final Edible Medical Marijuana Product or Edible Retail Marijuana Product contains the commercially manufactured food product.

F. Trademarked Food Products. Nothing in this Rule alters or eliminates a Regulated Marijuana Products Manufacturer's responsibility to comply with the trademarked food product provisions required by the Marijuana Code per section 44-10-503(9)(a-c), C.R.S.

G. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The production, Transfer, and donation of Edible Medical Marijuana Products or Edible Retail Marijuana Products in the following shapes is prohibited:

i. The distinct shape of a human, animal, or fruit; or

ii. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Regulated Marijuana Business. Nothing in this subparagraph (G)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Medical Marijuana Products and Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Medical Marijuana Products and Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

H. Inactive Ingredients.

1. Only non-cannabis derived inactive Ingredients listed in the Federal Food and Drug Administration Inactive Ingredient Database

https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, or approved by another equivalent international government agency, may be used in the manufacture of Audited Product and Regulated Marijuana Concentrate intended for use through a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

2. All non-cannabis derived inactive Ingredients contained in any Audited Product or in any Regulated Marijuana Concentrate intended for use through a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler must be less than or equal to the concentration listed in the Federal Food and Drug Administration Inactive Ingredient Database, or approved by another equivalent international government agency for:

    a. The inhalation route of administration for any Audited Product to be used in a metered dose nasal spray, or any Regulated Marijuana Concentrate to be used in a Vaporizer Delivery Device or pressurized metered dose inhaler;

    b. The vaginal route of administration for any Audited Product to be used for vaginal administration; or

    c. The rectal route of administration for any Audited Product to be used for rectal administration.

I. Other Permitted Ingredients. Nothing in paragraph H above prohibits a Regulated Marijuana Products Manufacturer from using marijuana-derived ingredients or Botanically Derived Compounds and/or terpenoids.

J. Additives. A Regulated Marijuana Products Manufacturer shall not include any Additive that is toxic within a Regulated Marijuana Product; nor include any Additive for the purposes of making the product more addictive, appealing to children, or misleading to patients or consumers.

K. Prohibited Ingredients. A Regulated Marijuana Products Manufacturer shall not use the following Ingredients in the production or Transfer of Regulated Marijuana Concentrate and Regulated Marijuana Product for which the inhaled product is the intended use in accordance with Rule 3-1015:

1. Polyethylene glycol (PEG);

2. Vitamin E Acetate;

3. Medium Chain Triglycerides (MCT Oil);

4. A Licensee authorized to manufacture Regulated Marijuana Concentrate or Regulated Marijuana Product shall not use ingredients, other than Regulated Marijuana, with over 0.3% combined D8-THC, D9-THC, D10-THC, Exo-THC or other THC isomers, salts, or salt isomers of tetrahydrocannabinol in the manufacture, production, or Transfer of Regulated Marijuana Concentrate or Regulated Marijuana Product.

L. Standard Operating Procedures.

1. A Regulated Marijuana Products Manufacturer must have written standard operating procedures for each category and type of Medical Marijuana Product or Retail Marijuana Product that it produces.

    a. All standard operating procedures for the production of a Medical Marijuana Concentrate or Retail Marijuana Concentrate must follow the requirements in Rules 5-315 and 6-315.

b. A copy of all standard operating procedures must be maintained on the Licensed Premises of the Regulated Marijuana Products Manufacturer.

c. If a Regulated Marijuana Products Manufacturer produces Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana, the standard operating procedures must include all methods and processes related to the creation of each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana product, including but not limited to, the strains used, where strains are sourced, which parts of Harvest Batches are used (e.g. flower, shake, trim), the size of the product (e.g. 1 gram pre-rolls), and how much and what type of Regulated Marijuana Concentrate is added (if applicable) for each type of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana it produces.

d. Provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

2. If a Regulated Marijuana Products Manufacturer makes a Material Change to its standard Medical Marijuana Product production process or Retail Marijuana Product production process, it must document the change and revise its standard operating procedures accordingly. Records detailing the Material Change must be maintained on the relevant Licensed Premises.

M. Expiration Date for Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers. Effective July 1, 2022, a Regulated Marijuana Products Manufacturer that produces a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler shall establish an expiration date upon which the Vaporized Delivery Device or Pressurized Metered Dose Inhaler will no longer be fit for consumption. The Licensee shall determine the expiration date by conducting potency and contaminant testing pursuant to Rules 4-120 and 4-125 on the final Vaporizer Delivery Device or Pressurized Metered Dose Inhaler prior to Transfer to ensure the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler can pass potency and contaminant testing prior to the established expiration date.

1. When determining the expiration date for a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler pursuant to this rule, the Licensee shall also consider the following:

i. Any expiration dates of additives used to produce the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler;

ii. The interaction with hardware;

iii. The final formulation within the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler; and

iv. The ideal storage conditions for the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

2. The License may, but is not required to, use accelerated stability tests to demonstrate compliance with this rule.

3. Expiration date determinations, along with any data used to establish the expiration date, shall be documented and maintained in the Licensee's business records pursuant to these rules.

N. DMSO. Except for R&D Licensees, the use of Dimethylsulfoxide (DMSO) in the production of Regulated Marijuana Product and possession of DMSO upon the Licensed Premises is prohibited.

Basis and Purpose – 3-336

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(b)-(c), 44-10-203(1)(k), 44-10-203(2)(d)(l)-(VI), 44-10-203(2)(m), 44-10-401(2)(a)(III), 44-10-503, and 44-10-901(1), C.R.S. The purpose of this rule is to establish minimum requirements for a recall plan, the process by which the Division or a Regulated Marijuana Business initiates a product recall, the requirements any recall must meet, and how such recall is terminated.

3-336 – Recall of Regulated Marijuana

A. Effective Date. This Rule is effective January 1, 2021.

B. Applicability. This Rule 3-336 applies to Medical Marijuana Stores, Medical Marijuana Products Manufacturers, Medical Marijuana Cultivation Facilities, Medical Marijuana Research and Development Facilities, Retail Marijuana Stores, Retail Marijuana Products Manufacturers, Retail Marijuana Cultivation Facilities, Licensed Hospitality Businesses, Accelerator Cultivators, Accelerator Manufacturers, and Accelerator Stores.

C. Initiating a Recall. A Regulated Marijuana Business subject to this Rule 3-336 may voluntarily initiate a recall at any time or a recall may be initiated at the request of the Division. A Regulated Marijuana Business subject to this rule must comply with the requirements of this Rule 3-336.

1. Division Requests for Recalls:

i. If the Division requests a Regulated Marijuana Business to initiate a recall pursuant to this rule, the Division's correspondence, which may be electronic, must include the reasons for the recall request and any other information necessary for the Regulated Marijuana Business to initiate a recall pursuant to this rule.

ii. A recall request issued by the Division does not require that a Regulated Marijuana Business initiate a recall. However, if the Division has reasonable grounds to believe a Licensee's Regulated Marijuana is contaminated or otherwise presents a risk to public safety, the Division may require a Regulated Marijuana Business to quarantine affected Regulated Marijuana Inventory pursuant to Rules 4-115 and 4-135.

D. Recall Plan Required. A Regulated Marijuana Business subject to this Rule 3-336 must have a written recall plan. A recall plan shall include, but is not limited to the following:

1. Evaluation of a Complaint or Condition. A Regulated Marijuana Business subject to this rule must maintain a record of all complaints it receives regarding the quality of Regulated Marijuana that has any potential negative impact to health or regarding an adverse reaction. To the extent known after reasonable diligence to ascertain the information, the record must contain the name of the complainant, the purchase date, the location of where the product was purchased, the date the complaint was received, the nature of the complaint, the steps taken to investigate the complaint, the response to the

complaint, and the name and Production or Harvest Batch number for the Regulated Marijuana subject to the complaint.

a. If an initial assessment indicates a recall may be necessary, the Regulated Marijuana Business shall take the following measures:

i. Determine the hazard and evaluate the safety concerns with the product;

ii. Undertake necessary product quarantine measures for any affected Regulated Marijuana in the Licensee's possession or control; and

iii. Determine the product removal strategy appropriate to the threat and location in commerce.

2. Identification of Affected Regulated Marijuana. A recall plan must establish a process for identifying affected Regulated Marijuana subject to a recall, which shall include the following:

a. Distribution List. When identifying Regulated Marijuana subject to a recall, the Licensee shall create a distribution list that includes the following information:

i. The name, license number, and address of the Regulated Marijuana Business(es) that received the Regulated Marijuana subject to the recall;

ii. Ship or Transfer date(s) for the Regulated Marijuana subject to the recall; and

iii. Business contact information for each Regulated Marijuana Business that received Regulated Marijuana subject to the recall, including names and telephone numbers.

b. Product Information. When identifying Regulated Marijuana subject to a recall, the Licensee shall document the following product information:

i. The category of Regulated Marijuana (e.g. Medical Marijuana flower; Medical Marijuana Concentrate; Medical Marijuana Product; Retail Marijuana flower; Retail Marijuana Concentrate, Retail Marijuana Product);

ii. Product description;

iii. Net contents;

iv. Production or Harvest Batch number;

v. The license number(s) for the Regulated Marijuana Business(es) that cultivated or manufactured the product(s) subject to the recall; and

vi. To the extent known after reasonable diligence to ascertain the information, the recall plan must also include the following additional product information: The amount of affected Regulated Marijuana returned in response to the recall and the amount of affected Regulated Marijuana that remains in the marketplace.

3. Notification to Affected Parties.

a. A Licensee initiating a recall pursuant to this rule shall issue a recall notice to Regulated Marijuana Businesses identified on the Licensee's distribution list.

b. No later than 48 hours from issuing a recall notice to Regulated Marijuana Businesses on the Licensee's distribution list, the Licensee shall issue the following additional notifications:

i. The Licensee shall notify the Division and the Colorado Department of Public Health and Environment;

ii. The Licensee shall notify the Local Licensing Authority or Local Jurisdiction in which the Licensee issuing the recall is located; and

iii. The Licensee shall notify patients or consumers using the most effective method available, which may include any of the following methods: an email to the patient or customer list serve, an alert on the Regulated Marijuana Business' website, a warning that is clearly and visibly posted on the Regulated Marijuana Business' Licensed Premises, or a press release to notify patients or consumers.

c. Recall Notice. A recall notice issued by a Regulated Marijuana Business pursuant to this rule shall include at least the following information:

i. The reason for recall and related hazards, if any. If the Regulated Marijuana is being removed for quality rather than health reasons, the notice may state that the Regulated Marijuana does not meet internal company specifications and is being removed from distribution;

ii. The category of Regulated Marijuana (e.g. Medical Marijuana flower; Medical Marijuana Concentrate; Medical Marijuana Product; Retail Marijuana flower; Retail Marijuana Concentrate, Retail Marijuana Product);

iii. Regulated Marijuana Businesses that received the Medical Marijuana Concentrate, Medical Marijuana Product, Retail Marijuana Concentrate or Retail Marijuana Product;

iv. The license number(s) and name(s), including trade name(s), of the Regulated Marijuana Business(es) that cultivated or manufactured the product(s) subject to the recall;

v. Product description(s) for Regulated Marijuana subject to the recall;

vi. Production or Harvest Batch number(s) for the Regulated Marijuana subject to the recall;

vii. Expiration date(s) for the Regulated Marijuana subject to the recall, if applicable;

viii. Ship or Transfer date(s) for the Regulated Marijuana subject to the recall; and

ix. Instructions regarding the disposition of the Regulated Marijuana subject to the recall.

4. Removal of Affected Regulated Marijuana.

   a. Removal. A Regulated Marijuana Business subject to this Rule 3-336 shall make all reasonable efforts to remove the affected Regulated Marijuana from commerce. Affected Regulated Marijuana that is either still in control of the originating Regulated Marijuana Business or in commerce shall be, secured, segregated, clearly labeled not for sale or distribution and separated from any other Medical Marijuana Concentrate, Medical Marijuana Product(s), Retail Marijuana Concentrate, or Retail Marijuana Product(s).

   b. Final Product Disposition. At the discretion of the Regulated Marijuana Business contaminated product must be disposed by either:

      i. Destroying and documenting the destruction of the affected Regulated Marijuana pursuant to Rule 3-230; or

      ii. If possible, Decontaminating the affected Regulated Marijuana pursuant to Rule 4-135(B)(2). If the Regulated Marijuana cannot be decontaminated, it must be destroyed pursuant to Rule 4-135(B)(3)(c) and 3-230.

   c. Recall Effectiveness. A Regulated Marijuana Business initiating a recall pursuant to this rule is responsible for determining whether the recall is effective. The Licensee shall complete recall effectiveness checks to verify that all receiving Licensees have been notified and have taken the appropriate action.

      i. Effectiveness checks shall determine:

         A. If the receiving Licensee received the recall notification;

         B. If the recalled Regulated Marijuana was handled as instructed in the recall notification; and

         C. If the Regulated Marijuana was further distributed or sold by the receiving Licensee before receipt of the recall notification, and if so, were these additional Licensees notified.

      ii. If 100 percent of the affected Regulated Marijuana has been accounted for, then no effectiveness checks are required.

   d. Termination of Recall. A Regulated Marijuana Business initiating a recall pursuant to this rule may terminate the recall when the Licensee determines that all reasonable efforts have been made to remove or correct the affected Regulated Marijuana in accordance with the recall plan, and when it is reasonable to assume that the Regulated Marijuana subject to the recall has been removed and proper disposition or correction has been made commensurate with the degree of hazard of the recalled Regulated Marijuana.

      i. Upon termination of the recall, the Regulated Marijuana Business shall provide notice to the Division with a recall status report and a description of the disposition of the recalled Regulated Marijuana. The recall status report shall contain the following information:

         A. Number of receiving Licensees notified of the recall, the date and method of notification;

B. Number of receiving Licensees who responded to the recall notice and both the quantity of affected Regulated Marijuana in the possession of the Licensee at the time of response, and quantity of affected Regulated Marijuana returned or corrected;

C. Number and results of the effectiveness checks that were made; and

D. Estimated time frame for completion of the recall.

Basis and Purpose – 3-340

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(b)-(c), 44-10-203(1)(k), 44-10-203(2)(l), 44-10-203(2)(m), and 44-10-901(1), C.R.S. The purpose of this Rule is to clarify that a Regulated Marijuana Businesses failure to comply with the requirements of 3-300 Rules Series may jeopardize the public health and safety.

3-340 – Violation Affecting Public Safety

A violation of these 3-300 Rules may be considered a license violation affecting public safety.

Basis and Purpose – 3-345 {Emergency rule expired 05/11/2021]

Rule 3-345 – [Emergency rule expired 05/11/2021]

3-400 Series – Acceptable Forms of Identification for Regulated Marijuana Sales

Basis and Purpose – 3-405

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-10-203(2)(z), 44-10-401(2)(a)(I), 44-10-401(2)(b)(I), 44-10-501(3)(b), 44-10-501(3)(c), 44-10-501(3)(d), 44-10-501(4), 44-10-501(10)(b)(II), 44-10-601(3)(b), 44-10-701(1)(b), 44-10-701(2)(a), 44-10-701(4)(a), and 44-10-701(5)(a), C.R.S. The purpose of this rule is to establish guidelines for the acceptable forms of identification for verifying the lawful sale of Regulated Marijuana. This Rule 3-405 was previously Rule M 405, 1 CCR 212-1, and Rule R 404, 1 CCR 212-2.

3-405 – Identification

A. Medical Marijuana Transfers.

1. Necessary Identification. Medical Marijuana Stores may only Transfer Medical Marijuana to any patient or caregiver who is permitted to deliver Medical Marijuana to homebound patients or minor patients as permitted by section 25-1.5-106(9)(e), C.R.S., if the patient or caregiver can produce:

a. Proof of identification that complies with subparagraphs (C) and (D) of this Rule; and

b. Either a valid patient registry card, including any valid and verified digital registry card, or a copy of a current and complete new application for the Medical Marijuana registry that is documented by proof of submittal to the Colorado Department of Public Health and Environment within the preceding 35 days.

2. Physical Inspection Required. A Licensee must physically view and inspect the patient or caregiver's registry card, including any valid and verified digital registry card, and proof of identification to confirm the information contained on the documents and also to judge the authenticity of the documents presented.

3. Valid and Verified Registry Card. For the purposes of these rules, a valid and verified digital registry card may include:

    a. A hard copy of the patient's registry card; or

    b. A portable document format (PDF) of the patient's registry card presented on a phone or other portable device.

        i. If a patient is presenting his or her registry card on a phone or other portable device, the PDF of the registry card must be presented.

        ii. A screen shot of the patient's profile, text image of a blank card, or photo of the hard copy is unacceptable.

B. Retail Marijuana Transfers. An Accelerator Store, a Retail Marijuana Store, or a Retail Marijuana Hospitality and Sales Business may only Transfer Retail Marijuana to a consumer that first produces a form of identification that complies with subparagraphs (C) and (D) of this Rule establishing the consumer is 21 years of age or older.

1. Fraudulent Identification and Licensee's Burden. Pursuant to section 44-10-601(3)(b)(I), C.R.S., if a person under 21 years of age presents a fraudulent proof of age to a Retail Marijuana Store, or an Accelerator Store any action based upon the fraudulent proof of age shall not be grounds for the revocation or suspension of a license. To establish that the identification presented by the minor was a fraudulent proof of age, the Licensee must establish that:

    a. The minor presented fraudulent identification of the type established in subparagraph (C) below;

    b. During the transaction in which Retail Marijuana was Transferred to the minor, the Licensee inspected the identification provided, compared the identification to the person presenting the identification, and:

        i. Inspected an identification book issued within the past three years:

        ii. Used an electronic scanner;

        iii. Used an ID checking software or other device used in the inspection of identification; or

        iv. Used other ID security features.

C. Forms of Valid Identification. The kind and type of identification deemed adequate shall be limited to the following, including any valid and verified digital identification:

1. An operator's, chauffeur's, or similar type driver's license, including a temporary license issued by any state within the United States, District of Columbia, or any U.S. territory;

2. An identification card, including a temporary identification card, issued by any state within the United States, District of Columbia, or any U.S. territory, for the purpose of proof of age using requirements similar to those in sections 42-2-302 and 42-2-303, C.R.S.;

3. A United States military identification card or any other identification card issued by the United States government including but not limited to a permanent resident card, alien registration card, or consular card;

4. A passport or passport identification card; or

5. An Enrollment card issued by the governing authority of a federally recognized Indian tribe, if the enrollment card incorporates proof of age requirements similar to sections 42-2-302 and 42-2-303, C.R.S.

D. Identification Must Be Valid. A Licensee shall refuse the Transfer of Regulated Marijuana if a person produces identification that is invalid or expired.

3-500 Series – Responsible Vendor Program

Basis and Purpose – 3-505

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-203(2)(dd)(II), 44-10-609(3)(b), 44-10-1201, and 44-10-1202, C.R.S. The purpose of this rule is to establish the standards for a Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, Retail Marijuana Transporter, Marijuana Hospitality Businesses, and Retail Marijuana Hospitality and Sales Businesses to obtain and maintain a "responsible vendor" designation. This rule identifies Licensees required to attend the Approved Training Program and requirements to maintain a "responsible vendor" designation after initially being designated a "responsible vendor." This Rule 3-505 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-505 – General Standards for a Regulated Marijuana Business Designated A Responsible Vendor

A. Pursuant to section 44-10-1202, C.R.S., a Medical Marijuana Store, Accelerator Store, Retail Marijuana Store, Medical Marijuana Transporter, Retail Marijuana Transporter, or Licensed Hospitality Business shall comply with the 3-500 Series Rules to be designated a "responsible vendor" of Regulated Marijuana.

B. To be designated a "responsible vendor" all Controlling Beneficial Owners with day-to-day operational control of the Licensed Premises, management personnel, and Employee Licensees involved in the handling and Transfer of Regulated Marijuana shall attend and successfully complete an Approved Training Program.

C. Once a Licensee is designated a "responsible vendor," all new employees involved in the handling and Transfer of Regulated Marijuana shall successfully complete the training described in these 3-500 Series Rules within 90 days of hire.

D. After initial successful completion of a responsible vendor program, each Controlling Beneficial Owner with day-to-day operational control of the Licensed Premises, management personnel, and Employee Licensee of a Regulated Marijuana Business shall successfully complete the program once every two years thereafter to maintain designation as a "responsible vendor."

Basis and Purpose – 3-510

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(2)(v), and 44-10-203(1)(k), 44-10-1201, 44-10-1202, C.R.S. The purpose of this rule is to

establish general application and notification requirements for Responsible Vendor Program Providers. This Rule 3-510 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-510 – General Standards for Responsible Vendor Program Provider

A. An application for approval of a responsible vendor program pursuant to section 44-10-1201 or 44-10-1202, C.R.S., shall be made upon current forms prescribed by the Division and in accordance with the 2-200 Series Rules.

B. Changes to an Approved Program. Within 30 days of any changes to the Marijuana Code, or these rules, a Responsible Vendor Program Provider shall update its responsible vendor program curriculum with any such changes.

Basis and Purpose – 3-515

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-203(2)(dd)(II), 44-10-609(3)(b), 44-10-1201, and 44-10-1202, C.R.S. The purpose of this rule is to provide the general standards for an Approved Training Program including the minimum amount of instruction time required, that the training must be provided in a classroom setting which may be virtual or online and the testing and passing score requirements for successful completion of the Approved Training Program. This Rule 3-515 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-515 – Certification Training Program Standards

A. No owner or employee of a responsible vendor program may have an Owner's Interest in a Regulated Marijuana Business.

B. A Responsible Vendor Program Provider shall submit their responsible vendor program for approval every two years in order to maintain designation as a Responsible Vendor Program Provider. The renewal application must be submitted within 60 days of the expiration of the Approved Training Program.

C. The responsible vendor program shall include at least two hours of instruction time.

D. Classroom setting. The responsible vendor program shall be taught in a classroom setting where the instructor is able to verify the identification of each individual attending the responsible vendor program and certify completion of the responsible vendor program by the individual identified.

1. An Approved Training Program may be delivered in an on-line or virtual based classroom setting provided the Responsible Vendor Program Provider utilizes a learning management system or other means to verify the identification of each individual attending the responsible vendor program. For purposes of this Rule, a learning management system means the platform or database used to monitor participation, attendance, and to deliver core-curriculum materials.

2. Any Approved Training Program delivered in an on-line or virtual based classroom setting must comply with the core curriculum and assessment requirements of Rule 3-520.

E. The Responsible Vendor Program Provider shall maintain its training records in a format that is readily understood by a reasonably prudent business person during the applicable year and for the following three years. The Responsible Vendor Program Provider shall make the records available for inspection by the State Licensing Authority upon request during normal business hours.

F. The responsible vendor program shall provide to the Licensee written or electronic documentation of attendance and successful passage of a test on the knowledge of the required curriculum for each attendee.

1. Successful completion of an Approved Training Program requires a minimum passage score of 70% or better. A Responsible Vendor Program Provider may provide a reasonable testing accommodation or modification to a Licensee participant, provided the results of the test are documented and meet the minimum passing score requirement.

G. A Responsible Vendor Program Provider shall solicit effectiveness evaluations from individuals who have completed the Approved Training Program.

Basis and Purpose – 3-520

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-12-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(v), 44-203(2)(dd)(II), 44-10-609(3)(b), 44-10-1201, and 44-10-1202, C.R.S. The purpose of this rule is to establish the required curriculum for an Approved Training Program. This rule also includes the required additional curriculum for Licensees engaged in delivery activity pursuant to a valid delivery permit and employees and Controlling Beneficial Owners of a Licensed Hospitality Businesses. This Rule 3-520 was previously Rules M 408, 1 CCR 212-1, and R 407, 1 CCR 212-2.

3-520 – Certification Training Class Core Curriculum

When considering whether to approve a responsible vendor program, the Division, after consulting with the Colorado Department of Public Health and Environment, will consider the following criteria.

A. Discussion concerning the health and safety concerns of marijuana use. Training shall include:

1. Health effects of marijuana use, including but not limited to the effects in connection with pregnancy and breast-feeding;

2. The amount of time to feel impairment based on the type of marijuana or marijuana product;

3. Recognizing signs of impairment;

4. The amount of time to wait before driving after marijuana use based on the type of marijuana or marijuana product;

5. Safe storage of marijuana;

6. Responsible use of marijuana; and

7. Appropriate responses in the event of unintentional or over-consumption of marijuana or marijuana product, including but not limited to access to the appropriate resources provided by state and local public health authorities.

B. Transfers to minors. Training shall cover all pertinent Colorado statutes, rules, and regulations.

C. Quantity Limitations on Transfer to Patients and Consumers. Training shall cover all pertinent Colorado statutes, rules, and regulations.

D. Acceptable Forms of Identification. Training shall include:

1. How to check identification;

2. Spotting false identification;

3. Patient Registry Cards issued by the Colorado Department of Public Health and Environment and equivalent patient verification documentation;

4. Provisions for confiscating false identification; and

5. Common mistakes made in verification.

E. Other Key State Laws and Rules That Apply to Medical Marijuana Stores, Medical Marijuana Transporters, Retail Marijuana Stores, Retail Marijuana Transporters Licensed Hospitality Businesses, and their Owners, Management Personnel, and Employees. Training shall include:

1. Local and state licensing and enforcement;

2. Compliance with all Inventory Tracking System regulations;

3. Administrative and criminal liability;

4. License sanctions and court sanctions;

5. Waste handling, management, and disposal;

6. Health and safety standards;

7. Patrons prohibited from bringing marijuana onto licensed premises;

8. Permitted hours of sale;

9. Licensee security and surveillance requirements;

10. Permitting inspections by state and local licensing and enforcement authorities;

11. Licensee responsibility for activities occurring within licensed premises;

12. Maintenance of records;

13. Privacy issues;

14. Applicable laws and regulations concerning Transfers to patients and consumers;

15. Packaging and labeling requirements for Transfers to patients and consumers;

16. How to access the Medical Marijuana Patient Registry website and how to sign up for the Registry's voluntary email list; and

17. Statutory and regulatory requirements related to Regulated Marijuana delivery.

F. Evaluation of Program Participants. The Responsible Vendor Program Provider shall establish that it has an adequate mechanism for evaluating attendees' successful completion of the Approved Training Program.

G. Additional Curriculum for Delivery to Patients and Consumers. In addition to the required curriculum in subparagraphs (B) through (F) above, training provided to any Licensee involved in activity pursuant to a valid delivery permit must also include all Colorado statutes and rules

related to delivery of Regulated Marijuana to patients and consumers. Responsible Vendor Program Providers may provide the delivery curriculum as a separate training or as part of the core curriculum training. Licensees that do not engage in delivery activity are not required to, but may, complete the delivery training. Training provided to Licensees involved in delivery activity must include, but is not limited to:

1. Verification of identification and patient registry cards required before delivering Regulated Marijuana to a patient or consumer;

2. Maintaining confidentiality of patients' and consumers' personally identifiable information;

3. Methods for Licensees to identify themselves and verify the delivery permit during an interaction with law enforcement, Division employees or local regulators; and

4. Strategies to de-escalate potentially dangerous situations which could include development of an emergency action plan.

H. Additional Curriculum for Licensed Hospitality Businesses. In addition to the required curriculum in subparagraphs (B) through (F) above, training provided to Controlling Beneficial Owners of and any Licensee employed by a Licensed Hospitality Business must also include all Colorado statutes and rules related to Licensed Hospitality Businesses. Responsible Vendor Program Providers may provide the hospitality curriculum as a separate training or as part of the core curriculum training. Licensees that are not employed by a Licensed Hospitality Business are not required to, but may, complete the hospitality training. Training provided to Controlling Beneficial Owners of and employees of a Licensed Hospitality Business must include, but is not limited to:

1 Identifying signs of visible impairment including alcohol and drug impairment;

2. Resources to mitigate impaired driving including safe transportation options available to consumers;

3. Understanding customer's varying experience with Regulated Marijuana and options for lower dose Regulated Marijuana Products;

4. Resources available from the Colorado Department of Public Health and Environment regarding responsible Regulated Marijuana use;

5. Ceasing all consumption and other activities until law enforcement, firefighters, emergency medical service providers, or other public safety personnel have completed any investigation or services and left the Licensed Premises of the Licensed Hospitality Business;

6. Methods for Licensees to identify themselves during an interaction with law enforcement, Division employees or local regulators;

7. Poly-substance interactions including but not limited to interactions of Regulated Marijuana with alcohol, prescription and over-the-counter medications and other substances;

8. Risks and potential responses to adverse events such as overconsumption, altitude sickness, dehydration, poly-substance use or other similar events.

9. Strategies to de-escalate interactions with intoxicated consumers and potentially dangerous situations which could include development of an emergency action plan.

3-600 Series – Transport and Storage

Basis and Purpose – 3-605

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-313(5)(b), 44-10-505, and 44-10-605 C.R.S. The purpose of the rule is to provide clarity as to the requirements associated with the transport and delivery of Regulated Marijuana between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices. This Rule 3-605 was previously Rules M and R 801, 1 CCR 212-1 and 1 CCR 212-2.

3-605 – Transport: All Regulated Marijuana Businesses

A. Persons Authorized to Transport. Except as provided in these 3-600 Series Rules, any individual who transports Regulated Marijuana, Regulated Marijuana Vegetative plants, Regulated Marijuana Immature plants, Regulated Marijuana, or Regulated Marijuana Product on behalf of a Regulated Marijuana Business must hold a valid Owner License or Employee License and must be an employee of the Regulated Marijuana Business. An individual who does not possess a current and valid Owner's License or Employee License from the State Licensing Authority may not transport Regulated Marijuana, Regulated Marijuana Vegetative plants, Regulated Marijuana Immature plants, Regulated Marijuana Concentrate, or Regulated Marijuana Product between Licensed Premises.

B. Transport Between Licensed Premises.

1. Regulated Marijuana. Regulated Marijuana shall only be transported by Licensees between Licensed Premises; between Licensed Premises and a permitted off-premises storage facility; and between Licensed Premises and a Pesticide Manufacturer. Licensees transporting Regulated Marijuana are responsible for ensuring that all Regulated Marijuana are secured at all times during transport.

2. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants.

a. Regulated Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule 2-255.

b. Regulated Marijuana Immature plants shall only be transported between Licensed Premises; and between Licensed Premises and a Pesticide Manufacturer.

c. Licensees transporting Regulated Marijuana Vegetative plants and Regulated Marijuana Immature plants are responsible for ensuring that all Regulated Marijuana Vegetative plants and Regulated Marijuana Immature plants are secure at all times during transport. Transportation of Regulated Marijuana Vegetative plants and Regulated Marijuana Immature plants to a permitted off-premises storage facility shall not be allowed. Transport of Regulated Marijuana plants other than Vegetative Plants and Immature plants shall not be allowed.

C. Inventory Tracking System-Generated Transport Manifest Required. A Licensee may only transport Regulated Marijuana if he or she has a copy of an Inventory Tracking System-generated transport manifest that contains all the information required by this Rule and shall be in the format prepared by the State Licensing Authority.

1. A Licensee may elect to use a hard copy or digital copy of an Inventory Tracking System-generated transport manifest. Licensees are required to ensure all information is preserved with valid and verified signatures on any digital copy of an Inventory Tracking System-generated transport manifest.

2. Regulated Marijuana. A Licensee may transport Regulated Marijuana from an originating location to multiple destination locations so long as the transport manifest correctly reflects the specific inventory destined for specific Regulated Marijuana Businesses and/or Pesticide Manufacturers.

3. Regulated Marijuana Vegetative Plants. A Licensee shall transport Regulated Marijuana Vegetative plants only from the originating Licensed Premises to the destination Licensed Premises due to a change of location that has been approved by the Division pursuant to Rule 2-255.

4. Manifest for Transfers to Pesticide Manufacturers. A Licensee may not transport or permit the transportation of Regulated Marijuana to a Pesticide Manufacturer unless an Inventory Tracking System-generated transport manifest has been generated.

D. Motor Vehicle Required. Transport of Regulated Marijuana shall be conducted by a motor vehicle that is properly registered in the state of Colorado pursuant to motor vehicle laws, but need not be registered in the name of the Licensee. Except that when a rental truck is required for transporting Regulated Marijuana Vegetative plants or Regulated Marijuana Immature plants, Colorado motor vehicle registration is not required.

E. Documents Required During Transport. Transport of Regulated Marijuana shall be accompanied by a copy of the originating Regulated Marijuana Business's business license, the driver's valid Owner's License or Employee License, the driver's valid motor vehicle operator's license, and all required vehicle registration and insurance information.

F. Use of Colorado Roadways. State law does not prohibit the transport of Regulated Marijuana on any public road within the state of Colorado as authorized in this Rule. However, nothing herein authorizes a Licensee to violate specific local ordinances or resolutions enacted by any city, town, city and county, or county related to the transport of Regulated Marijuana.

G. Preparation of Regulated Marijuana for Transport.

1. Final Weighing and Packaging. A Regulated Marijuana Business shall comply with the specific rules associated with the final weighing and packaging of Regulated Marijuana before such items are prepared for transport pursuant to this Rule. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S.

2. Preparation in Limited Access Area. Regulated Marijuana shall be prepared for transport in a Limited Access Area, including the packaging and labeling of Containers or Shipping Containers.

3. Shipping Containers. Licensees may Transfer multiple Containers of Regulated Marijuana in a Shipping Container. The contents of Shipping Containers shall be easily accessible and may be inspected by the State Licensing Authority, Local Licensing Authorities, Local Jurisdictions, and state and local law enforcement agency for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose.

a. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch, or Production Batch of Regulated Marijuana. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag

b. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants. Each Regulated Marijuana Vegetative plant that is transported pursuant to this Rule must have a RFID tag affixed to it prior to transport. Each receptacle containing Regulated Marijuana Immature plants transported pursuant to this Rule must have an RFID tag affixed prior to transport.

H. Creation of Records and Inventory Tracking.

1. Use of Inventory Tracking System – Generated Transport Manifest.

a. Regulated Marijuana. Licensees who transport or permit the transportation of Regulated Marijuana shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the Licensed Premises destined for another Licensed Premises or Pesticide Manufacturers. The transport manifest may either reflect multiple destination locations within a single trip or separate transport manifests may reflect each single destination location. In either case, no inventory shall be transported without an Inventory Tracking System-generated transport manifest.

b. Use of a Medical Marijuana Transporter or Retail Marijuana Transporter. In addition to subparagraph (H)(1)(a), Licensees shall also follow the requirements of this subparagraph (H)(1)(b) when a Licensee utilizes the services of a Medical Marijuana Transporter or Retail Marijuana Transporter.

i. When a Medical Marijuana Business utilizes a Medical Marijuana Transporter for transporting its Medical Marijuana, the originating Licensee shall input the requisite information on the Inventory Tracking System-generated transport manifest for the final destination Licensee or Pesticide Manufacturer who will be receiving the Medical Marijuana.

ii. When a Retail Marijuana Business utilizes a Retail Marijuana Transporter for transporting its Retail Marijuana the originating Licensee shall input the requisite information on the Inventory Tracking System-generated transport manifest for the final destination Licensee or Pesticide Manufacturer who will be receiving the Retail Marijuana.

iii. A Medical Marijuana Transporter or Retail Marijuana Transporter is prohibited from being listed as the final destination Licensee.

iv. A Medical Marijuana Transporter or Retail Marijuana Transporter shall not alter the information of the final destination Licensee or Pesticide Manufacturer after the information has been entered on the Inventory Tracking System-generated transport manifest by the Licensee.

v. If the Medical Marijuana Transporter or Retail Marijuana Transporter is not delivering the originating Licensee's Regulated Marijuana directly to the final destination Licensee or Pesticide Manufacturer, the Medical

Marijuana Transporter or Retail Marijuana Transporter shall communicate to the originating Licensee which of the Medical Marijuana Transporter's or Retail Marijuana Transporter's Licensed Premises or off-premises storage facilities will receive and temporarily store the Regulated Marijuana. The originating Licensee shall input the Medical Marijuana Transporter's or Retail Marijuana Transporter's location address and license number on the Inventory Tracking System-generated transport manifest.

c. Medical Marijuana Vegetative Plants and Retail Marijuana Vegetative Plants.

i. Licensees who transport Medical Marijuana Vegetative or Retail Marijuana Vegetative plants shall create an Inventory Tracking System-generated transport manifest to reflect inventory that leaves the originating Licensed Premises to be transported to the destination Licensed Premises due to a change of location approved by the Division pursuant to Rule 2-255, or a one-time Transfer pursuant to Rule 3-805.

ii. Retail Marijuana Transporters are permitted to transport Retail Marijuana Vegetative plants on behalf of other Licensees due to a change of location approved by the Division pursuant to Rule 2-255, or a one-time Transfer pursuant to Rule 3-805. The Retail Marijuana Transporter shall transport the Retail Marijuana Vegetative Plants directly from the originating Licensed Premises to the final destination Licensed Premises.

iii. Medical Marijuana Transporters are permitted to transport Medical Marijuana Vegetative plants on behalf of other Licensees due to a change of location approved by the Division pursuant to Rule 2-255, or a one-time Transfer pursuant to Rule 3-805. The Medical Marijuana Transporter shall transport the Medical Marijuana Vegetative plants directly from the originating Licensed Premises to the final destination Licensed Premises.

2. Copy of Transport Manifest to Recipient. A Licensee shall provide a copy of the transport manifest to each Regulated Marijuana Business, or Pesticide Manufacturer receiving the inventory described in the transport manifest. In order to maintain transaction confidentiality, the originating Licensee may prepare a separate Inventory Tracking System-generated transport manifest for each recipient Regulated Marijuana Business or Pesticide Manufacturer.

3. The Inventory Tracking System-generated transport manifest shall include the following:

a. Departure date and approximate time of departure;

b. Name, location address, and license number of the originating Regulated Marijuana Business;

c. Name, location address, and license number of the destination Regulated Marijuana Business(es) or name and location address of the destination Pesticide Manufacturer;

d. Name, location address, and license number of the Medical Marijuana Transporter or Retail Marijuana Transporter if applicable pursuant to Rule 3-605(H)(1)(b)(iv).

e. Product name and quantities (by weight and unit) of each product to be delivered to each specific destination location(s);

f. Arrival date and estimated time of arrival;

g. Transport vehicle make and model and license plate number; and

h. Name, Employee or Owner License number, and signature of the Licensee accompanying the transport.

I. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Regulated Marijuana Business shall be responsible for all the procedures associated with the tracking of inventory that is transported between Licensed Premises. *See* Rule 3-905 – Business Records Required.

1. Responsibilities of Originating Licensee.

a. Regulated Marijuana. Prior to departure, the originating Regulated Marijuana Business shall adjust its records to reflect the removal of Regulated Marijuana. The scale used to weigh product to be transported shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

b. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants. Prior to departure, the originating Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility shall adjust its records to reflect the removal of Medical Marijuana Vegetative plants and Medical Marijuana Immature plants, or Retail Marijuana Vegetative plants and Retail Marijuana Immature plants. Entries to the records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest.

2. Responsibilities of Recipient Licensee.

a. Regulated Marijuana. Upon receipt, the receiving Licensee shall ensure that the Regulated Marijuana received are as described in the transport manifest and shall immediately adjust its records to reflect the receipt of inventory. The scale used to weigh product being received shall be tested and approved in accordance with measurement standards established in 35-14-127, C.R.S. Entries to the inventory records shall note the Inventory Tracking System-generated transport manifest and shall be easily reconciled, by product name and quantity, with the applicable transport manifest. Medical Marijuana Transporters and Retail Marijuana Transporters shall comply with all requirements of this subparagraph (I)(2)(a) except that they are not required to weigh Regulated Marijuana.

i. When a Regulated Marijuana Business transfers Regulated Marijuana to a Pesticide Manufacturer, the originating Licensee is responsible for confirming receipt of the Regulated Marijuana in the Inventory Tracking System.

b. Regulated Marijuana Vegetative Plants and Regulated Marijuana Immature Plants. Upon receipt, the recipient Licensee shall ensure that the Regulated

Marijuana Vegetative plants received are as described in the transport manifest, accounting for all RFID tags and each associated plant, and shall immediately adjust its records to reflect the receipt of inventory. Upon Receipt, the recipient Licensee shall ensure that the Regulated Marijuana Immature plants received are as described in the transport manifest, accounting for all RFID tags and each receptacle containing Regulated Marijuana Immature plants, and shall immediately adjust its records to reflect the receipt of inventory.

i. When a Regulated Marijuana Business transfers Regulated Marijuana Immature plants to a Pesticide Manufacturer, the originating Licensee is responsible for confirming receipt of the Retail Marijuana Immature plants in the Inventory Tracking System.

3. Discrepancies.

a. Licensees. A recipient Licensee shall separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in the Inventory Tracking System and in any relevant business records.

b. Pesticide Manufacturers. In the event of a discrepancy between the quantity specified in a transport manifest and the quantity received by a Pesticide Manufacturer, the originating Licensee shall document the discrepancy in the Inventory Tracking System and in any relevant business records, and account for the discrepancy.

J. Adequate Care of Perishable Regulated Marijuana Product. A Regulated Marijuana Business must provide adequate refrigeration for perishable Regulated Marijuana Product during transport.

K. Failed Testing. In the event Regulated Marijuana has failed required testing, has been contaminated, or otherwise presents a risk of cross-contamination to other Regulated Marijuana, such Regulated Marijuana may only be transported if it is physically segregated and contained in a sealed package that prevents cross-contamination.

Basis and Purpose – 3-610

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-505(2), 44-10-605(2), and 44-10-1001(2), C.R.S. The purpose of this rule is to establish that Regulated Marijuana may not be stored outside of Licensed Premises unless the Licensee obtains an off-premises storage facility permit. This Rule 3-610 was previously Rules M and R 802, 1 CCR 212-1 and 1 CCR 212-2.

3-610 – Off-Premises Storage of Regulated Marijuana: All Regulated Marijuana Businesses

A. Off-Premises Storage Permit Authorized.

1. A Medical Marijuana Store, Medical Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, Medical Marijuana Testing Facility may only store Medical Marijuana in their Limited Access Area or in their one permitted off-premises storage facility. Medical Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.

2. A Retail Marijuana Store, Retail Marijuana Products Manufacturer, a Retail Marijuana Cultivation Facility, and a Retail Marijuana Testing Facility may only store Retail Marijuana in their Limited Access Area or in their one permitted off-premises storage

facility. Retail Marijuana Transporters are allowed to have more than one permitted off-premises storage facility.

B. Permitting. To obtain a permit for an off-premises storage facility, a Regulated Marijuana Business must apply on current Division forms and pay any applicable fees.

1. A Medical Marijuana Transporter may only apply for and hold an off-premises storage permit in a local jurisdiction that permits the operation of Medical Marijuana Stores.

2. A Retail Marijuana Transporter may only apply for and hold an off-premises storage permit in a Local Jurisdiction that permits the operation of Retail Marijuana Stores.

C. Extension of Licensed Premises. A permitted off-premises storage facility is an extension of the Regulated Marijuana Business's Licensed Premises, subject to all applicable Regulated Marijuana regulations.

D. Limitation on Inventory to be Stored.

1. A Medical Marijuana Store, Medical Marijuana Products Manufacturer, and a Medical Marijuana Cultivation Facility possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Medical Marijuana that is part of the particular Medical Marijuana Business's finished goods inventory. The aforementioned Licensees may only share the premises with and store inventory belonging to, a Medical Marijuana Business that has identical Controlling Beneficial Owners.

2. A Retail Marijuana Store, Retail Marijuana Products Manufacturer, and a Retail Marijuana Cultivation Facility possessing a valid off-premises storage facility permit may only have upon the permitted off-premises storage facility Retail Marijuana that is part of the particular Retail Marijuana Business's finished goods inventory. The aforementioned Licensees may only share the premises with and store inventory belonging to a Retail Marijuana Business that has identical Controlling Beneficial Owners.

3. A Medical Marijuana Business may share one off-premises storage facility with the same type of Retail Marijuana Business if the businesses operate a shared Licensed Premises pursuant to Rule 3-215 and if the Local Licensing Authority and Local Jurisdiction permit shared off-premises storage facilities. All Transfers of Regulated Marijuana by a Regulated Marijuana Business to or from its off-premises storage facility must be without consideration except for delivery orders packaged for delivery to patients or consumers pursuant to subparagraph E.

E. Privileges and Restrictions. The permitted off-premises storage facility may be utilized for storage only. A Regulated Marijuana Business must not Transfer, cultivate, manufacture, process, test, research, or consume any Regulated Marijuana within the premises of the permitted off-premises storage facility. An off-premises storage facility shall not be used as a distribution center for Transfers to Regulated Marijuana Businesses without identical Controlling Beneficial Owners or for consideration.

1. A Medical Marijuana Store or Retail Marijuana Store with a valid delivery permit may use its own off-premises storage facility to package, label, and fill orders for delivery of Regulated Marijuana to a patient or consumer after the Medical Marijuana Store or Retail Marijuana Store receives an order for delivery, unless otherwise restricted by the local jurisdiction.

2. A Medical Marijuana Transporter or Retail Marijuana Transporter shall not use its own off-premises storage facility to package, label, or fill orders for delivery of Regulated Marijuana to a patient or customer. A Medical Marijuana Transporter or a Retail Marijuana Transporter may use its own off-premises storage facility to store Regulated Marijuana that is packaged and labeled for delivery to a patient or consumer, unless otherwise restricted by the Local Licensing Authority or Local Jurisdiction.

F. Display of Off-premises Storage Permit and License. The off-premises storage facility permit and a copy of the Regulated Marijuana Business's license must be displayed in a prominent place within the permitted off-premises storage facility.

G. Local Licensing Authority or Local Jurisdiction Approval.

1. Prior to submitting an application for an off-premises storage facility permit, the Regulated Marijuana Business must obtain approval or acknowledgement from the relevant Local Licensing Authority or Local Jurisdiction.

2. A copy of the relevant Local Licensing Authority's or Local Jurisdiction's approval or acknowledgement must be submitted by the Regulated Marijuana Business in conjunction with its application for an off-premises storage facility.

3. No Regulated Marijuana may be stored within a permitted storage facility until the relevant Local Licensing Authority or Local Jurisdiction has been provided a copy of the off-premises storage facility permit.

4. Any off-premises storage permit issued by the Division shall be conditioned upon the Regulated Marijuana Business's receipt of all required Local Jurisdiction approvals or acknowledgments.

H. Security in Storage Facility. A permitted off-premises storage facility must meet all video, security and lock requirements applicable to a Licensed Premises. *See* Rules 3-220 – Security Alarm and Lock Standards and Rule 3-225 – Video Surveillance.

I. Transport to and from a Permitted Off-Premises Storage Facility. A Licensee must comply with the provisions of Rule 3-605 – Transport: All Regulated Marijuana Businesses, when transporting any Regulated Marijuana to and from a permitted off-premises storage facility.

J. Inventory Tracking. In addition to all the other tracking requirements set forth in these rules, a Regulated Marijuana Business shall utilize the Inventory Tracking System to track its inventories from the point of Transfer to or from a permitted off-premises storage facility. *See* Rules 3-805 – All Regulated Marijuana Businesses: Inventory Tracking System and Rule 3-905 – Business Records Required.

K. Inventory Tracking System Access and Scale. Every permitted off-premises storage facility must have an Inventory Tracking System terminal and a scale tested and approved in accordance with measurement standards established in section 35-14-127, C.R.S.

L. Adequate Care of Perishable Regulated Marijuana Product. A Regulated Marijuana Business must provide adequate refrigeration for perishable Regulated Marijuana Product and shall utilize adequate storage facilities and transport methods.

M. Consumption Prohibited. A Regulated Marijuana Business shall not permit the consumption of marijuana or marijuana product on the premises of its permitted off-premises storage facility.

Basis and Purpose – 3-615

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(2)(dd), C.R.S. The purpose of this rule is to provide requirements for a Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter or Retail Marijuana Transporter to apply for and conduct deliveries to private residences pursuant to a delivery permit. This rule provides application and renewal requirements for a delivery permit. Additionally, the rule describes requirements for responsible vendor training, requirements for use of the inventory tracking system, Delivery Motor Vehicles requirements including security, requirements for delivery orders, requirements prior to completing a delivery to a patient or consumer at a private residence and requirements for maintaining the confidentiality of all patient and customer information.

3-615 – Regulated Marijuana Delivery Permits

A. Application, Qualification, and Eligibility for Delivery Permit.

1. Beginning January 2, 2020, a Medical Marijuana Store may apply for a delivery permit. The application shall be made on Division forms and in accordance with the 2-200 Series Rules. The delivery permit application can be submitted simultaneously with a Medical Marijuana Store initial or renewal application or it can be separate from a Medical Marijuana Store application but the application must identify the Medical Marijuana Store(s) seeking to obtain the delivery permit.

2. Beginning January 2, 2021, a Retail Marijuana Store, a Medical Marijuana Transporter, and a Retail Marijuana Transporter may apply for a delivery permit. The delivery permit application can be submitted simultaneously with a Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter initial or renewal application or it can be separate from a Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter application but the application must identify the Retail Marijuana Store(s), Medical Marijuana Transporter(s), or Retail Marijuana Transporter(s) seeking to obtain the delivery permit.

3. Prior to the State Licensing Authority issuing an Applicant a delivery permit, the Applicant must establish the Local Licensing Authority and/or Local Jurisdiction where the Applicant is located, or for a Medical Marijuana Transporter or Retail Marijuana Transporter without a Licensed Premise, the Local Licensing Authority or Local Jurisdiction for the location where they intend to operate:

    a. By ordinance or resolution has permitted delivery of Regulated Marijuana in the jurisdiction, and

    b. Is currently accepting applications for delivery permits in the jurisdiction, if required.

4. Multiple Medical Marijuana Stores, Retail Marijuana Stores, Medical Marijuana Transporters, or Retail Marijuana Transporters with identical Controlling Beneficial Owners that are in the same local jurisdiction may obtain one delivery permit that allows all Medical Marijuana Stores, all Retail Marijuana Stores, all Medical Marijuana Transporters, or all Retail Marijuana Transporters in that jurisdiction to make deliveries to patients or consumers.

5. Delivery Permit Renewal.

    a. A delivery permit must be renewed annually with the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter license it accompanies. A Medical Marijuana Store or Retail

Marijuana Store must disclose to the Division any online platform provider that the Licensee has utilized during the previous year at the time of renewal.

b. Length of Delivery Permit.

i. A delivery permit issued with an initial or renewal license application is valid for one year and will expire at the same time as the license for the associated Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter.

ii. A delivery permit that is not issued with an initial or renewal application will be valid for less than one year to align the license expiration date of the related Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter. In all years after the first year, such a delivery permit will be valid for one year.

c. In addition to any other basis for denial of renewal application, the State Licensing Authority may also consider the following facts and circumstances as an additional basis for denial of a delivery permit renewal application:

i. The Medical Marijuana Store or Retail Marijuana Store failed to collect the one-dollar surcharge on every delivery or failed to timely remit the one-dollar surcharge to the municipality where the Medical Marijuana Store or Retail Marijuana Store is located, or to the county if the Medical Marijuana Store or Retail Marijuana Store is in an unincorporated area.

B. Delivery to Private Residence. Private residence includes, but is not limited to, a private premises where a person lives such as a private dwelling, place of habitation, a house, a multi-dwelling unit for residential occupants, or an apartment unit. Private residence does not include any premises located at a school, on the campus of an institution of higher education, public property, or any commercial property unit such as offices or retail space.

C. Responsible Vendor Certification Required. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter must obtain a responsible vendor designation pursuant to sections 44-10-1201 or 44-10-1202, C.R.S., and the 3-500 Series Rules including the delivery curriculum prior to conducting its first delivery.

D. Inventory Tracking System Required. A Regulated Marijuana Business possessing a valid delivery permit must use the inventory tracking system and transport manifests to track all Regulated Marijuana delivered to the intended patient or consumer. This includes the use of a transport manifest.

E. Delivery Motor Vehicle Requirements.

1. Any Delivery Motor Vehicle must be owned or leased by the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, Retail Marijuana Transporter, or an Owner Licensee of the Regulated Marijuana Business that holds the delivery permit, must be registered in the State of Colorado, and must be insured.

2. Any Delivery Motor Vehicle must have a vehicle tracking system that is capable of real-time tracking and recording of the route taken by the Delivery Motor Vehicle while conducting deliveries that can be accessed remotely in real-time by the Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter. The vehicle tracking system may be an application installed on a

mobile device. The real-time location of the Delivery Motor Vehicle shall not be displayed to any patients or consumers.

3. Any Delivery Motor Vehicle must not have any external markings, words, or symbols that indicate the Delivery Motor Vehicle is used for delivery of Regulated Marijuana or is owned or leased by a Medical Marijuana Business or a Retail Marijuana Business.

4. Regulated Marijuana must not be visible from outside the Delivery Motor Vehicle.

5. Delivery Motor Vehicle security requirements include but are not limited to:

   a. A security alarm system, and

   b. A secure, locked, opaque storage compartment that is securely affixed to the Delivery Motor Vehicle for the purpose of securing Regulated Marijuana.

6. Video Surveillance Requirements.

   a. The Delivery Motor Vehicle must be equipped with video surveillance equipment that digitally records during all deliveries. The video surveillance shall record at least the secured, locked, opaque storage compartment containing the Regulated Marijuana and the front view of the Delivery Motor Vehicle (e.g. dash camera).

   b. Video surveillance shall be kept for a minimum of 40 days, must be capable of being embedded with the date and time, must be reproducible upon request from law enforcement, the Division, a Local Licensing Authority or a Local Jurisdiction and must be archived in a format that ensures authentication and guarantees no alteration of the video.

7. An enclosed Delivery Motor Vehicle shall not contain more than $10,000.00 in retail value of Regulated Marijuana. A Delivery Motor Vehicle that is not enclosed shall not contain more than $2,000.00 in retail value of Regulated Marijuana.

8. A Delivery Motor Vehicle must not leave the State of Colorado while any amount of Regulated Marijuana is in the Delivery Motor Vehicle.

9. Only persons licensed by the State Licensing Authority and identified on the transport manifest may occupy a Delivery Motor Vehicle while conducting deliveries of Regulated Marijuana.

F. Delivery Order Requirements.

1. A Medical Marijuana Store or a Retail Marijuana Store that has a valid delivery permit may accept orders for delivery of Regulated Marijuana to patients who are at least 21 years of age, parents or guardians of patient under 18 years of age, or consumers who are at least 21 years of age at a private residence. Delivery orders to patients ages 18 to 20 are not permitted.

2. For a Medical Marijuana Store or a Retail Marijuana Store that utilizes an online platform provider:

   a. The online platform provider must require that the patient or consumer choose a Medical Marijuana Store or Retail Marijuana Store before displaying the price of Regulated Marijuana to the patient or consumer; and

b. The Medical Marijuana Store or Retail Marijuana Store must receive verification that there has not already been a delivery of Regulated Marijuana to that private residence through the online platform provider that same business day.

3. All delivery orders must document the following information which must be maintained pursuant to Rule 3-905 by the Medical Marijuana Store or the Retail Marijuana Store:

a. The name and date of birth of the patient or consumer placing the delivery order;

b. The address of the private residence where the order will be delivered;

c. For Medical Marijuana delivery orders only, the registration number reflecting on the patient's registry identification card; and

d. For Medical Marijuana delivery orders only, if the patient is under 18 years of age, the parent or guardian designated as the patient's primary caregiver, and if applicable, the registration number of the primary caregiver.

4. A Medical Marijuana Store or a Retail Marijuana Store may accept payment for delivery orders using any legal method of payment, gift card pre-payments or payment on delivery, or pre-payment accounts established with a Medical Marijuana Store or Retail Marijuana Store except that any payment with an Electronic Benefits Transfer Services Card is not permitted. A Medical Marijuana Transporter or Retail Marijuana Transporter may accept payment on behalf of a Medical Marijuana Store or Retail Marijuana Store at the point of Transfer to the patient or consumer.

a. A Local Licensing Authority or Local Jurisdiction may further restrict legal methods of payment not expressly permitted by section 44-10-203(2)(dd)(XV), C.R.S.

5. Regulated Marijuana must be weighed, packaged, prepared, and labeled for delivery on the Licensed Premises of a Medical Marijuana Store or Retail Marijuana Store or at their off-premises storage facility after receipt of a delivery order. Regulated Marijuana cannot be placed into a Delivery Motor Vehicle until after an order has been received and the Regulated Marijuana has been packaged and labeled for delivery to the patient or consumer as required by the 3-1000 Series Rules.

6. Medical Marijuana Transporters and Retail Marijuana Transporters shall not take delivery orders but may deliver Regulated Marijuana on behalf of Medical Marijuana Stores and Retail Marijuana Stores pursuant to a contract with the Medical Marijuana Store or Retail Marijuana Store provided that the store also holds a valid delivery permit. The Medical Marijuana Store and Medical Marijuana Transporter must maintain copies of all contracts for delivery pursuant to Rule 3-905. The Retail Marijuana Store and Retail Marijuana Transporter must maintain copies of all contracts for delivery pursuant to Rule 3-905.

G. Regulated Marijuana Delivery Requirements.

1. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter shall not deliver Regulated Marijuana to patients, parents, guardians, or consumers while also transporting Regulated Marijuana between Licensed Premises in the same Delivery Motor Vehicle.

2. Delivery of Medical Marijuana and Retail Marijuana.

a. A Medical Marijuana Store and Retail Marijuana Store, both of which hold a valid delivery permit, and which have identical Controlling Beneficial Owners, may complete deliveries of Medical Marijuana and Retail Marijuana using the same Delivery Motor Vehicle and without returning to the Medical Marijuana Store or Retail Marijuana Store between deliveries.

b. A Medical Marijuana Transporter and Retail Marijuana Transporter, both of which hold a valid delivery permit, and which have identical Controlling Beneficial Owners may complete deliveries of Medical Marijuana and Retail Marijuana using the same Delivery Motor Vehicle and without returning to the Medical Marijuana Store or Retail Marijuana Store between deliveries.

c. A Medical Marijuana Transporter holding a valid delivery permit may make deliveries for multiple Medical Marijuana Stores that also hold valid delivery permits using the same Delivery Motor Vehicle and without returning to a Medical Marijuana Store between deliveries.

d. A Retail Marijuana Transporter holding a valid delivery permit may make deliveries for multiple Retail Marijuana Stores that also hold valid delivery permits using the same Delivery Motor Vehicle and without returning to a Retail Marijuana Store between deliveries.

3. An Owner Licensee or Employee Licensee delivering Regulated Marijuana shall not open any Container of Regulated Marijuana in the Delivery Motor Vehicle and is prohibited from packaging or re-packaging Regulated Marijuana once the Delivery Motor Vehicle has departed from the Licensed Premises of a Medical Marijuana Store or Retail Marijuana Store.

4. A Medical Marijuana Store or Retail Marijuana Store shall not accept delivery orders for Regulated Marijuana Product that is perishable unless the Delivery Motor Vehicle that will make the delivery has the ability to secure the Regulated Marijuana Product in climate-controlled storage.

5. A Medical Marijuana Store, Retail Marijuana Store, Medical Marijuana Transporter, or Retail Marijuana Transporter must maintain a transport manifest that documents the following:

a. The time of delivery;

b. The name, and identification number of the valid, acceptable identification (e.g. driver’s license) presented by the patient or consumer;

c. Address of the private residence;

d. Acknowledgement of receipt of delivery by the person receiving the delivery;

e. If applicable, patient registry number;

f. If applicable, primary caregiver registry number of the patient’s parent or guardian; and

g. For every Regulated Marijuana delivery that could not be completed, the reason the delivery could not be completed.

6. Proof of Patient Medical Registry and Identification.

a. Prior to Transferring possession of the order, the Owner Licensee or Employee Licensee delivering Medical Marijuana to a patient or a patient's parent or guardian must:

i. Inspect the patient's or parent's or guardian's identification and registry identification card;

ii. Verify the possession of a valid registry identification card;

iii. Verify that the information provided at the time of order match the name and age on the patient's or parent or guardian's identification; and

iv. Verify that the identification and registry identification card belong to the person receiving the delivery.

b. The Owner Licensee or Employee Licensee must refuse delivery of Medical Marijuana if the person attempting to accept the delivery order cannot establish all of the requirements of subparagraph (F)(6)(a)(i) through (iv) above.

7. Proof of Consumer Identification.

a. The Owner Licensee or Employee Licensee delivering Retail Marijuana to a consumer must first verify that the natural person accepting the delivery has an acceptable form of identification demonstrating the person is at least 21 years of age and that the person is the same as the person that placed the order for delivery with the Retail Marijuana Store.

b. The Owner Licensee or Employee Licensee must refuse delivery of Retail Marijuana if the natural person attempting to accept the delivery order cannot establish all the requirements of subparagraph (F)(5)(a) above.

8. Daily Delivery Limits.

a. A Medical Marijuana Store or Medical Marijuana Transporter must not deliver individually or in any combination, more than two ounces of Medical Marijuana, eight (8) grams of Medical Marijuana Concentrate, or Medical Marijuana Products containing more than 20,000 milligrams of THC to a patient in a single business day.

b. A Medical Marijuana Store or Medical Marijuana Transporter must not deliver to a patient, parent, or guardian or private residence where the Licensee knows or reasonably should know that the patient, parent or guardian, or private residence has already received a delivery during that same business day. This does not prohibit delivery to more than one patient at the same time and private residence.

c. A Retail Marijuana Store or Retail Marijuana Transporter must not deliver individually or in any combination, more than one ounce of Retail Marijuana, 8 grams of Retail Marijuana Concentrate, or Retail Marijuana Products containing more than ten 80 milligram servings of THC to a customer in a single business day.

d. A Retail Marijuana Store or Retail Marijuana Transporter must not deliver to a consumer or private residence where the Licensee knows or reasonably should know that the consumer or private residence has already received a delivery

during that same business day. This does not prohibit delivery to more than one consumer at the same time and private residence.

9. An Owner Licensee or Employee Licensee who cannot complete a delivery order for any reason must return the Regulated Marijuana to the Medical Marijuana Store, Retail Marijuana Store, or off-premises storage facility from which the delivery order originated. If the Container is unopened and has not been tampered with, the Medical Marijuana Store, Retail Marijuana Store, or off-premises storage facility may return the Regulated Marijuana into its inventory and reconcile it with the Inventory Tracking System by the close of business that same day. Otherwise, the Regulated Marijuana must be destroyed in accordance with this Rule and Rule 3-235.

H. Confidentiality of Patient and Consumer Personal Identifying Information. A Medical Marijuana Store, a Retail Marijuana Store, a Medical Marijuana Transporter, a Retail Marijuana Transporter, and their respective Owner Licensees and Employee Licensees must keep all personal identifying information and any health care information obtained from patients and consumers confidential and must not disclose such personally identifiable information and any health care information to any person other than those who need that information to take, process, or deliver the order or otherwise as required by the Marijuana Code, or Title 18, or Title 25 of the Colorado Revised Statutes.

3-700 Series – Signage and Advertising

Basis and Purpose – 3-705

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(3)(a), and 44-10-701(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clearly delineate that a Regulated Marijuana Business is not permitted to make deceptive, false, or misleading statements in Advertising materials or on any product or document provided to a patient or consumer. This Rule 3-705 was previously Rules M and R 1102, 1 CCR 212-1 and 1 CCR 212-2.

3-705 – Advertising General Requirements

A. No Deceptive, False, or Misleading Statements. A Regulated Marijuana Business shall not engage in Advertising that is deceptive, false, or misleading. A Regulated Marijuana Business shall not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a patient or consumer.

B. Potential Risks of Regulated Marijuana Concentrate Overconsumption. A Regulated Marijuana Business Advertising Medical Marijuana Concentrate or Retail Marijuana Concentrate shall include a notice as determined by the Division to patients or consumers regarding the potential risks of Medical Marijuana Concentrate or Retail Marijuana Concentrate overconsumption.

Basis and Purpose – 3-710

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(3)(a), and 44-10-701(3)(c), C.R.S. Authority also exists throughout Article XVIII, Section 16 of the Colorado Constitution. The purpose of this rule is to clarify the definition of the term “minor” as used in the Marijuana Code and these rules. This Rule 3-710 was previously Rules M and R 1103, 1 CCR 212-1 and 1 CCR 212-2.

3-710 – The Term “Minor” as Used in the Marijuana Code and These Rules

The term "minor" as used in the Marijuana Code and these rules means an individual under the age of 18 for Medical Marijuana and under the age of 21 for Retail Marijuana.

Basis and Purpose – 3-715

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(3)(a), and 44-10-103(10), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising and Branding.

3-715 – Use of Branding

A. For the purposes of these 3-700 Series Rules, the term Branding includes taglines, which may or may not be trademarked.

B. Branding may not be used to target individuals under the age of 21.

Basis and Purpose – 3-720

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to Advertising.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-720 was previously Rules M and R 1104, 1105, 1106, and 1107, 1 CCR 212-1 and 1 CCR 212-2.

3-720 – Advertising: All Media

A. Medical Marijuana Businesses. A Medical Marijuana Business may Advertise in television, radio, a print publication, or via the internet only where at least 71.6 percent of the audience is reasonably expected to be at least the age of 21. A Medical Marijuana Business is prohibited from specifically directing Advertising and marketing to persons under 21 years of age.

B. Retail Marijuana Businesses. A Retail Marijuana Business may Advertise in television, radio, a print publication or via the internet only where at least 71.6 percent of the audience is reasonably expected to be at least the age of 21.

C. Advertising for all Marijuana Businesses. Advertising proposes a commercial transaction or otherwise constitutes commercial speech. Advertising includes marketing.

Basis and Purpose – 3-725

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety and health and benefit claims that are by nature misleading, deceptive, or false.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-725 was previously Rules M and R 1109, 1 CCR 212-1 and 1 CCR 212-2.

3-725 – Signage and Advertising: No Safety Claims Because Regulated by State Licensing Authority

No Regulated Marijuana Business may engage in Advertising or utilize signage that asserts its products are safe because they are regulated by the State Licensing Authority.

Basis and Purpose – 3-730

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c) and 44-10-203(3)(a), and 44-10-701(3)(c), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to safety claims that are by nature misleading, deceptive, or false. This Rule 3-730 was previously Rules M and R 1110, 1 CCR 212-1 and 1 CCR 212-2.

3-730 – Signage and Advertising: No Safety Claims Because Tested

A Regulated Marijuana Business shall not engage in Advertising or utilize signage that asserts its products are safe because they are tested by a Regulated Marijuana Testing Facility.

Basis and Purpose – 3-735

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the restrictions applicable to outdoor Advertising and signage.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana

product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-735 was previously Rules M and R 1111, 1 CCR 212-1 and 1 CCR 212-2.

3-735 – Signage and Advertising: Outdoor Advertising

A. Local Ordinances. In addition to any requirements within these rules, a Regulated Marijuana Business shall comply with any applicable local ordinances regulating signs and Advertising.

B. All Applicable State Laws Apply. A Regulated Marijuana Business that engages in any Advertising shall comply with all applicable state laws, including but not limited to the Outdoor Advertising Act at sections 43-1-401 through 43-1-420, C.R.S.

C. A Regulated Marijuana Business shall not Advertise on any outdoor sign that is within 500 feet of established and conspicuously identified elementary or secondary schools, places of worship, or public playgrounds.

Basis and Purpose – 3-740

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to prohibit signage and Advertising that has a high likelihood of reaching individuals under the age of 21.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana “in a manner similar to alcohol” in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-740 was previously Rules M and R 1112, 1 CCR 212-1 and 1 CCR 212-2.

3-740 – Signage and Advertising: No Content That Targets Minors

A. A Medical Marijuana Business shall not include in any form of Advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.

B. A Retail Marijuana Business shall not include in any form of Advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.

Basis and Purpose – 3-745

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to marketing directed toward location-based devices.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-745 was previously Rules M and R 1113, 1 CCR 212-1 and 1 CCR 212-2.

3-745 – Advertising: Advertising via Marketing Directed Toward Location-Based Devices

A Regulated Marijuana Business shall not engage in Advertising via marketing directed towards location-based devices, including, but not limited to, cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older for Medical Marijuana, 21 years of age or older for Retail Marijuana, and includes a permanent and easy opt-out feature.

Basis and Purpose – 3-750

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V) and (5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to pop-up Advertising.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-750 was previously Rules M and R 1114, 1 CCR 212-1 and 1 CCR 212-2.

3-750 – Pop-Up Advertising

A Regulated Marijuana Business shall not utilize unsolicited pop-up Advertising on the internet.

Basis and Purpose – 3-755

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), and 44-10-203(3)(a), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VIII). The purpose of this rule is to clarify the Advertising restrictions applicable to event sponsorship.

The operation of Regulated Marijuana Businesses in Colorado is authorized solely within the narrow confines of the Colorado Constitution, Article XVIII, Sections 14 and 16. The Colorado Constitution prohibits the purchase, possession, and consumption of Medical Marijuana by those under the age 18, and of Retail Marijuana by those under the age of 21. *See for example* Colo. Const. art XVIII, §16(1)(a), (1)(b)(I), (1)(b)(II), (2)(b), (3), (4), (5)(a)(V), (5)(c), and 6(c). The Colorado Constitution calls for the regulation of marijuana "in a manner similar to alcohol" in certain key respects. Colo. Const. Art. XVIII, §16(1)(b). The constitutionally mandated regulatory scheme governing Regulated Marijuana Businesses must include rules establishing restrictions on the advertising and display of marijuana and marijuana product, and must include requirements to prevent the sale or diversion of marijuana and marijuana product to minors. Colo. Const. Art. XVIII, §16(5)(a)(V) and (VIII). Through the Marijuana Code the Colorado General Assembly provided further direction regarding mandated advertising restrictions. *See* § 44-10-203(3)(a), C.R.S. Voluntary standards adopted by the alcohol industry direct the industry to refrain from advertising where more than 28.4 percent of the audience is reasonably expected to be under the legal age of purchase. These rules apply to Advertising as defined in Rule 1-115. This Rule 3-755 was previously Rules M and R 1115, 1 CCR 212-1 and 1 CCR 212-2.

3-755 – Advertising: Event Sponsorship

A. A Medical Marijuana Business may sponsor a charitable, sports, or similar event, but a Medical Marijuana Business shall not engage in Advertising at, or in connection with, such an event unless the Medical Marijuana Business has reliable evidence that 71.6 percent of the audience at the event and/or viewing Advertising in connection with the event is reasonably expected to be at least the age of 21.

B. A Retail Marijuana Business may sponsor a charitable, sports, or similar event, but a Retail Marijuana Business shall not engage in Advertising at, or in connection with, such an event unless the Retail Marijuana Business has reliable evidence that 71.6 percent of the audience at the event and/or viewing Advertising in connection with the event is reasonably expected to be at least the age of 21.

3-800 Series – Inventory Tracking Requirements

Basis and Purpose – 3-805

The statutory authority for this rule includes but is not limited to sections, 44-10-201(1), 44-10-202(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-501(1)(b), 44-10-502(2), 44-10-503(1)(b), 44-10-505(3), 44-10-601(1)(d), 44-10-602(3), 44-10-603(1)(b), 44-10-605(3), and 44-10-610(3)(a), C.R.S. The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Regulated Marijuana from either seed or immature plant stage until the Regulated Marijuana is sold to a patient or consumer, or destroyed.

The Inventory Tracking System is a web-based tool coupled with RFID technology that allows both the Inventory Tracking System User and the State Licensing Authority the ability to identify and account for all Regulated Marijuana. Through the use of RFID technology, a Medical Marijuana Cultivation Facility or Retail Marijuana Cultivation Facility will tag either the seed or immature plant with an individualized number, which will follow the Regulated Marijuana through all phases of production and final sale to a patient or consumer. This will allow the State Licensing Authority and the Inventory Tracking System User the ability to monitor and track Regulated Marijuana inventory. The Inventory Tracking System will also

provide a platform for the State Licensing Authority to exchange information and provide compliance notifications to the industry.

The State Licensing Authority finds it essential to regulate, monitor, and track all Regulated Marijuana to eliminate diversion, inside and outside of the state, and to ensure that all marijuana grown, processed, sold, and disposed of in the Regulated Marijuana market is transparently accounted for.

The State Licensing Authority will engage the industry and provide training opportunities and continue to evaluate the Inventory Tracking System to promote an effective means for this industry to account for and monitor its Regulated Marijuana inventory. This Rule 3-805 was previously Rules M and R 309, 1 CCR 212-1 and 1 CCR 212-2.

3-805 – Regulated Marijuana Businesses: Inventory Tracking System

A. Inventory Tracking System Required. A Regulated Marijuana Business is required to use the Inventory Tracking System as the primary inventory tracking system of record. A Regulated Marijuana Business must have an Inventory Tracking System account activated and functional prior to operating or exercising any privileges of a license. Medical Marijuana Businesses converting to or adding a Retail Marijuana Business must follow the inventory transfer guidelines detailed in Rule 3-805(C) below. Because Marijuana Hospitality Businesses are not authorized to receive or conduct Transfers of Regulated Marijuana, this Rule does not apply to Marijuana Hospitality Businesses.

B. Inventory Tracking System Access - Inventory Tracking System Administrator.

1. Inventory Tracking System Administrator Required. A Regulated Marijuana Business must have at least one Owner Licensee who is an Inventory Tracking System Administrator. A Regulated Marijuana Business may also designate additional Owner Licensees and Employee Licensees to obtain Inventory Tracking System Administrator accounts.

2. Training for Inventory Tracking System Administrator Account. In order to obtain an Inventory Tracking System Administrator account, a Person must attend and successfully complete all required Inventory Tracking System training. The Division may also require additional ongoing, continuing education for an individual to retain his or her Inventory Tracking System Administrator account.

3. Inventory Tracking System Access - Inventory Tracking System User Accounts. A Regulated Marijuana Business may designate licensed Owners and employees who hold valid Employee Licenses as Inventory Tracking System Users. A Regulated Marijuana Business shall ensure that all Owner Licensees and Employee Licensees who are granted Inventory Tracking System User account access for the purposes of conducting inventory tracking functions in the system are trained by Inventory Tracking System Administrators in the proper and lawful use of Inventory Tracking System.

C. Medical Marijuana Business License Conversions - Declaring Inventory Prior to Exercising Licensed Privileges as a Retail Marijuana Business.

1. Medical Marijuana Inventory Transfer to Retail Marijuana Business.

a. Except pursuant to Rules 5-205 and 6-205:

i. The only allowed Transfer of marijuana between a Medical Marijuana Business and Retail Marijuana Business is Medical Marijuana and Medical Marijuana Concentrate that was produced at the Medical

Marijuana Cultivation Facility, from the Medical Marijuana Cultivation Facility to a Retail Marijuana Cultivation Facility.

ii. Each Medical Marijuana Cultivation Facility that is either converting to or adding a Retail Marijuana Cultivation Facility license must create a Retail Marijuana Inventory Tracking System account for each license it is converting or adding.

iii. A Medical Marijuana Cultivation Facility must Transfer all relevant Medical Marijuana and Medical Marijuana Concentrate into the Retail Marijuana Cultivation Facility's Inventory Tracking System account and affirmatively declare those items as Retail Marijuana or Retail Marijuana Concentrate as appropriate.

iv. The marijuana subject to the one-time Transfer is subject to the excise tax upon the first Transfer from the Retail Marijuana Cultivation Facility to another Retail Marijuana Business.

v. All other Transfers are prohibited, including but not limited to Transfers from a Medical Marijuana Store or Medical Marijuana Products Manufacturer to any Retail Marijuana Business.

2. No Further Transfer Allowed. Once a Licensee has declared any portion of its Medical Marijuana inventory as Retail Marijuana, no further Transfers of inventory from Medical Marijuana to Retail Marijuana shall be allowed.

D. RFID Tags Required.

1. Authorized Tags Required and Costs. Licensees are required to use RFID tags issued by a Division-approved vendor that is authorized to provide RFID tags for the Inventory Tracking System. Each licensee is responsible for the cost of all RFID tags and any associated vendor fees.

2. Use of RFID Tags Required. A Licensee is responsible to ensure its inventories are properly tagged where the Inventory Tracking System requires RFID tag use. A Regulated Marijuana Business must ensure it has an adequate supply of RFID tags to properly tag Regulated Marijuana as required by the Inventory Tracking System. An RFID tag must be physically attached to every Regulated Marijuana plant being cultivated that is greater than eight inches tall or eight inches wide. Prior to a plant reaching a viable point to support the weight of the RFID tag and attachment strap, the RFID tag may be securely fastened to the stalk. An RFID tag must be assigned to all Regulated Marijuana. *See* Rule 3-805(D); Rule 3-1005(G) – Shipping Containers.

3. Reuse of RFID Tags Prohibited. A Licensee shall not reuse any RFID tag that has already been affixed or assigned to any Regulated Marijuana.

4. When plants reach a viable point to support the weight of the RFID tag and attachment strap, the RFID tag shall be securely fastened to a lower supporting branch.

E. General Inventory Tracking System Use.

1. Reconciliation with Inventory. All inventory tracking activities at a Regulated Marijuana Business must be tracked through use of the Inventory Tracking System. A Licensee must reconcile all on-premises and in-transit Regulated Marijuana inventories each day in the Inventory Tracking System at the close of business.

2. Common Weights and Measures.

   a. A Regulated Marijuana Business must utilize a standard of measurement that is supported by the Inventory Tracking System to track all Regulated Marijuana.

   b. A scale used to weigh product prior to entry into the Inventory Tracking System shall be tested and approved in accordance with section 35-14-127, C.R.S.

3. Inventory Tracking System Administrator and User Accounts – Security and Record.

   a. A Regulated Marijuana Business shall maintain an accurate and complete list of all Inventory Tracking System Administrators and Inventory Tracking System Users for each Licensed Premises. A Regulated Marijuana Business shall update this list when a new Inventory Tracking System User is trained. A Regulated Marijuana Business must train and authorize any new Inventory Tracking System Users before those Owners or employees may access Inventory Tracking System or input, modify, or delete any information in the Inventory Tracking System.

   b. A Regulated Marijuana Business must cancel any Inventory Tracking System Administrators and Inventory Tracking System Users from their associated Inventory Tracking System accounts once any such individuals are no longer employed by the Licensee or at the Licensed Premises.

   c. A Regulated Marijuana Business is accountable for all actions employees take while logged into the Inventory Tracking System or otherwise conducting Regulated Marijuana inventory tracking activities.

   d. Each individual user is also accountable for all of his or her actions while logged into the Inventory Tracking System or otherwise conducting Regulated Marijuana inventory tracking activities, and shall maintain compliance with all relevant laws.

4. Secondary Software Systems Allowed.

   a. Nothing in this Rule prohibits a Regulated Marijuana Business from using separate software applications to collect information to be used by the business including secondary inventory tracking or point-of-sale systems.

   b. A Licensee must ensure that all relevant Inventory Tracking System data is accurately transferred to and from the Inventory Tracking System for the purposes of reconciliations with any secondary systems.

   c. A Regulated Marijuana Business must preserve original Inventory Tracking System data when transferred to and from a secondary application(s). Secondary software applications must use the Inventory Tracking System data as the primary source of data and must be compatible with updating to the Inventory Tracking System.

5. Regulated Marijuana Cultivations: Inventory Tracking System. A Manicure Batch may be combined with a Harvest Batch containing the same plants, provided that the Regulated Marijuana is homogenized prior to sampling and testing, uniform in strain, cultivated utilizing the same Pesticide and other agricultural chemicals. Manicure and Harvest Batches must be clearly identified at the Licensed Premises with the Manicure Batch and Harvest Batch name and date as it appears in the Inventory Tracking System.

F. Conduct While Using Inventory Tracking System.

1. Misstatements or Omissions Prohibited. A Regulated Marijuana Business and its designated Inventory Tracking System Administrator(s) and Inventory Tracking System User(s) shall enter data into the Inventory Tracking System that fully and transparently accounts for all inventory tracking activities. Both the Regulated Marijuana Business and the individuals using the Inventory Tracking system are responsible for the accuracy of all information entered into the Inventory Tracking System. Any misstatements or omissions may be considered a license violation affecting public safety.

2. Use of Another User's Login Prohibited. Individuals entering data into the Inventory Tracking System shall only use that individual's Inventory Tracking System account.

3. Loss of System Access. If at any point a Regulated Marijuana Business loses access to the Inventory Tracking System for any reason, the Regulated Marijuana Business must keep and maintain comprehensive records detailing all Regulated Marijuana tracking inventory activities that were conducted during the loss of access. *See* Rule 3-905 – Business Records Required. Once access is restored, all Regulated Marijuana inventory tracking activities that occurred during the loss of access must be entered into the Inventory Tracking System. A Regulated Marijuana Business must document when access to the system was lost and when it was restored. A Regulated Marijuana Business shall not Transfer any Regulated Marijuana to another Regulated Marijuana Business until such time as access is restored and all information is recorded into the Inventory Tracking System.

G. System Notifications.

1. Compliance Notifications. A Regulated Marijuana Business must monitor all compliance notifications from the Inventory Tracking System. The Licensee must resolve the issues detailed in the compliance notification in a timely fashion. Compliance notifications shall not be dismissed in the Inventory Tracking System until the Regulated Marijuana Business resolves the compliance issues detailed in the notification.

2. Informational Notifications. A Regulated Marijuana Business must take appropriate action in response to informational notifications received through the Inventory Tracking System, including but not limited to notifications related to RFID billing, enforcement alerts, and other pertinent information.

H. Lawful Activity Required. Proper use of the Inventory Tracking System does not relieve a Licensee of its responsibility to maintain compliance with all laws, rules, and other requirements at all times.

I. Inventory Tracking System Procedures Must Be Followed. A Regulated Marijuana Business must utilize Inventory Tracking System in conformance with these rules and Inventory Tracking System procedures, including but not limited to:

1. Properly indicating the creation of a Harvest Batch and/or Production Batch including the assigned Harvest Batch and/or Production Batch Number;

2. Accurately identifying the cultivation rooms and location of each plant within those rooms on the Licensed Premises;

3. Accurately identifying when inventory is no longer on the Licensed Premises;

4. Properly indicating that a Test Batch is being used as part of achieving a Reduced Testing Allowance;

5. Accurately indicating the Inventory Tracking System category for all Regulated Marijuana; and

6. Accurately including a note explaining the reason for any destruction of Regulated Marijuana, and reason for any adjustment of weights to Inventory Tracking System packages.

7. Properly designating one or more Sampling Managers before Transferring any Sampling Units;

8. Fully and accurately tracking the Transfer of any Sampling Unit from a Regulated Marijuana Business to a Sampling Manager identified by name and license number; and

9. When entering into the Inventory Tracking System a unit of Regulated Marijuana the Inventory Tracking System Trained Administrator or Inventory Tracking System User shall also identify the net contents of each unit consistent with Rules 3-1005(B)(2)(e) and (C)(2)(a)(iv). For example, if the Inventory Tracking System User enters 1 unit of Retail Marijuana Product that contains 100 milligrams of Retail Marijuana Product, then the Inventory Tracking System User shall also identify that each unit contains 100 milligrams. Further, if the Inventory Tracking System User enters 1 unit of Medical Marijuana Product that contains 200 mg of Medical Marijuana Product, the Inventory Tracking System User shall also identify that each unit contains 200 mg.

Basis and Purpose – 3-810

The statutory authority for this rule includes but is not limited to sections, 44-10-201, 44-10-202(1)(a), 44-10-202(1)(c), 44-10-203(2)(n), 44-10-501(1)(b), 44-10-502(2), 44-10-503(1)(b), 44-10-505(3), 44-10-601(1)(d), 44-10-601(4), 44-10-602(1), 44-10-602(6)(f), 44-10-603(1)(b), and 44-10-605(3), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to maintain a system that will allow the State Licensing Authority and the industry to jointly track Regulated Marijuana from either seed or immature plant stage until the Regulated Marijuana is sold to the patient or consumer or destroyed.

3-810 – Minimum Tracking Requirements

A. Requirement to Track Regulated Marijuana From Seed-to-Sale. Licensees must use the Inventory Tracking System to ensure Regulated Marijuana is identified and tracked from the point the Regulated Marijuana is Propagated from seed or cutting to the point when it is Transferred to another Regulated Marijuana Business, the Medical Marijuana Transporter or Retail Marijuana Transporter takes control of the Regulated Marijuana by removing it from the originating Licensee's Licensed Premises and placing the Regulated Marijuana in the transport vehicle, or it is Transferred to a Sampling Manager as a designated Sampling Unit, and through the delivery, point-of-sale, or the Regulated Marijuana is otherwise disposed of. *See* Rule 3-805 – Inventory Tracking System

B. Ability to Reconcile Required. Licensees must have the ability to reconcile transported and on-hand Regulated Marijuana inventory with the Inventory Tracking System and the associated transaction history and transportation order receipts. *See* Rule 3-905 – Business Records Required.

Basis and Purpose – 3-815

The statutory authority for this rule includes but is not limited to 44-10-201, 44-10-202(1)(a), 44-10-202(1)(c), 44-10-313(5)(b), 44-10-505(3), and 44-10-605(2) C.R.S. The purpose of this rule is to allow the State Licensing Authority and the industry to jointly track the Transfer and delivery of Regulated Marijuana and Regulated Marijuana Product between licensed Regulated Marijuana Businesses. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.

3-815 – Transport Manifest Required

A. Transport of Regulated Marijuana Without Transport Manifest Prohibited. Licensees are prohibited from transporting any Regulated Marijuana without a valid transport manifest generated by the Inventory Tracking System.

B. Accepting Regulated Marijuana Without Transport Manifest Prohibited. Licensees are prohibited from accepting any Regulated Marijuana from another Regulated Marijuana Business without receiving a valid transport manifest generated from the Inventory Tracking System.

C. Information Must Be Accurate. All information on the Inventory Tracking System generated transport manifest must be accurate.

Basis and Purpose – 3-820

The statutory authority for this rule includes but is not limited to sections 44-10-201, 44-10-202(1)(a), 44-10-202(1)(c), 44-10-502(3), 44-10-503(10), 44-10-602(6), and 44-10-603(10). The purpose of this rule is to establish inventory tracking, reporting and recordkeeping requirements for Sampling Units to ensure that any Regulated Marijuana or Regulated Marijuana Products designated as a Sampling Unit is identified and tracked from the point of such designation.

3-820 – Sampling Unit Tracking Requirements

A. Applicability. This Rule 3-820 applies to Medical Marijuana Cultivation Facilities, Retail Marijuana Cultivation Facilities, Medical Marijuana Products Manufacturers, and Retail Marijuana Products Manufacturers.

B. Sampling Unit Tracking Requirements.

1. In addition to all other requirements set forth in these rules, a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer shall utilize the Inventory Tracking System to ensure that any Regulated Marijuana designated as a Sampling Unit is identified and tracked from the point of such designation until the Sampling Unit is Transferred to a Sampling Manager. *See* Rules 5-230, 5-320, 6-225, 6-320 – Sampling Unit Protocols.

2. The Inventory Tracking System must adequately reflect all Transfers of Sampling Units. At a minimum, a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer must ensure that the Inventory Tracking System reflects the date the Sampling Unit was Transferred, the weight of the Sampling Unit, and the name and license number of the recipient Sampling Manager.

3. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer must have the ability to reconcile its Sampling Manager and Sampling Unit records with the Inventory Tracking System and any associated transaction history.

Basis and Purpose – 3-825

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-203(2)(d)(I), 44-10-504, and 44-10-604 The Purpose of this rule is to establish reporting standards for Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities.

3-825 – Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities Specific Tracking Requirements

A. Required Procedures. A Regulated Marijuana Testing Facility must establish procedures to ensure that results are accurate, precise, and scientifically valid prior to reporting such results.

B. Reports. Every final report, whether submitted to the Division, to a Regulated Marijuana Business, or to any other Person authorized to receive the report, must include the following:

1. Report quantitative results that are only above the lowest concentration of calibrator or standard used in the analytical run;

2. Verify results that are below the lowest concentration of calibrator or standard and above the LOQ by using a blank and a standard that falls below the expected value of the analyte in the sample in duplicate prior to reporting a quantitative result;

3. Qualitatively report results below the lowest concentration of calibrator or standard and above the LOD as either trace or using a non-specific numerical designation;

4. Adequately document the available external chain of custody information;

5. Ensure all final reports contain the name and location of the Regulated Marijuana Testing Facility that performed the test, name, and unique identifier of Sample, submitting client, Sample received date, date of report, type of Sample tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies; and

6. Provide the final report to the Division, as well as the Regulated Marijuana Business, and/or any other Person authorized to receive the report in a timely manner.

C. Inventory Tracking System. Each Regulated Marijuana Testing Facility shall:

1. Report all test results to the Division as part of daily reconciliation by the close of business and in accordance with all Inventory Tracking System Procedures under Rule 3-805 – All Regulated Marijuana Businesses: Inventory Tracking System. The requirement to report all test results includes:

a. Both positive and negative test results;

b. Results from both mandatory and voluntary testing; and

c. For quantitative tests, a quantitative value.

2. As part of Inventory Tracking System reporting, when results of tested Samples exceed maximum levels of allowable potency or contamination, or otherwise result in failed potency, homogeneity, or contaminant testing, the Regulated Marijuana Testing Facility shall, in the Inventory Tracking System, indicate failed test results for the Inventory

Tracking System package associated with the failed Sample. This requirement only applies to testing of Samples that are comprised of Regulated Marijuana.

D. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

3-900 Series – Business Records

Basis and Purpose – 3-905

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-301, and 44-10-1001(1), C.R.S. This rule explains what business records a Licensee must maintain and clarifies that such records must be made available to the Division on demand. This Rule 3-905 was previously Rules M and R 901, 1 CCR 212-1 and 1 CCR 212-2.

3-905 – Business Records Required

A. General Requirements.

1. A Regulated Marijuana Business must maintain the information required in this Rule in a format that is readily understood by a reasonably prudent business person.

2. Each Regulated Marijuana Business shall retain all books and records necessary to fully account for the business transactions conducted under its license for the current year and three preceding calendar years.

   a. On premises records: The Regulated Marijuana Business's books and records for the preceding six months (or complete copies of such records) must be maintained on the Licensed Premises at all times.

   b. On- or off-premises records: Books and records associated with older periods may be archived on or off of the Licensed Premises.

3. The books and records must fully account for the transactions of the business and must include, but shall not be limited to:

   a. Current Owner and Employee List – This list must provide the full name and License number of all Owner Licensees and every employee who works for a Regulated Marijuana Business. The list shall include all employees who work for the Regulated Marijuana Business, whether or not they report to the Licensed Premises as a part of their employment. A Regulated Marijuana Business can fulfill the requirements of this Rule by listing all employees in the Inventory Tracking System for each Licensed Premises. If a Regulated Marijuana Business does not use the Inventory Tracking System to list all employees, it must maintain a separate record for employees who do not report to the Licensed Premises.

      i. Employees Required to be Listed in the Inventory Tracking System. A Regulated Marijuana Business must use the Inventory Tracking System to list all employees who report to the Licensed Premises. The employee list in the Inventory Tracking System must include the full name and Employee License number of every employee who works on the premises. The Regulated Marijuana Business is responsible for updating its list of employees who work at the Licensed Premises in the Inventory

Tracking System within 10 days of an employee commencing or ceasing employment.

b. Secure Facility Information – For its Licensed Premises and any associated permitted off-premises storage facility, a Regulated Marijuana Business must maintain the business contact information for vendors that maintain video surveillance systems and Security Alarm Systems.

c. Advertising Records – All records related to Advertising and marketing, including, but not limited to, audience composition data.

d. Licensed Premises – Diagram of all approved Limited Access Areas, Restricted Access Areas, and any permitted off-premises storage facilities.

e. Visitor Log – List of all visitors entering Limited Access Areas or Restricted Access Areas.

f. All records normally retained for tax purposes.

g. Waste Log – Comprehensive records regarding all waste and Fibrous Waste material that accounts for, reconciles, and evidences all waste and Fibrous Waste activity related to the disposal of marijuana.

h. Surveillance Logs – Surveillance logs as required by Rule 3-225.

i. Every Licensee shall maintain a record of its identity statement and Standardized Graphic Symbol which shall be available upon request by the State Licensing Authority or Division. A Licensee may elect to have its Identity Statement also serve as its Standardized Graphic Symbol for purposes of complying with this rule.

j. Testing Records – All testing records required by Rule 5-450 and Rule 6-450.

k. Sampling Unit Records – All records related to designated Sampling Managers, identified Sampling Units, and Transfers of Sampling Units. *See* Rules 3-810, 5-230, 5-320, 6-225, 6-320. This includes, but is not limited to, standard operating procedures that explain the requirements of sections 44-10-502(5), 44-10-503(10), 44-10-602(6) and 44-10-603(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements imposed by Rules 5-230, 5-320, 6-225, 6-320.

l. License Application Records – All records provided by the Licensee to both the state and local licensing authorities in connection with an application for licensure pursuant to the Marijuana Code and these Rules.

m. Standard Operating Procedures – All standard operating procedures as required by these Rules.

n. Audited Product and/or Alternative Use Product Records – All records required to demonstrate compliance with Rule 5-325 and 6-325.

o. All records required by Rule 3-240 regarding collection and Transfers of Marijuana Consumer Waste.

p. Corrective Action and Preventive Action records required by Rules 5-115, 5-210, 5-310, 6-110, 6-210, 6-310.

q. Certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers as required by Rule 5-310(F).

r. Records required to be maintained by Delivery Permit holders.

s. Records required to be maintained by Licensed Hospitality Businesses.

t. Recall records required by Rule 3-336.

u. All records related to Material Changes.

v. Records related to Adverse Health Events.

w. All other records required by these Rules.

B. Loss of Records and Data. Any loss of electronically-maintained records shall not be considered a mitigating factor for violations of this Rule. Licensees are required to exercise due diligence in preserving and maintaining all required records.

C. Violation Affecting Public Safety. Violation of this Rule may constitute a license violation affecting public safety.

D. Records Related to Inventory Tracking. A Regulated Marijuana Business must maintain accurate and comprehensive inventory tracking records that account for, reconcile and evidence all inventory activity for Regulated Marijuana from either seed or Immature Plant stage until the Regulated Marijuana is destroyed or Transferred to another Regulated Marijuana Business, a consumer, a patient, or a Pesticide Manufacturer.

E. Records Related to Transport. A Regulated Marijuana Business must maintain adequate records for the transport of all Regulated Marijuana. *See* Rule 3-605 – Transport: All Regulated Marijuana Businesses.

F. Provision of Any Requested Record to the Division. A Licensee must provide on-demand access to on-premises records following a request from the Division during normal business hours or hours of apparent operation, and must provide access to off-premises records within three business days following a request from the Division.

Basis and Purpose – 3-910

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), and 44-10-203(2)(j), C.R.S. A Regulated Marijuana Business must collect and remit sales tax on all retail sales made pursuant to the licensing activities. The purpose of this rule is to clarify when such taxes must be remitted to the Colorado Department of Revenue. This Rule 3-910 was previously Rules M and R 902, 1 CCR 212-1 and 1 CCR 212-2.

3-910 – Reporting and Transmittal of Taxes

A. Sales and Use Tax Returns Required. All state and state-collected sales and use tax returns must be filed, and all taxes must be remitted to the Department of Revenue, on or before the 20th day of the month following the reporting month. For example, a January return and remittance will be due to the Department of Revenue by February 20th. If the due date (20th of the month) falls on a

weekend or holiday, the next business day is considered the due date for the return and remittance.

B. Excise and Retail Marijuana Sales Tax Returns Required. A Retail Marijuana Business shall submit any applicable tax returns and remit any payments due pursuant to Article 28.8 of Title 39, C.R.S.

C. Proof of Tax Remittance Required. All state tax payments shall require proof of remittance with the State Licensing Authority. A Retail Marijuana Cultivation Facility must maintain records evidencing the payment of all required excise taxes. Proof of retail sales taxes shall be identified in required tax records, tracking systems, and sales receipts provided to consumers.

Basis and Purpose – 3-915

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), and 44-10-1001(1), C.R.S. The Marijuana Code mandates that a Regulated Marijuana Business must pay for an audit when the State Licensing Authority deems an audit necessary. This rule explains when an audit may be deemed necessary and sets forth possible consequences of a Regulated Marijuana Business's refusal to cooperate or pay for the audit. This Rule 3-915 was previously Rules M and R 903, 1 CCR 212-1 and 1 CCR 212-2.

3-915 – Independent Audit May Be Required

A. State Licensing Authority May Require Independent Audit.

1. When the State Licensing Authority deems it necessary, it may require a Regulated Marijuana Business to undergo an audit by an independent accountant. The scope of the audit may include, but need not be limited, to financial transactions and inventory control measures.

2. In such instances, the Division may attempt to mutually agree upon the selection of the independent accountant with a Regulated Marijuana Business. However, the Division always retains the right to select the independent accountant regardless of whether mutual agreement can be reached. The independent accountant shall be a certified public accountant licensed by, and in good standing with, the Colorado State Board of Accountancy.

3. The Regulated Marijuana Business will be responsible for all direct costs associated with the independent audit.

B. When Independent Audit Is Necessary. The State Licensing Authority has discretion to determine when an audit by an independent accountant is necessary. The following is a non-exhaustive list of examples that may justify an independent audit:

1. A Regulated Marijuana Business does not provide requested records to the Division;

2. The Division has reason to believe that the Regulated Marijuana Business does not properly maintain its business records;

3. A Regulated Marijuana Business has a prior violation related to recordkeeping or inventory control;

4. A Regulated Marijuana Business has a prior violation related to diversion.

5. As determined by the Division, the scope of an audit conducted by the Division would be so extensive as to jeopardize the regular duties and responsibilities of the Division's audit or enforcement staff.

C. Compliance Required. A Regulated Marijuana Business must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an audit in accordance with this Rule.

D. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 3-920

The statutory authority for this rule includes but is not limited to sections 44-10-201(4), 44-10-204(1)(a), 44-10-202(1)(c), 44-10-202(1)(a), 44-10-204(1)(a), 44-10-203(1)(k), 44-10-313(12), and 44-10-701(2)(a), C.R.S. The State Licensing Authority must be able to immediately access information regarding a Regulated Marijuana Business's managing individual. Accordingly, this rule reiterates the statutory mandate that Licensees provide any management change to the Division within seven days of any change, and also clarifies that a Licensee must save a copy of any management change report to the Division, and clarifies that failure to follow this rule can result in discipline.

The State Licensing Authority finds it essential to the stringent and comprehensive enforcement of the Marijuana Code to regulate, monitor, and track all Regulated Marijuana in order to prevent diversion and to ensure that all Regulated Marijuana grown, processed, sold, and disposed of in the Regulated Marijuana market is accounted for transparently in accordance with the Marijuana Code.

Requiring Licensees to report instances when the Regulated Marijuana they cultivate, manufacture, distribute, sell, test, or dispose of is stolen, unlawfully Transferred, or otherwise diverted from the regulated market, or when Licensees discover plans to divert the Regulated Marijuana, emphasizes that Licensees are accountable for their Regulated Marijuana at all times and contributes to the transparency of the regulated market.

In addition to maintaining transparency in the regulated marijuana industry, the State Licensing Authority also must ensure the confidentiality of certain Licensee information and records, including information in the Inventory Tracking System. Requiring Licensees to report instances where the Inventory Tracking System was compromised or planned to be compromised through unlawful access, use for unlawful purposes, the deliberate alteration or deletion of data, or deliberately entering false data, contributes to ensuring the accuracy and transparency of the system and therefore the regulated market, and aids in maintaining the confidentiality of Licensee data.

This Rule 3-920 was previously Rules M and R 904, 1 CCR 212-1 and 1 CCR 212-2.

3-920 – Regulated Marijuana Business Reporting Requirements

A. Management Personnel Change Must Be Reported.

1. When Required. A Regulated Marijuana Business shall provide the Division a written report within seven days after any change in management personnel occurs. In addition, a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer shall report any designation or change of Sampling Manager(s) through the Inventory Tracking System.

2. Licensee Must Maintain Record of Reported Change. A Regulated Marijuana Business must also maintain a copy of this written report with its business records.

3. Consequence of Failure to Report. Failure to report a change in a timely manner may result in discipline.

B. Reporting of Crime on the Licensed Premises or Otherwise Related to a Regulated Marijuana Business. A Regulated Marijuana Business and all Licensees employed by the Regulated Marijuana Business shall report to the Division any discovered plan or other action of any Person to (1) commit theft, burglary, underage sales, diversion of marijuana or marijuana product, or other crime related to the operation of the subject Regulated Marijuana Business; or (2) compromise the integrity of the Inventory Tracking System. A report shall be made as soon as possible after the discovery of the action, but not later than 14 days. Nothing in this paragraph (B) alters or eliminates any obligation a Regulated Marijuana Business or Licensee may have to report criminal activity to a local law enforcement agency.

C. Adverse Health Event Reporting. If a Regulated Marijuana Business is notified of any possible Adverse Health Event, as defined by Rule 1-115, associated with Regulated Marijuana, it must report the Adverse Health Event to the Division within 48 hours from its receipt of notification of the Adverse Health Event. To the extent known after reasonable diligence to ascertain the information, the report must contain the name and contact information of the complainant, the date the complaint was received, the nature of the complaint, the Production Batch or Harvest Batch number, and any other identifying information found on the label of the Regulated Marijuana. The Regulated Marijuana Business must maintain records of reports of Adverse Health Events in accordance with Business Records Rule 3-905

Basis and Purpose – 3-925

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-204(1)(a), 44-10-203(2)(j), 44-10-203(2)(k), 44-10-203(1)(k), and 44-10-307(1)(e), C.R.S. *See also* articles 21, 22, 26 and 28.8 of title 39, C.R.S. The purpose of this rule is to clarify the Division's authority to provide taxation divisions within the Department copies of or access to reports or other information obtained from or regarding a Licensee, for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise and income taxes required by Title 39 of the Colorado Revised Statutes. Such information sharing is for a purpose authorized by the Marijuana Code. This Rule 3-925 was previously Rules M and R 905, 1 CCR 212-1 and 1 CCR 212-2.

3-925 – Department Information Access

A. Department Access to Reports or Other Information. The Division may provide taxation divisions within the Department copies of or access to reports or other information obtained from or regarding a Licensee for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise, and income taxes required by Title 39 of the Colorado Revised Statutes.

B. Confidentiality. Reports or other information provided to or accessed by taxation divisions within the Department for the purpose of ensuring accurate and complete filing of tax returns and payment of sales, excise, and income taxes required by Title 39 of the Colorado Revised Statutes shall be considered part of the Department's investigation pursuant to subsection 39-21-113(4)(a), C.R.S., and the Division shall continue to maintain such records and information in its possession or control as confidential pursuant to subsection 44-10-204(1)(a), C.R.S.

Basis and Purpose – 3-930

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-204, 44-10-301, and 44-10-1001(1), C.R.S. This rule identifies the business records a Licensee can request from the Division and how the business records will be provided to the Licensee.

3-930 – Request for Business Records from the Division.

A. A Controlling Beneficial Owner, a Passive Beneficial Owner who is licensed or disclosed to the Division or an authorized representative according to the Division's records may request from the Division a copy of applications which the Controlling Beneficial Owner, the Passive Beneficial Owner or a Regulated Marijuana Business for which the requestor was identified on the ownership structure that has previously been submitted to the Division. The following limitations apply to requests for business records from the Division:

1. Requests for records under this rule are limited to applications submitted by a Licensee in the prior two (2) calendar years during which the requesting Controlling Beneficial Owner or Passive Beneficial Owner that was licensed or disclosed was identified on the Licensee's ownership structure on file with the Division.

2. Applications provided by the Division in response to a request under this rule will not include supporting documents. For example, business records provided by the Division under this rule will not include leases, operating agreements, or premises diagrams.

3. Business records provided to a Controlling Beneficial Owner, Passive Beneficial Owner that was licensed disclosed, or authorized representative under this rule will only be provided in an electronic format and sent only to the Controlling Beneficial Owner, disclosed Passive Beneficial Owner, or to an individual with a valid authorization letter on file with the Division.

B. The Division will not provide any business records or provide business records to any person which could violate the obligation to maintain the confidentiality of documents and information provided by Applicants and Licensees to the State Licensing Authority as provided in Section 44-10-204, C.R.S.

3-1000 Series – Labeling, Packaging, and Product Safety

Basis and Purpose – 3-1005

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(f), 44-10-203(1)(k), 44-10-203(3)(a)-(b), 44-10-601(2)(a), 44-10-601(5), 44-10-603(1)(d), 44-10-603(4)(a), and 44-10-603(8), C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product Transferred between Regulated Marijuana Businesses. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production, and sale of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. The labeling requirements in this rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. This Rule 3-1005 was previously Rules M and R 1001-1, 1 CCR 212-1 and 1 CCR 212-2.

3-1005 - Packaging and Labeling: Minimum Requirements Prior to Transfer to a Regulated Marijuana Business, except to a Regulated Marijuana Testing Facility

A. Applicability. This Rule establishes minimum requirements for packaging and labeling Regulated Marijuana prior to Transfer to a Regulated Marijuana Business, except to a Regulated Marijuana Testing Facility. See Rule 3-1025 for minimum requirements for packaging and labeling Regulated Marijuana prior to Transfer to a Regulated Marijuana Testing Facility. The labeling

requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, and Retail Marijuana Product.

B. Packaging and Labeling of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate, Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana flower, trim, wet whole plant, or Medical Marijuana Concentrate to another Medical Marijuana Business, or Retail Marijuana flower, trim, wet whole plant, or Retail Marijuana Concentrate to another Retail Marijuana Business:

1. Packaging of Regulated Marijuana Flower and Trim, and Regulated Marijuana Concentrate.

   a. Prior to Transfer to a Regulated Marijuana Business, Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be placed into a Container. The Container may but is not required to be Child-Resistant.

   b. Each Container of Regulated Marijuana flower or trim that is Transferred to a Regulated Marijuana Business shall not exceed 50 pounds of Regulated Marijuana flower or trim, but may include pre-weighed units that are within the sales limit in Rules 5-115(C),6-110(C), and 6-925(G).

   c. A Container of wet whole plant that is Transferred to a Regulated Marijuana Business may exceed 50 pounds, but shall not exceed 100 pounds.

   d. Each Container of Medical Marijuana Concentrate that is Transferred to a Medical Marijuana Business, or Retail Marijuana Concentrate that is Transferred to a Retail Marijuana Business, shall not exceed 50 pounds of Medical Marijuana Concentrate or Retail Marijuana Concentrate, but may include pre-weighed units that are within the applicable sales limit in Rules 5-115(C),6-110(C), and 6-925(G).

2. Labeling of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate. Prior to Transfer to a Regulated Marijuana Business, every Container of Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be affixed with a label that includes at least the following information:

   a. The license number of the Medical Marijuana Cultivation Facility where the Medical Marijuana was grown, the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown, or the Accelerator Cultivator where the Retail Marijuana was grown;

   b. The Harvest Batch Number(s) assigned to the Regulated Marijuana or the Production Batch Number(s) assigned to the Regulated Marijuana Concentrate;

   c. If applicable, the license number of the Medical Marijuana Cultivation Facility(ies) that produced the Physical Separation-Based Medical Marijuana Concentrate, the Retail Marijuana Cultivation Facility(ies) that produced the Physical Separation-Based Retail Marijuana Concentrate, or the license number of the Accelerator Cultivator;

   d. If applicable, the license number of the Medical Marijuana Products Manufacturer(s) where the Medical Marijuana Concentrate was produced, the Retail Marijuana Products Manufacturer(s) where the Retail Marijuana

Concentrate was produced, or the Accelerator Manufacturer(s) where the Retail Marijuana Concentrate was produced;

e. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana or Regulated Marijuana Concentrate prior to its placement in the Container; and

f. Potency test results as required to permit the receiving Regulated Marijuana Business to label the Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate as required by these rules.

g. Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers. A list of all Ingredients, including Additives, used to manufacture the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

C. Packaging and Labeling of Regulated Marijuana Product Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana Product to another Medical Marijuana Business, or Transferring Retail Marijuana Product to another Retail Marijuana Business:

1. Packaging of Regulated Marijuana Product.

a. Transfer to a Regulated Marijuana Business Other Than a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store, Regulated Marijuana Product shall be placed into a Container. The Container may but is not required to be Child-Resistant.

b. Transfer to a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Medical Marijuana Store or Retail Marijuana Store, all Regulated Marijuana Product shall be packaged in a Child-Resistant Container that is ready for sale to the patient or consumer as required by the Rule 3-1010(D).

2. Labeling of Regulated Marijuana Product.

a. Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Business other than a Medical Marijuana Store or Retail Marijuana Store, every Container of Regulated Marijuana Product shall be affixed with a label that includes at least the following information:

i. The license number of the Regulated Marijuana Cultivation Facility(ies) where the Medical Marijuana or Retail Marijuana was grown;

ii. The license number of the Regulated Marijuana Products Manufacturer that produced the Medical Marijuana Product or Retail Marijuana Product;

iii. The Production Batch Number(s) assigned to the Regulated Marijuana Product;

iv. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana Product prior to its placement in the Container; and

v. Potency test results as required to permit the receiving Regulated Marijuana Business to label the Regulated Marijuana Product as required by these rules.

b. Transfer to a Medical Marijuana Store or Retail Marijuana Store. Prior to Transfer to a Regulated Marijuana Store, every Container of Regulated Marijuana Product shall be affixed with a label ready for sale to the patient or consumer including all information required by Rules 3-1010(D)(2) and 3-1015(B).

D. Packaging and Labeling of Regulated Marijuana Seeds and Immature Plants Prior to Transfer to a Regulated Marijuana Business. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Regulated Marijuana seeds or Immature plants to another Regulated Marijuana Business:

1. Packaging of Regulated Marijuana Seeds.

a. Prior to Transfer to a Regulated Marijuana Business, Regulated Marijuana seeds shall be placed into a Container. The Container may but is not required to be Child-Resistant.

b. Each Container of Regulated Marijuana seeds that is Transferred to a Regulated Marijuana Business shall not exceed 10 pounds of Regulated Marijuana seeds.

2. Packaging of Immature Plants. Prior to Transfer to a Regulated Marijuana Business, Immature plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.

3. Labeling of Regulated Marijuana Seeds and Immature Plants. Prior to Transfer to a Regulated Marijuana Business, every Container of Regulated Marijuana seeds and all receptacles holding an Immature plant shall be affixed with a label that includes at least the license number of the Regulated Marijuana Cultivation Facility where the Regulated Marijuana that produced the seeds or the Immature plant was grown.

E. Packaging and Labeling of Sampling Units. Regulated Marijuana Cultivation Facilities and Regulated Marijuana Products Manufacturers shall comply with the following minimum packaging and labeling requirements prior to Transferring any Sampling Unit to a Sampling Manager.

1. Packaging of Sampling Units. Prior to Transfer to a Sampling Manager, a Sampling Unit must be placed in a Container. If the Sampling Unit is Regulated Marijuana flower, trim, Medical Marijuana Concentrate, or Retail Marijuana Concentrate, the Container may, but is not required to, be Child-Resistant; however, the Container shall be placed into a Child-Resistant Exit Package at the point of Transfer to the Sampling Manager. If the Sampling Unit is composed of Regulated Marijuana Product, the Sampling Unit shall be packaged in a Child-Resistant Container.

2. Labeling of Sampling Units. Prior to Transfer to a Sampling Manager, every Container for a Sampling Unit shall be affixed with a label that includes at least the following information:

a. Required License Number. The license number for the Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer Transferring the Sampling Unit.

b. Batch Number(s). The relevant Harvest Batch number and/or Production Batch number from which the Sampling Unit was designated.

c. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"

d. Required Potency Statement.

i. For a Sampling Unit composed of Regulated Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate, the potency of the Sampling Unit's active THC and CBD expressed as a percentage.

ii. For a Sampling Unit composed of Regulated Marijuana Product, the potency of the Sampling Unit's active THC and CBD expressed in milligrams. If the potency of the Sampling Unit's active THC or CBD is less than 1 milligram, the potency may be expressed as "<1 mg."

iii. The required potency statement shall be displayed either: (1) In a font that is bold, and enclosed within an outlined shape such as a circle or square; or (2) highlighted with a bright color, such as yellow.

e. Date of Transfer. The label shall include the date of Transfer to the Sampling Unit.

f. Patient Number. If the Sampling Unit contains Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product, the label must also include the patient registration number of the recipient Sampling Manager.

g. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "This product was received as a Sampling Unit and may have been produced with undisclosed allergens, solvents, or pesticides, and may pose unknown physical or mental health risks. This product is not for resale and should not be used by anyone else."

F. Prohibited Transfers – All Regulated Marijuana Businesses. A Regulated Marijuana Business shall not Transfer to a Medical Marijuana Store, Retail Marijuana Store, Accelerator Store, or Retail Marijuana Hospitality and Sales Business—and a Medical Marijuana Store, Retail Marijuana Store, Accelerator Store, or Retail Marijuana Hospitality and Sales Business shall not accept nor offer for sale—any Regulated Marijuana that is not packaged and labeled in conformance with the requirements of these rules or that does not provide all information necessary to permit the Medical Marijuana Store, Retail Marijuana Store, Accelerator Store or Retail Marijuana Hospitality and Sales Business to package and label the Regulated Marijuana prior to Transfer to a patient or consumer. However, a Medical Marijuana Store or Retail Marijuana Store is not required to open any tamper evident Marketing Layer received from a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or a Retail Marijuana Products Manufacturer to verify the Container is Child-Resistant or labeled.

G. Shipping Containers. Licensees may Transfer multiple Containers of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product to a Regulated Marijuana Business in a Shipping Container.

1. RFID Tag Required. Licensees shall ensure that either the multiple Containers placed within a Shipping Container each have an RFID tag, or the Shipping Container itself must have an RFID tag. If the Licensee elects to place the RFID tag on the Shipping Container, the Shipping Container shall contain only one Harvest Batch of Regulated Marijuana, one Production Batch of Regulated Marijuana Concentrate, or one Production Batch of Regulated Marijuana Product. If a Shipping Container consists of more than one Harvest Batch or Production Batch, then each group of multiple Containers shall be affixed with an RFID tag. *See* Rule 3-805 – Inventory Tracking System; Rule 3-605 – Transport: All Regulated Marijuana Businesses.

2. Labeling of Shipping Containers. Any Shipping Container that will not be displayed to the consumer is not required to be labeled according to these rules.

H. Packaging and Labeling of Regulated Marijuana Flower and Trim Prior to Transfer to a Pesticide Manufacturer or a Marijuana Research and Development Facility. The packaging and labeling requirements in these 3-1000 Series Rules also apply to any Transfer of Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

I. Marijuana Research and Development Facility Transfers to Persons as Part of an Approved Research Project. Any Marijuana Research and Development Facility conducting research as part of an approved Research Project involving human subjects shall comply with all packaging and labeling requirements that are applicable to a Medical Marijuana Store prior to Transfer to a patient, unless the Marijuana Research and Development Facility requests and receives in advance a waiver of specific packaging or labeling requirements in connection with the approved Research Project.

J. Research Transfers Prohibited. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall not Transfer any Medical Marijuana, Medical Marijuana Concentrate, Medical Marijuana Product, Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a Pesticide Manufacturer or a Licensed Research Business.

K. Violation Affecting Public Safety. A violation of any rule in these 3-1000 Series Rules may be considered a license violation affecting public safety.

Basis and Purpose – 3-1010

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(f), 44-10-203(1)(k), 44-10-203(3)(a)-(b), 44-10-601(2)(a), 44-10-601(5), 44-10-603(1)(d), 44-10-603(4)(a), and 44-10-603(8), C.R.S. The purpose of this rule is to define general packaging and labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product prior to Transfer to a patient or consumer. The labeling requirements in this rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide necessary information to patients and consumers to make informed decisions and first responders in the event of accidental ingestion, over ingestion or allergic reaction. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. This Rule 3-1010 was previously Rules M and R 1002-1, 1 CCR 212-1 and 1 CCR 212-2.

3-1010 – Packaging and Labeling: General Requirements Prior to Transfer to a Patient or Consumer

A. Applicability. This Rule establishes general requirements for packaging and labeling Regulated Marijuana prior to Transfer to a patient or consumer. The labeling requirements in this Rule apply to all Containers immediately containing any Regulated Marijuana. The labeling requirements based on intended use in Rule 3-1015 are in addition to, not in lieu of, the requirements in this Rule.

1. Exemption for Transfers to Consumers by a Retail Marijuana Hospitality and Sales Business. Unless otherwise provided by these rules, a Retail Marijuana Hospitality and Sales Business Transferring Retail Marijuana to consumers in compliance with the packaging and labeling requirements of Rule 3-1020 is exempt from the requirements of this Rule.

B. Labeling Requirements – All Regulated Marijuana.

1. Font Size. Required labeling text on the Container and any Marketing Layer must be no smaller than 1/16 of an inch.

2. Labels Shall Not Be Designed to Appeal to Children. A Regulated Marijuana Business shall not place any content on a Container or the Marketing Layer in a manner that reasonably appears to target individuals under the age of 21, including but not limited to, cartoon characters or similar images.

3. False or Misleading Statements. Label(s) on a Container and any Marketing Layer shall not include any false or misleading statements.

4. Trademark Infringement Prohibited. No Container or Marketing Layer shall be intentionally or knowingly labeled so as to cause a reasonable consumer confusion as to whether the Regulated Marijuana is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.

5. Health and Benefit Claims. The label(s) on the Container and any Marketing Layer shall not make any claims regarding health or physical benefits to the patient or consumer.

6. Use of English Language. Labeling text on the Container and any Marketing Layer must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate foreign language translation on the label that otherwise complies with these rules.

7. Unobstructed and Conspicuous. Labeling text on the Container and any Marketing Layer must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed. For example and not by means of limitation, labels may be accordion, expandable, extendable or layered to permit labeling of small Containers.

8. Use of the Word “Candy” and/or “Candies” Prohibited.

a. Licensees shall not use the word(s) “candy” and/or “candies” on the label of any Container holding Regulated Marijuana, or of any Marketing Layer.

b. Notwithstanding the requirements of this subparagraph, a Regulated Marijuana Business whose identity statement contains the word(s) “candy” and/or “candies” may place its Identity Statement on the label of the Container holding Regulated Marijuana, or of any Marketing Layer.

9. Child Resistant Certificate(s). A Licensee shall maintain a copy of the certificate showing that each Child-Resistant Container into which the Licensee places Regulated Marijuana is Child-Resistant and complies with the requirements of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995) in accordance with the requirements of Rule 3-905(A).

    a. Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), which is available to the public for inspection and copying during the Division's regular business hours.

10. Containers and Marketing Layers. The Container and any Marketing Layer shall have a label with all information required by these 3-1000 Series Rules. Any intermediary packaging between the Container and the Marketing Layer is not required to be labeled in accordance with these rules.

11. Exit Packages.

    a. Exit Packages Permitted for Child-Resistant Containers. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store may but is not required to place a Child-Resistant Container into an Opaque Exit Package at the point of Transfer to the patient or consumer.

    b. Exit Packages Required for Regulated Marijuana Flower, Trim, and Seeds. Any Regulated Marijuana flower, trim, or seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient or consumer. The Exit Package is not required to be labeled but may include the Medical Marijuana Store's, Retail Marijuana Store's, or Accelerator Store's Identity Statement and/or Standardized Graphic Symbol.

C. Packaging and Labeling of Regulated Marijuana Flower and Trim, and Regulated Marijuana Concentrate Prior to Transfer to a Patient or Consumer. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Medical Marijuana flower and trim, Retail Marijuana flower and trim, Medical Marijuana Concentrate, or Retail Marijuana Concentrate to a patient or consumer:

1. Packaging of Regulated Marijuana Flower and Trim. Prior to Transfer to a patient or a consumer, Regulated Marijuana flower and trim shall be in a Container that does not exceed the sales limit in Rules 5-115(C) and 6-110(C). The Container may but is not required to be Child-Resistant. Any Regulated Marijuana flower and trim in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient or consumer.

2. Packaging of Regulated Marijuana Concentrate. Prior to Transfer to a patient or consumer, Regulated Marijuana Concentrate shall be in a Child-Resistant Container that does not exceed the sales limit in Rules 5-115(C) and 6-110(C).

    a. A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device that is within an intended use that is listed in Rule 3-1015(B) and is not an Alternative Use Product need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a patient or consumer.

    b. A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device with an intended use that is listed in Rule 3-1015(B) and that is not an Alternative Use Product must be labeled with at least the Universal Symbol, but

is not required to include "**Contains Marijuana. Keep away from children.**", prior to Transfer to a patient or consumer. The Universal Symbol shall be legible and no smaller than ¼ of an inch by ¼ of an inch.

c. A Marketing Layer or Container for a Pressurized Metered Dose Inhaler or Vaporizer Delivery Device must be affixed with a label that states "**Not approved by the FDA.**"

d. Nothing in this Rule authorizes the use of a syringe for any type of injection involving a needle piercing the skin.

3. Labeling of Regulated Marijuana Flower and Trim, and Regulated Marijuana Concentrate. Prior to Transfer to a patient or consumer, every Container of Regulated Marijuana flower and trim, or Regulated Marijuana Concentrate and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Regulated Marijuana Cultivation Facility where the Regulated Marijuana was grown;

ii. If applicable, the Regulated Marijuana Cultivation Facility(ies) where the Physical Separation-Based Medical Marijuana Concentrate or Physical Separation-Based Retail Marijuana Concentrate was produced;

iii. If applicable, the Regulated Marijuana Products Manufacturer where the Medical Marijuana Concentrate or Retail Marijuana Concentrate was produced; and

iv. The Regulated Marijuana Store that sold the Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, or Retail Marijuana Concentrate to the patient or consumer, except the Regulated Marijuana Store may affix its license number to the Container or Marketing Layer.

v. Retail Marijuana that was designated as Medical Marijuana pursuant to Rule 5-235, 6-230, 6-730 must be labeled with the license number of the Retail Marijuana Cultivation Facility.

vi. Retail Marijuana Concentrate that was designated as Medical Marijuana Concentrate pursuant to Rule 5-335, 6-335, 6-830 must be labeled with the license number of the Retail Marijuana Products Manufacturer.

b. Batch Numbers. The Harvest Batch Number(s) assigned to the Regulated Marijuana or the Production Batch Number(s) assigned to the Regulated Marijuana Concentrate.

c. Statement of Net Contents. The statement of net contents must identify the net weight of the Regulated Marijuana or net weight or volume of Regulated Marijuana Concentrate prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children."**

e. Required Potency Statement.

i. The potency of Regulated Marijuana flower or trim shall be expressed as: (1) the percentage of total THC and CBD from the test results for that Harvest Batch, or (2) if the Harvest Batch is not required to be tested, either as: (i) a range of percentages of total THC and CBD that extends from the lowest percentage to the highest percentage for each cannabinoid listed, from every test conducted on that strain of Regulated Marijuana cultivated by the same Regulated Marijuana Cultivation Facility during the preceding six months or (ii) an average for each cannabinoid listed, from every test conducted on that strain of Regulated Marijuana cultivated by the Regulated Marijuana Cultivation Facility during the preceding six months. If CBD is not detected in Harvest Batch, then Total CBD potency is not required.

ii. The potency of Medical Marijuana Concentrate's or Retail Marijuana Concentrate's Total THC and CBD shall be expressed as a percentage. If CBD is not detected in the Production Batch, then Total CBD potency is not required. The potency of Regulated Marijuana, Medical Marijuana Concentrate, and Retail Marijuana Concentrate shall be displayed either: (i) In a font that is bold, and enclosed within an outlined shape such as a circle or square; or (ii) Highlighted with a bright color such as yellow.

f. Date of Sale. The Regulated Marijuana Store shall affix the date of sale to the patient or consumer to the Container or Marketing Layer.

g. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or Marking Layer at the time of Transfer to the patient.

h. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

i. Ingredient List Including Major Allergens. If applicable, a list of all Ingredients used to manufacture the Regulated Marijuana Concentrate including identification of any major allergens contained in the Regulated Marijuana Concentrate in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this Rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

j. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy.**"

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may**

become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery."

k. Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers.

i. Ingredient List. A list of all Ingredients, including Additives, used to manufacture the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.

ii. Expiration Date. Effective July 1, 2022, a Marijuana Products Manufacturer that produces a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler shall include an expiration date pursuant to Rule 3-335(M).

iii. Storage Conditions. Effective July 1, 2022, a Marijuana Products Manufacturer that produces a Vaporizer Delivery Device or Pressurized Metered Dose Inhaler shall include ideal storage conditions for the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler pursuant to Rule 3-335(M).

D. Packaging and Labeling of Regulated Marijuana Product and Audited Product. A Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Accelerator Manufacturer, Medical Marijuana Store, Retail Marijuana Store, and an Accelerator Store shall comply with the following minimum packaging and labeling requirements prior to Transferring Regulated Marijuana Product:

1. Packaging of Regulated Marijuana Product. Every Regulated Marijuana Product shall be in a Child-Resistant Container at the time of Transfer to a Medical Marijuana Store or Retail Marijuana Store in accordance with the following packaging limits:

a. Regulated Marijuana Product Other than Edible Medical Marijuana Product or Edible Retail Marijuana Product. Medical Marijuana Product that is not Edible Medical Marijuana Product and Retail Marijuana Product that is not Edible Retail Marijuana Product shall be placed into a Child-Resistant Container that does not exceed the sales limit in Rule 5-115(C) and 6-110(C). A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device that is within the intended use that is listed in Rule 3-1015(B) and is not an Alternative Use Product need not itself be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a patient or consumer. A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device within an intended use that is listed in Rule 3-1015(B) and that is not an Alternative Use Product must be labeled with at least the Universal Symbol, but is not required to include "**Contains Marijuana. Keep away from children.**", prior to Transfer to a patient or consumer. The Universal Symbol shall be legible and no smaller than ¼ of an inch by ¼ of an inch. Nothing in this Rule authorizes the use of a syringe for any type of injection involving a needle piercing the skin.

b. Edible Medical Marijuana Product. Every Edible Medical Marijuana Product including Liquid Edible Medical Marijuana Product shall be in a Child-Resistant Container. If the Edible Medical Marijuana Product contains multiple portions then it shall be placed into a Child-Resistant Container that is Resealable.

c. Edible Retail Marijuana Product. Edible Retail Marijuana Product shall be in a Child-Resistant Container as follows:

i. Single-Serving Edible Retail Marijuana Product. Every Single-Serving Edible Retail Marijuana Product must be placed into a Child-Resistant Container.

ii. Bundled Single-Serving Edible Retail Marijuana Product. Single-Serving Edible Retail Marijuana Products that are placed into a Child-Resistant Container may be bundled into a larger Marketing Layer so long as the total amount of active THC per Marketing Layer does not exceed 100 milligrams.

iii. Multiple-Serving Edible Retail Marijuana Product. Every Multiple-Serving Edible Retail Marijuana Product shall be placed into a Child-Resistant Container that is Resealable and shall not exceed 100 milligrams of active THC per Container.

d. Liquid Edible Medical Marijuana Product and Liquid Edible Retail Marijuana Product. Liquid Edible Medical Marijuana Product and Liquid Edible Retail Marijuana Product shall be in a Child-Resistant Container as follows:

i. Single-Serving Liquid Edible Medical Marijuana Product Liquid Edible Retail Marijuana Product. Each Liquid Edible Medical Marijuana Product and Liquid Edible Retail Marijuana Product that is a Single-Serving must be packaged in a Child-Resistant Container.

ii. Multiple-Serving Liquid Edible Retail Marijuana Product. Each Liquid Edible Retail Marijuana Product that is a Multiple-Serving Edible Retail Marijuana Product shall be:

a. Packaged in a structure that uses a single mechanism to achieve both Child-Resistant properties and accurate pouring measurement of each liquid serving in increments equal to or less than 10 milligrams of active THC per serving, with no more than 100 milligrams of active THC total per Container; and

b. The measurement component is within the Child-Resistant cap or closure of the bottle and is not a separate component.

iii. Multiple-Serving Liquid Edible Medical Marijuana Product. Each Liquid Edible Medical Marijuana Product that is a Multiple-Serving Edible Medical Marijuana Product shall be:

a. Packaged in a structure that uses a single mechanism to achieve both Child-Resistant properties and accurate pouring measurement of each liquid serving; and

b. The measurement component is within the Child-Resistant cap or closure of the bottle, and is not a separate component.

e. Audited Product. The Container containing Audited Product for administration by: (i) metered dose nasal spray or (ii) vaginal administration must be Child Resistant and labeled. A Container holding Audited Product for rectal administration need not be Child-Resistant but must be placed into a Child-Resistant Container prior to Transfer to a patient.

i. A metered dose nasal spray must be affixed with a label that states: "**Not approved by FDA.**"

ii. The Container holding Audited Product for vaginal administration and rectal administration must be affixed with a label that states: "**Not approved by FDA.**"

iii. For example and not by means of limitation, labels may be affixed using the following methods: accordion, expandable, extendable, layered, tags, or stickers.

2. Labeling of Regulated Marijuana Product. Prior to Transfer to a Regulated Marijuana Store and a patient or consumer, every Container of Regulated Marijuana Product and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Regulated Marijuana Cultivation Facility where the Medical Marijuana or Retail Marijuana was grown;

ii. The Regulated Marijuana Products Manufacturer where the Medical Marijuana Product or Retail Marijuana Product was produced; and

iii. The Regulated Marijuana Store that sold the Medical Marijuana Product to a patient or consumer, except the Regulated Marijuana Store may affix its license number to the Container or Marketing Layer.

b. Batch Numbers. The Production Batch Number(s) assigned to the Regulated Marijuana Product.

c. Statement of Net Contents. The statement of net contents must identify the net weight, volume, or number of Regulated Marijuana Products prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children**."

e. Ingredient List Including Major Allergens. A list of all Ingredients used to manufacture the Regulated Marijuana Product including identification of any major allergens contained in the Regulated Marijuana Product in accordance with the Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010). The Food Allergen Labeling and Consumer Protection Act of 2004, 21 U.S.C. § 343 (2010) requires disclosure of the following major food allergens: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

i. Note that this Rule does not include any later amendments or editions to the United States Code. The Division maintains a copy of 21 U.S.C. § 343 (2010), which is available to the public for inspection and copying during the Division's regular business hours.

f. Required Potency Statement. The Target Potency or potency value determined from testing by a Regulated Marijuana Testing Facility of the Regulated Marijuana Product's active THC and CBD expressed in milligrams. If the Regulated Marijuana Product's Target Potency or potency value of THC or CBD is less than 1 milligram, the potency may be expressed as "<1 mg." If CBD is not detected in the Regulated Marijuana Product, then active CBD potency is not required. The Target Potency or potency value, shall be displayed either:

i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

ii. Highlighted with a bright color such as yellow.

g. Solvent List. A list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate used as a production input in any Medical Marijuana Product, or Solvent-Based Retail Marijuana Concentrate used as a production input in any Retail Marijuana Product.

h. Date of Sale. The Regulated Marijuana Store shall affix the date of sale to the Container or Marketing Layer at the time of Transfer to the patient or consumer.

i. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or Marking Layer at the time of Transfer to the patient.

j. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy.**"

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery.**"

3. Labeling of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana. Prior to Transfer to a Regulated Marijuana Store and to a patient or consumer, every Container of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana and any Marketing Layer shall be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Regulated Marijuana Cultivation Facility where the Medical Marijuana or Retail Marijuana was grown;

ii. The license number of the Regulated Marijuana Business where the Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana was produced; and

iii. The Regulated Marijuana Store that sold the Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana to a patient or consumer, except the Regulated Marijuana Store may affix its license number to the Container or Marketing Layer.

b. Batch Numbers. The Production Batch Number(s) assigned to the Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana.

c. Statement of Net Contents. The statement of net contents must identify the net weight (excluding the paper, wrapper, filter and/or equivalent) of each Pre-Rolled Marijuana joint or Infused Pre-Rolled Marijuana joint prior to its placement in the Container and the number of joints in each Container of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana, using a standard of measure compatible with the Inventory Tracking System.

d. Universal Symbol. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: **"Contains Marijuana. Keep away from children."**

e. Solvent List. If applicable, a list of any solvent(s) used to produce any Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate used in the creation of Infused Pre-Rolled Marijuana.

f. Required Potency Statement. The potency of Pre-Rolled Marijuana shall be expressed as: (1) the percentage of total THC and CBD from the test results of each Production Batch, or (2) if each Production Batch is not required to be tested, either as: (i) a range of percentages of total THC and CBD that extends from the lowest percentage to the highest percentage for each cannabinoid listed, from every test conducted for a particular type of Pre-Rolled Marijuana produced by the same Regulated Marijuana Business during the preceding six months or (ii) an average for each cannabinoid listed, from every test conducted for a particular type of Pre-Rolled Marijuana produced by the same Regulated Marijuana Business during the preceding six months. If CBD is not detected in the Production Batch, then Total CBD potency is not required. The potency of Infused Pre-Rolled Marijuana shall be expressed as the percentages of total THC and CBD from the test results of each Production Batch. If CBD is not detected in the Production Batch, then Total CBD potency is not required. The potency of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana shall be displayed either:

   i. In a font that is bold, and enclosed within an outlined shape such as a circle or square; or

   ii. Highlighted with a bright color such as yellow.

g. Date of Sale. The Regulated Marijuana Store shall affix the date of sale to the Container or Marketing Layer at the time of Transfer to the patient or consumer.

h. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or Marking Layer at the time of Transfer to the patient.

i. Required Warning Statements. Either the label affixed to the Container or the Marketing Layer shall include the following information:

   i. **"This product was produced without regulatory oversight for health, safety, or efficacy."**

   ii. **"There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery."**

E. Packaging and Labeling of Seeds and Immature Plants Prior to Transfer to a Patient or Consumer. A Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall comply with the following minimum packaging and labeling requirements prior to Transferring seeds or Immature plants to a patient or consumer:

1. Packaging of Regulated Marijuana Seeds. Prior to Transfer to a patient or consumer, Regulated Marijuana seeds shall be in a Container. The Container may but is not required to be Child-Resistant. Any Regulated Marijuana seeds in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to a patient or consumer.

2. Packaging of Immature Plants. Prior to Transfer to a patient or consumer, Immature plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.

3. Labeling of Seeds and Immature Plants. Prior to Transfer to a patient or consumer, every Container holding Regulated Marijuana seeds and any receptacle containing an Immature plant must be affixed with a label that includes at least the following information:

a. Required License Number(s). The license number for each of the following:

i. The Medical Marijuana Cultivation Facility where the Medical Marijuana that produced the seeds or Immature plant was grown, the Retail Marijuana Cultivation Facility where the Retail Marijuana that produced the seeds or the Immature plant was grown, or the Accelerator Cultivator where the Retail Marijuana that produced the seeds or the Immature plant was grown; and

ii. The Medical Marijuana Store that sold the seeds or Immature plant to the patient, the Retail Marijuana Store that sold the seeds or Immature plant to the consumer, or the Accelerator Store that sold the seeds or Immature plant to the consumer.

b. Universal Symbol. The Universal Symbol on the front of the Container holding seeds and the receptacle containing each Immature plant, no smaller than ½ of an inch by ½ of an inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"

c. Statement of Net Contents for Seeds. A statement of net contents identifying the number of seeds in the Container.

d. Date of Sale. The Medical Marijuana Store, Retail Marijuana Store, or Accelerator Store shall affix the date of sale to the patient or consumer to the Container or receptacle.

e. Patient Number. The Medical Marijuana Store shall affix the patient's registration number to the Container or receptacle at the time of Transfer to the patient.

f. Required Warning Statements:

i. "**This product was produced without regulatory oversight for health, safety, or efficacy**."

ii. "**There may be long term physical or mental health risks from use of marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of marijuana may impair your ability to drive a car or operate machinery**."

F. Permissive Information.

1. Identity Statement. A label affixed to a Container of Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product or any Marketing Layer may include, but is not required to include, the Identity Statement and/or Standardized Graphic Symbol for:

a. The Regulated Marijuana Cultivation Facility(ies) where the Medical Marijuana or Retail Marijuana was grown;

b. The Regulated Marijuana Products Manufacturer that manufactured the Regulated Marijuana Product or Regulated Marijuana Concentrate; and/or

c. The Regulated Marijuana Store that sold the Regulated Marijuana, Regulated Marijuana Concentrate, or Regulated Marijuana Product.

2. Nutritional Fact Panel. Label(s) may include, but are not required to include, a nutritional fact panel or dietary supplement fact panel in substantial conformance with 21 CFR 101.9 (2016) or 21 C.F.R. 101.36 (2016) as follows:

a. For Edible Medical Marijuana Products or Edible Retail Marijuana Products other than pills, capsules, and tinctures and Food-Based Medical Marijuana Concentrate or Food-Based Retail Marijuana Concentrate the nutritional fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.9(C) (2016) which provides the FDA's nutritional labeling requirements for food;

b. For pills, capsules, and tinctures, the dietary supplement fact panel shall be in substantial conformance with the requirements of 21 C.F.R. 101.36 (2016) which provides the FDA's nutritional labeling requirements for dietary supplements.

i. Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division maintains copies of 21 C.F.R. 101.9(C) (2016) and 21 C.F.R. 101.36 (2016), which are available to the public for inspection and copying during the Division's regular business hours.

3. Other Permissive Information. The labeling requirements in the 3-1000 Series Rules provide only the minimum labeling requirements. Licensees may include additional information on the label(s) so long as such information is consistent with the requirements of these Rules.

Basis and Purpose – 3-1015

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(d)(IV)(A)-(C), 44-10-203(2)(f), 44-10-203(2)(w), 44-10-203(1)(a), 44-10-601(2)(a), 44-10-603(4)(a), and 44-10-603(8), C.R.S. The purpose of this rule is to define additional labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and/or Regulated Marijuana Product (except Regulated Marijuana seeds and Immature plants) based on its intended use.

These labeling requirements are in addition to, not in lieu of, the labeling requirements in Rule 3-1010. This Rule 3-1015 was previously Rules M and R 1003-1, 1 CCR 212-1 and 1 CCR 212-2.

3-1015 – Additional Labeling Requirements Prior to Transfer to a Patient or Consumer

A. Applicability. This Rule establishes additional labeling requirements for Regulated Marijuana (except seeds and Immature plants), Regulated Marijuana Concentrate, and Regulated Marijuana Product prior to Transfer to a patient or consumer. The labeling requirements in this Rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product. These labeling requirements based on intended use are in addition to, not in lieu of, the requirements in Rule 3-1010.

1. Exemption for Transfers to Consumers by a Retail Marijuana Hospitality and Sales Business. Unless otherwise provided by these rules, a Retail Marijuana Hospitality and Sales Business Transferring Retail Marijuana to consumers in compliance with the packaging and labeling requirements of Rule 3-1020 is exempt from the requirements of this Rule.

B. Additional Information Required on Every Container (Except Seeds and Immature Plants) Prior to Transfer to a Patient or Consumer. Prior to Transfer to a patient or consumer, every Container of Regulated Marijuana (except seeds and Immature plants), Regulated Marijuana Concentrate, or Regulated Marijuana Product and any Marketing Layer must have a label that includes at least the following additional information.

1. Statement of Intended Use. The Container and any Marketing Layer shall identify one or more intended use(s) for Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, and Retail Marijuana Product from the following exclusive list:

a. Inhaled Product:

i. Flower, shake, or trim;

ii. Pre-Rolled Marijuana and Infused-Pre-Rolled Marijuana;

iii. Solvent-Based Medical Marijuana Concentrate;

iv. Solvent-Based Retail Marijuana Concentrate;

v. Physical Separation-Based Medical Marijuana Concentrate;

vi. Physical Separation-Based Retail Marijuana Concentrate;

vii. Heat/Pressure-Based Medical Marijuana Concentrate;

viii. Heat/Pressure-Based Retail Marijuana Concentrate;

ix. Vaporizer Delivery Device;

x. Pressurized Metered Dose Inhaler.

b. For Oral Consumption:

i. Food or drink infused with Regulated Marijuana;

ii. Regulated Marijuana Concentrate intended to be consumed orally;

iii. Pills and capsules;

iv. Tinctures.

c. Skin and Body Products:

i. Topical;

ii. Transdermal.

d. Audited Product:

i. Metered Dose Nasal Spray;

ii. Vaginal Administration;

iii. Rectal Administration.

2. Inhaled Product. The "Inhaled Product" intended use may be used only for products intended for consumption by smoking or Vaporizer Delivery Device where the product is heated or burned prior to consumption, or through use of a Pressurized Metered Dose Inhaler. The label(s) on all inhaled product intended use shall also include:

a. The potency statement required by Rule 3-1010 for: (1) flower, shake, or trim, (2) Pre-Rolled Marijuana, (3) Infused-Pre-Rolled Marijuana, (4) Solvent-Based Medical Marijuana Concentrate, (5) Solvent-Based Retail Marijuana Concentrate, (6) Physical Separation-Based Medical Marijuana Concentrate, (7) Physical Separation-Based Retail Marijuana Concentrate, (8) Heat/Pressure-Based Medical Marijuana Concentrate, (9) Heat/Pressure-Based Retail Marijuana Concentrate shall be stated as the percentage of Total THC and CBD. If CBD is not detected, then total CBD potency is not required.

b. The potency statement required by Rule 3-1010 for Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers shall be stated as either the percentage of Total THC and CBD, or the number of milligrams of Total THC and CBD, per cartridge, pen, or inhaler. If the potency value for Total THC or CBD of the Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers is less than one milligram, the potency may be expressed as "<1 mg." If CBD is not detected in the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler, then total CBD potency is not required.

c. Additional Labeling Requirement for Regulated Marijuana Concentrate to Promote Consumer Health and Awareness: Effective January 1, 2023, if a Regulated Marijuana Concentrate that is an Inhaled Product cannot easily be measured or separable to the recommended serving size established under Rule 3-335(D)(3)(d) and (f), the Regulated Marijuana Manufacturer that manufacturers the Regulated Marijuana Concentrate must:

i. Affix the Container of Regulated Marijuana Concentrate with a measuring device that permits the patient or consumer to measure each serving in a manner consistent with the recommended serving established under Rule 3-335(D); or

ii. Include a label on the Container of Regulated Marijuana Concentrate that provides instructions to allow the patient or consumer to measure each recommended serving pursuant to Rule 3-335(D).

3. For Oral Consumption. The label(s) on all Edible Medical Marijuana Products and Edible Retail Marijuana Products, including but not limited to confections, liquids, pills, capsules and tinctures, shall also include:

a. Potency Statement. The potency statement required by Rule 3-1010 shall be stated as: (1) milligrams of active THC and CBD per serving and (2) milligrams of active THC and CBD per Container where the Container contains more than one serving. The Target Potency may be used to fulfill the requirement of this Rule. If CBD is not detected, then active CBD potency is not required.

i. If the Edible Medical Marijuana Product's or Edible Retail Marijuana Product's Target Potency or potency value of active THC or CBD is less than one milligram per serving, the potency may be expressed as "<1 mg." If "<1 mg" was used to display the active THC or CBD per serving, then a corresponding statement regarding the total THC or CBD content for the entire Container shall be included on the Container. For example, if there are five servings in the Container, "<5 mg" should be displayed for the active THC or CBD statement that was represented as "<1 mg" per serving.

b. Additional Warning Statement Required. The following additional warning statement shall be included on the label on the Container or Marketing Layer for all Edible Medical Marijuana Product and Edible Retail Marijuana Product: **"The intoxicating effects of this product may be delayed by up to 4 hours.**"

c. Expiration/Use-By Date. A product expiration date, upon which the Edible Medical Marijuana Product or Edible Retail Marijuana Product will no longer be fit for consumption, or a use-by-date, upon which the Edible Medical Marijuana Product or Edible Retail Marijuana Product will no longer be optimally fresh. Once a label with an expiration or use-by date has been affixed to a Container containing an Edible Medical Marijuana Product or Edible Retail Marijuana Product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date.

d. Production Date. The date on which the Edible Medical Marijuana Product or Edible Retail Marijuana Product was produced which may be included in the Batch Number required by Rule 3-1010.

e. Statement Regarding Refrigeration. If an Edible Medical Marijuana Product or Edible Retail Marijuana Product is perishable, a statement that the product must be refrigerated.

4. Skin and Body Products (Topical and Transdermal). The "Skin and Body Products" intended use may be used only for products intended for consumption by topical or transdermal application, and must be intended for external use only. The label(s) on all skin and body products shall also include:

a. Topical Product Potency Statement. For topical product the potency statement required by Rule 3-1010 shall be stated as the number of milligrams of active THC and CBD per Container. The Target Potency may be used to fulfill the requirement of this Rule. If CBD is not detected, then active CBD potency is not

required. If the THC or CBD comprises less than one percent of the total cannabinoids, the potency may be expressed as less than one percent of the total cannabinoids.

b. Transdermal Product Potency Statement. For transdermal product, the potency statement required by Rule 3-1010 shall be stated as the number of milligrams of active THC and CBD per transdermal product, and the total number of milligrams of active THC and CBD per Container. The Target Potency may be used to fulfill the requirement of this Rule. If CBD is not detected, then active CBD potency is not required.

i. If the transdermal product's Target Potency or potency value of active THC or CBD is less than one milligram per transdermal product, the potency may be expressed as "<1 mg." If "<1 mg" was used to display the active THC or CBD per transdermal product, then a corresponding statement regarding the total THC or CBD content for the entire Container shall be included on the Container. For example, if there are five servings in the Container, "<5 mg" should be displayed for the active THC or CBD statement that was represented as "<1 mg" per serving.

c. Expiration/Use-By Date. A product expiration or use-by date, after which the skin and body product will no longer be fit for use. Once a label with an expiration or use-by date has been affixed to any Container holding a skin and body product and any Marketing Layer, a Licensee shall not alter that expiration or use-by date or affix a new label with a later expiration or use-by date.

d. Production Date. The date on which the skin and body product was produced which may be included in the Batch Number required by Rule 3-1010.

5. Audited Product. Packaging and labeling for all Audited Products: (i) metered dose nasal spray, (ii) vaginal administration, or (iii) rectal administration shall include:

a. All packaging and labeling requirements required by this 3-1000 Series for Regulated Marijuana Products; except Rules 5-325 and 6-325 control where the context otherwise clearly requires.

b. Audited Product shall be packaged and labeled for Transfer to a patient or consumer prior to Transfer from a Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer.

c. Expiration/Use-By Date. A product expiration date that is appropriate for the Audited Product when stored at room temperature as verified by testing required by Rules 5-325 and 6-325. Once a label with an expiration date has been affixed to a Container containing and Audited Product, a Licensee shall not alter that expiration date, or affix a new label with a later expiration date.

d. Production Date. The date on which the Audited Product was produced, which may be included in the Batch Number required by Rule 3-1010.

C. No Other Intended Use Permitted. No intended use other than those identified in this Rule shall be identified on any label, except as permitted by an Alternative Use Designation approved by the State Licensing Authority pursuant to Rules 5-325 and 6-325. Licensees shall accurately identify all intended use(s) from the exclusive list of intended uses in this Rule, or as required by the Alternative Use Designation, on the label.

1. Alternative Use Product. No Regulated Marijuana Business shall Transfer or accept an Alternative Use Product unless the Alternative Use Product received an Alternative Use Designation in accordance with Rules 5-325 and 6-325 and complied with all the requirements of Rules 5-325, 6-325, and 3-1005 through 3-1015, and with any additional packaging and labeling requirements identified in the Alternative Use Designation. At a minimum the label(s) on all Alternative Use Products shall include:

    a. All packaging and labeling requirements applicable to the Medical Marijuana Products Manufacturer or Retail Marijuana Products Manufacturer by these 3-1000 Series Rules unless inconsistent with the Alternative Use Designation in which case the Alternative Use Designation shall control.

    b. Expiration/Use-By Date. A product expiration date that is appropriate for the Alternative Use Product when stored at room temperature as verified by a Regulated Marijuana Testing Facility. Once a label with an expiration date has been affixed to a Container containing Alternative Use Product, a Licensee shall not alter that expiration date, or affix a new label with a later expiration date.

    c. Production Date. The date on which the Alternative Use Product was produced, which may be included in the Batch Number required by Rule 3-1010.

    d. All other requirements identified by the Alternative Use Designation.

D. Multiple Intended Uses. Any Regulated Marijuana having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed. Licensees shall not counsel or advise any patient or consumer to use Regulated Marijuana other than in accordance with the intended use(s) identified on the label.

Basis and Purpose – 3-1020

The statutory authority for this rule includes but is not limited to 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to define minimum packaging and labeling requirements for Retail Marijuana Hospitality and Sales Businesses.

3-1020 – Packaging and Labeling: Requirements for Transfers to a Consumer at a Retail Marijuana Hospitality and Sales Business

A. Applicability. This Rule establishes minimum requirements for packaging and labeling Retail Marijuana Transferred to a consumer at a Retail Marijuana Hospitality and Sales Business.

B. Packaging and Labeling Exemptions and Minimum Requirements. A Retail Marijuana Hospitality and Sales Business may Transfer Retail Marijuana to a consumer without packaging and labeling under the following conditions:

1. The consumer intends to consume the Retail Marijuana on the Licensed Premises of the Retail Marijuana Hospitality and Sales Business;

2. At the time of Transfer to a consumer, the Retail Marijuana Hospitality and Sales Business provides the consumer with a written statement of the potency of the Retail Marijuana's active THC and CBD, which shall be expressed as a percentage for Retail Marijuana and Retail Marijuana Concentrate, and expressed in milligrams for Retail

Marijuana Product. If CBD is not detected in the Retail Marijuana, then active CBD potency is not required;

3. The Retail Marijuana Hospitality and Sales Business maintains within the Restricted Access Area of the Licensed Premises—and makes available to the consumer upon request—written or electronic documentation reflecting all relevant information required in Rules 3-1010 and 3-1015; and

4. For Multiple-Serving Edible Retail Marijuana Product or Multiple-Serving Liquid Edible Retail Marijuana Product, the Retail Marijuana Hospitality and Sales Business shall at the time of Transfer to the consumer provide a measurement device necessary for the consumer to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of active THC per serving.

C. Packaging and Labeling Required Before Retail Marijuana is Removed from the Licensed Premises. Prior to a consumer removing any unconsumed Retail Marijuana from the Licensed Premises, the Retail Marijuana Hospitality and Sales Business shall:

1. Provide the consumer with written or electronic documentation reflecting all relevant information required in Rules 3-1010 and 3-1015; and

2. Place the unconsumed Retail Marijuana into a Child-Resistant Container, or if the Container is not Child-Resistant, a Child-Resistant Exit Package. The Container must be affixed with a label that includes at least the following:

i. Universal Symbol. The Universal Symbol on the Container, no smaller than ½ inch by ½ inch, with the following statement directly below the Universal Symbol: "**Contains Marijuana. Keep away from children.**"; and

ii. Required Potency Statement. A written statement of the potency of the Retail Marijuana's total THC and CBD expressed as a percentage. A written statement of the potency of the Retail Marijuana Product's active THC and CBD expressed in milligrams. If the potency of the Regulated Marijuana Product's active THC or CBD is less than 1 milligram, the potency may be expressed as "<1 mg." If CBD is not detected in the Retail Marijuana, then active CBD potency is not required.

iii. For Multiple-Serving Edible Retail Marijuana Product or Multiple-Serving Liquid Edible Retail Marijuana Product, the Retail Marijuana Hospitality and Sales Business shall provide a measurement device necessary for the consumer to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of active THC per serving.

D. Additional Packaging and Labeling Requirements for Retail Marijuana Hospitality and Sales Businesses.

1. Font Size. Required labeling text on the Container must be no smaller than 1/16 of an inch.

2. Labels Shall Not Be Designed to Appeal to Children. A Retail Marijuana Hospitality and Sales Business shall not place any content on a Container that reasonably appears to target individuals under the age of 21, including but not limited to, cartoon characters or similar images.

3. False or Misleading Statements. Label(s) on a Container shall not include any false or misleading statements.

4. Trademark Infringement Prohibited. No Container shall be intentionally or knowingly labeled so as to cause a reasonable consumer confusion as to whether the Retail Marijuana is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.

5. Health and Benefit Claims. The label(s) on the Container shall not make any claims regarding health or physical benefits to the consumer.

6. Use of English Language. Labeling text on the Container must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate foreign language translation on the label that otherwise complies with these rules.

7. Unobstructed and Conspicuous. Labeling text on the Container must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed. For example and not by means of limitation, labels may be accordion, expandable, extendable or layered to permit labeling of small Containers.

8. Use of the Word “Candy” and/or “Candies” Prohibited. Licensees shall not use the word(s) “candy” and/or “candies” on the label of any Container.

9. Child Resistant Certificate(s). A Licensee shall maintain a copy of the certificate showing that each Child-Resistant Container into which the Licensee places Retail Marijuana is Child-Resistant and complies with the requirements of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995) in accordance with the requirements of Rule 3-905(A). Note that this Rule does not include any later amendments or editions to the Code of Federal Regulations. The Division has maintained a copy of 16 C.F.R. 1700.15 (1995) and 16 C.F.R. 1700.20 (1995), which is available to the public for inspection and copying during the Division’s regular business hours.

Basis and Purpose – 3-1025

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(c), 44-10-202(6), 44-10-203(2)(f), 44-10-203(1)(k), 44-10-203(3)(a)-(b) The purpose of this rule is to define minimum packaging and labeling requirements for Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product Transferred to a Regulated Marijuana Testing Facility. The labeling requirements in this rule apply to all Containers immediately containing Regulated Marijuana, Regulated Marijuana Concentrate, and Regulated Marijuana Product being Transferred to a Regulated Marijuana Testing Facility.

3-1025 – Packaging and Labeling: Minimum Requirements for Test Batch Transfers to a Regulated Marijuana Testing Facility

A. Applicability. This Rule establishes minimum requirements for packaging and labeling of Regulated Marijuana Test Batches prior to Transfer to a Regulated Marijuana Testing Facility. The labeling requirements in this Rule apply to all Containers immediately containing Medical Marijuana, Retail Marijuana, Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, and Retail Marijuana Product.

B. Packaging and Labeling of Test Batches of Regulated Marijuana Flower, Trim, Wet Whole Plant, and Regulated Marijuana Concentrate, Prior to Transfer to a Regulated Marijuana Testing Facility. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Test Batches of Medical Marijuana flower, trim, wet whole plant, or Medical Marijuana Concentrate to a Medical Marijuana Testing Facility, and prior to

Transferring Test Batches of Retail Marijuana flower, trim, wet whole plant, or Retail Marijuana Concentrate to a Retail Marijuana Testing Facility:

1. Packaging of Test Batches of Regulated Marijuana Flower, Trim, Wet Whole Plant and Regulated Marijuana Concentrate.

    a. A Licensee shall submit Test Batches of Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate in a transparent Container to allow for the Samples of the Test Batch to be photo documented.

    b. Each Container containing a Test Batch of Regulated Marijuana flower, trim, or wet whole plant shall have at least 20% empty space. Test Batch Containers shall not be completely full so that individual Samples of the Test Batch can be photo documented.

    c. Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers. Test Batches from Production Batches of Vaporizer Delivery Devices and Pressurized Metered Dose Inhalers must be packaged in the hardware or inhaler, respectively, that allows for the consumption.

2. Labeling of Test Batches of Regulated Marijuana Flower, Trim, Wet Whole Plant and Regulated Marijuana Concentrate. Prior to Transfer to a Regulated Marijuana Testing Facility, every Container containing a Test Batch of Regulated Marijuana flower, trim, wet whole plant, or Regulated Marijuana Concentrate shall be affixed with a label that includes at least the following information, some of which may be included on the Inventory Tracking System RFID Tag:

    a. For Test Batches from Harvest Batches, the license number of the Medical Marijuana Cultivation Facility where the Medical Marijuana was grown, or the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown;

    b. For Test Batches of Concentrates from Production Batches, the license number of the Medical Marijuana Products Manufacturer(s) where the Medical Concentrate was produced, or the Retail Marijuana Products Manufacturer(s) where the Retail Marijuana Concentrate was produced; and

    c. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana or Regulated Marijuana Concentrate prior to its placement in the Container.

C. Packaging and Labeling of Test Batches of Regulated Marijuana Product Prior to Transfer to a Regulated Marijuana Testing Facility. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Test Batches of Regulated Marijuana Product to a Regulated Marijuana Testing Facility:

1. Packaging Test Batches of Regulated Marijuana Product.

    a. Prior to any Transfer of a Test Batch to a Regulated Marijuana Testing Facility, the Test Batch of Regulated Marijuana Product subject to testing shall be placed into the Container(s) in which the rest of the Production Batch will be sold. The Container may but is not required to be Child-Resistant.

2. Labeling of Test Batches of Regulated Marijuana Product. Prior to Transfer to a Regulated Marijuana Testing Facility, every Container containing a Test Batch of

Regulated Marijuana Product shall be affixed with a label, which can be noted on the Inventory Tracking System RFID Tag, that includes at least the following information:

a. The license number of the Medical Marijuana Products Manufacturer or the Retail Marijuana Products Manufacturer that produced the Regulated Marijuana Product;

b. The Production Batch Number(s) assigned to the Regulated Marijuana Product;

c. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana Product prior to its placement in the Container; and

d. The serving size, number of serving per package, and the Target Potency as required for a Regulated Marijuana Testing Facility to assess potency variance.

D. Packaging and Labeling of Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana, Prior to Transfer to a Regulated Marijuana Testing Facility. A Regulated Marijuana Business shall comply with the following minimum packaging and labeling requirements prior to Transferring Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana to a Medical Marijuana Testing Facility, and prior to Transferring Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana to a Retail Marijuana Testing Facility:

1. Packaging of Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

a. Prior to any Transfer of a Test Batch to a Regulated Marijuana Testing Facility, the Test Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana subject to testing shall be placed into the Container(s) in which the rest of the Production Batch will be sold. The Container may but is not required to be Child-Resistant.

2. Labeling of Test Batches of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana. Prior to Transfer to a Regulated Marijuana Testing Facility, every Container containing a Test Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana shall be affixed with a label that includes at least the following information, some of which may be included on the Inventory Tracking System RFID Tag:

a. For Test Batches from Harvest Batches, the license number of the Medical Marijuana Cultivation Facility where the Medical Marijuana was grown, or the Retail Marijuana Cultivation Facility where the Retail Marijuana was grown which was used to create Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana;

b. For Test Batches of Concentrates from Production Batches, the license number of the Medical Marijuana Products Manufacturer(s) where the Medical Concentrate was produced, or the Retail Marijuana Products Manufacturer(s) where the Retail Marijuana Concentrate was produced which was used to create Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana;

c. The Production Batch Number(s) assigned to the Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana; and

d. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Regulated Marijuana or Regulated Marijuana Concentrate prior to its placement in the Container.

3-1100 Series – Accelerator Program Operations

Basis and Purpose – 3-1105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees and Accelerator Licensees participating in the accelerator program. The Accelerator Program permits different structures. The first option is for the Accelerator-Endorsed Licensee and the Accelerator Licensee to have a mentor/apprentice relationship at the same premises pursuant to Rules 3-1105 and 3-1110. The second option is for the Accelerator-Endorsed Licensee and the Accelerator Licensee to have a separate premises relationship pursuant to Rules 3-1105 and 3-1115.

3-1105 – Accelerator Program Participation and Privileges

A. Licensed Premises. An Accelerator Licensee may share a Licensed Premises or operate at a separate premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store that is an Accelerator-Endorsed Licensee.

1. Shared Premises. An Accelerator Licensee may share the Licensed Premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store pursuant to this Rule 3-1105 and Rule 3-1110.

2. Separate Premises. An Accelerator Licensee participating in the accelerator program may operate at a separate premises of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or Retail Marijuana Store pursuant to this Rule 3-1105 and Rule 3-1115.

B. Number of Licenses held by an Accelerator Licensee.

1. An Accelerator Licensee may initially apply to be an Accelerator Cultivator, Accelerator Manufacturer or Accelerator Store and hold a single license.

2. After 180 days of demonstrated operations, an Accelerator Licensee may apply for additional accelerator licenses, which may include different accelerator license types. An Accelerator Licensee may not apply for more than one accelerator license until at least 180 days of demonstrated operations.

3. A Controlling Beneficial Owner who holds an accelerator license shall not have an Owner's Interest in more than three of the same accelerator license type. No Controlling Beneficial Owner shall have an Owner's Interest in more than nine total accelerator licenses.

C. Accelerator-Endorsed Licensee Required Equity Assistance Proposal.

1. An Accelerator-Endorsed Licensee must disclose its equity assistance proposal to the Division and to any prospective Social Equity Licensee pursuant to Rule 2-285 and these 3-1100 Series Rules prior to entering any contractual agreements with an Accelerator Licensee.

2. Required Information. An equity assistance proposal must detail the technical, compliance, and/or capital assistance the Accelerator-Endorsed Licensee intends to provide an Accelerator Licensee. All equity assistance proposals must, at a minimum, including the following:

a. The types of assistance the Accelerator-Endorsed Licensee intends to provide, which may include but is not limited to, the following types of assistance:

i. Accounting;

ii. Business services (e.g. sales and marketing);

iii. Financial or capital support;

iv. Information technology support;

v. Access to legal services from an attorney licensed in the state of Colorado; or

vi. Regulatory compliance support.

b. Whether the Accelerator-Endorsed Licensee intends to subcontract with any third parties to provide technical or compliance assistance, and the identity of the prospective third parties, if known;

c. Any applicable timelines associated with the provisions of the assistance the Accelerator-Endorsed Licensee intends to provide;

d. Whether the Accelerator-Endorsed Licensee intends to charge rent for a prospective Accelerator Licensee's use of the premises, and the amount of rent and required deposits, if applicable;

e. How the Accelerator-Endorsed Licensee plans to protect or minimize disruptions on a prospective Accelerator Licensee in the event of a change of Controlling Beneficial Owner of the Accelerator-Endorsed Licensee's license; and

f. Whether the Accelerator-Endorsed Licensee has been subject to any administrative action by the State Licensing Authority or the Local Jurisdiction within the preceding two years and, if so, whether there are any restrictions on the Licensee as a result of such administrative action.

3. Voluntary Information. An equity assistance proposal may, but is not required to, include additional information about the Accelerator-Endorsed Licensee, including but not limited to the following:

a. The Accelerator-Endorsed Licensee's business objectives and organizational values;

b. A description of the Accelerator-Endorsed Licensee's work environment;

c. Information regarding the Accelerator-Endorsed Licensee's business profile, including company size, revenue, and distribution capabilities;

d. Any educational or training assistance provided to the Accelerator Licensee in navigating human resources matters; and

e. Any other information that may be useful to informing prospective Accelerator Licensees and determining compatibility between an Accelerator-Endorsed Licensee and Accelerator Licensee.

4. Modification of Equity Assistance Proposal. Nothing in these rules shall preclude an Accelerator-Endorsed Licensee from amending or modifying its equity assistance proposal. The Accelerator-Endorsed Licensee shall submit the updated equity assistance

proposal to the Division within 30 days of finalizing any such amendments or modifications.

5. The Accelerator-Endorsed Licensee may request that a prospective Social Equity Licensee enter into a non-disclosure agreement prior to providing the prospective Social Equity Licensee a copy of the Accelerator-Endorsed Licensee's equity assistance proposal in order to ensure the information remains confidential.

D. Equity Partnership Agreement – General Requirements. Prior to hosting or offering technical and/or capital support to an Accelerator Licensee, an Accelerator-Endorsed Licensee must first enter into an equity partnership agreement with the Accelerator Licensee. In addition to any other requirements in Rules 3-1110 and 3-1115, an equity partnership agreement must include the following minimum requirements:

1. The equity partnership agreement must be executed by both the Accelerator-Endorsed Licensee and the Accelerator Licensee.

2. The executed equity partnership agreement must represent the full legal and business relationship between the Accelerator-Endorsed Licensee and Accelerator Licensee unless additional agreements are permitted or required pursuant to Rules 3-1110 or Rule 3-1115.

3. The executed equity partnership agreement shall at a minimum, include the following:

a. A description of the types of technical, compliance, and/or capital assistance the Accelerator-Endorsed Licensee is providing to the Accelerator Licensee;

b. The timeline associate with the assistance the Accelerator-Endorsed Licensee is providing;

c. If the Accelerator-Endorsed Licensee is charging rent for the Accelerator Licensee's use of the Licensed Premises, the rent amount, any required deposits, and length of lease;

d. How the Accelerator-Endorsed Licensee will protect or minimize disruptions to the Accelerator Licensee in the event of a change of owner of the Accelerator-Endorsed Licensee's license;

e. Conditions for amendments to the equity partnership agreement; and

f. Conditions for dissolution of the equity partnership agreement.

4. An Accelerator-Endorsed Licensee must provide technical, compliance, and/or capital assistance to an Accelerator Licensee pursuant to its equity partnership agreement with an Accelerator Licensee. An Accelerator-Endorsed Licensee may provide technical and/or compliance assistance to an Accelerator Licensee through third parties. However, an equity partnership agreement cannot require an Accelerator Licensee to receive such assistance from a specific provider unless permitted pursuant to Rule 3-1115.

E. There shall not be any agreement(s) or contracts between the Accelerator-Endorsed Licensee and the Accelerator Licensee that are not disclosed to the Division.

F. Dissolution of Business Relationship. If the business relationship between the Accelerator-Endorsed Licensee and Accelerator Licensee dissolves, both parties must notify the Division

within 10 days. The notification of dissolution must include the reasons for the dissolution of the business relationship between the Accelerator-Endorsed Licensee and Accelerator Licensee.

1. The Accelerator Licensee will have until renewal of the Accelerator License to identify a new Accelerator-Endorsed Licensee or apply for a new Regulated Marijuana Business license unless this deadline is extended by the Division. The Division may waive or reduce the application and/or licensing fees affiliated with the application. However, the Accelerator Licensee cannot operate without a Licensed Premises or an executed and valid equity partnership agreement with an Accelerator-Endorsed Licensee.

2. Upon notification of dissolution of the accelerator business relationship, the Division will determine whether the Accelerator-Endorsed Licensee retains the social equity leader designation for that calendar year.

G. Additional Privileges for Accelerator-Endorsed Licensees.

1. Social Equity Leader Designation. A Retail Marijuana Store, Retail Marijuana Cultivation Facility, or Retail Marijuana Products Manufacturer that is an Accelerator-Endorsed Licensee and that is operating under an equity partnership agreement with an Accelerator Licensee may be designated by the Division as a social equity leader for each year the Accelerator-Endorsed Licensee hosts an Accelerator Licensee on its premises. A social equity leader may use a logo or symbol created or approved by the Division to indicate its leadership status. The Accelerator-Endorsed Licensee may only use the social equity leader logo or symbol while the designation remains valid.

2. Mitigation. The Division and the State Licensing Authority may consider a social equity leader designation as a mitigating factor when determining the initiation of administrative action or assessment of penalties.

3. Compliance Assistance and Education Engagement. For an Accelerator-Endorsed Licensee operating under an equity partnership agreement with an Accelerator Licensee, the Division will conduct an on-site compliance assistance and education engagement with the Accelerator-Endorsed Licensee for purposes of supporting the Licensee's activities as an Accelerator-Endorsed Licensee.

4. Application and License Fee Exemptions. An Accelerator-Endorsed Licensee may submit a request to the State Licensing Authority for an exemption from application and license fees for a change of Controlling Beneficial Owner, change of location, or modification of premises that is directly related to its participation in the accelerator program.

    a. The request for an exemption may be included with the submission of the application for which it is requesting an exemption from fees. The request for exemption must include any information demonstrating the application is related to its participation in the accelerator program, including but not limited to, the positive impact to the Accelerator Licensee.

    b. If a request for an exemption is denied, the Applicant shall submit required fees within 10 days from notice that the fee exemption request was denied. Failure to submit required fees may result in denial of the application.

Basis and Purpose – 3-1110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees and Social Equity Licensees to participate in the accelerator program.

This option is for the Accelerator-Endorsed Licensee and the Social Equity Licensee to have a mentor/apprentice type relationship pursuant to Rules 3-1105 and 3-1110.

3-1110 – Accelerator Shared Premises

A. Equity Assistance Plan – Additional Requirements. In addition to all equity assistance proposal requirements outlined in Rule 3-1105(C)(1), an Accelerator-Endorsed Licensee intending to share its Licensed Premises with an Accelerator Licensee must also include the following in tis equity assistance proposal:

1. How the Accelerator-Endorsed Licensee will protect or minimize disruptions to a prospective Accelerator Licensee in the event of a change of location of the Accelerator-Endorsed Licensee's Licensed Premises;

2. The extent to which the Accelerator-Endorsed Licensee will provide equipment, ingredients, or other resources to an Accelerator Licensee pursuant to an equity partnership agreement.

B. Equity Partnership Agreement – Additional Requirements. An Accelerator-Endorsed Licensee's equity assistance proposal that includes the information required by Rule 3-1105 and this Rule 3-1110 may also serve as the equity partnership agreement.

1. How the Accelerator-Endorsed Licensee will protect or minimize disruptions to the Accelerator Licensee in the event of a change of location of the Accelerator-Endorsed Licensee's Licensed Premises;

2. Any intellectual property protections or restrictions;

3. Any agreements about operational control of any shared equipment, premises, or shared personnel;

4. Any agreements related to division of liability pursuant this Rule; and

5. Any non-disclosure agreements.

C. Division of Liability.

1. Shared Equipment. An Accelerator-Endorsed Licensee and Accelerator Licensee may share equipment in the same Licensed Premises if they have standard operating procedures addressing the following:

a. Rotational/time schedule for utilizing equipment;

b. Changes to the schedule; and

c. Sanitizing equipment.

2. Shared Ingredients and/or Co-Mingling of Inventory. An Accelerator-Endorsed Licensee and Accelerator Licensee may share non-marijuana ingredients such as soil, growing medium, fertilizers, sugar, flour, etc. If the Accelerator-Endorsed Licensee and the Accelerator Licensee share non-marijuana ingredients, they must have standard operating procedures for the protection, use, and maintenance of such products.

3. Inventory Tracking and Record Keeping. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee are each required to comply with the Inventory Tracking

Requirements in the 3-800 Series Rules and all business records requirements in the 3-900 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements such as purchasing RFID tags for use by the Accelerator Licensee.

4. Security and Surveillance. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee are each required to comply with security and surveillance requirements in the 3-220 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements.

5. Other. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee will be jointly liable for any violations related to the Licensed Premises, security requirements, video surveillance requirements, health and safety requirements, possession limits, and waste rules, unless the Licensees have expressly established severed liability in the equity partnership agreement. It may be considered mitigation if the Accelerator-Endorsed Licensee demonstrated the Accelerator Licensee failed to comply with the standard operating procedures.

D. Accelerator License Operational Control. The Accelerator-Endorsed Licensee and the Accelerator Licensee may define the division of operational control of equipment in the shared premises.

E. Intellectual Property Protections. The Accelerator-Endorsed Licensee and the Accelerator Licensee shall maintain control over their individual intellectual property unless expressly agreed to in the equity partnership agreement.

Basis and Purpose – 3-1115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(aa), 44-10-310(2), and 44-10-311(2), C.R.S. The purpose of this rule is to establish requirements for Accelerator-Endorsed Licensees and Social Equity Licensees participating in the accelerator program. This option allows the Accelerator-Endorsed Licensee and the Social Equity Licensee to have a separate premises relationship pursuant to Rules 3-1105 and 3-1115.

3-1115 – Accelerator Separate Premises

A. Equity Assistance Proposal – Additional Requirements. In addition to all equity assistance proposal requirements outlined in Rule 3-1105(C)(1), an Accelerator-Endorsed Licensee intending to share a separate premises in its possession or control with an Accelerator Licensee must also include the following in its equity assistance proposal:

1. Estimate of the Accelerator Licensee's initial investment, if any;

2. Estimate of the Accelerator-Endorsed Licensee's initial investment;

3. Any anticipated application and/or licensing fees for which the Accelerator Licensee will be responsible;

4. Restrictions on the Accelerator Licensee's business (including any restrictions on sources of products or required vendors);

5. Assistance provided by the Accelerator-Endorsed Licensee to the Accelerator Licensee (including assistance in installing required security; hiring and training employees; providing necessary equipment; establishing prices; establishing administrative, bookkeeping, accounting, and inventory control procedures; etc.);

6. Advertising that will benefit the Accelerator Licensee;

7. Use of the Accelerator-Endorsed Licensee's brand, trade name, or trademarks;

8. Total number of licenses and locations of businesses the Accelerator-Endorsed License owns, operates, or is affiliated with;

9. Anticipated terms of the financing agreement, including leases and installment contracts offered directly or indirectly to the Accelerator Licensee;

10. Terms of renewal, termination, transfer, and dispute resolution procedures;

11. All proposed agreements, including any property or equipment leases;

12. The Accelerator-Endorsed Licensee's total annual revenue and fair financial projections of the Accelerator Licensee; and

13. The anticipated annual fee or percentage of profits the Accelerator Licensee will be required to pay the Accelerator-Endorsed Licensee for use of the Accelerator-Endorsed Licensee's brand, trade name, or trademarks.

B. Equity Partnership Agreement – Additional Requirements. In addition to all equity partnership agreement requirements outlined in Rule 3-1105, an equity partnership agreement between an Accelerator-Endorsed Licensee and Accelerator Licensee who is operating on a separate premises from the Accelerator-Endorsed Licensee must include the following:

1. Initial Investment.

   a. The Accelerator Licensee's initial business investment, if any; and

   b. The Accelerator-Endorsed Licensees initial business investment.

2. Fees. The fees, if any, the Accelerator Licensee and the Accelerator-Endorsed Licensee will be responsible for, which may include, but need not be limited to:

   a. Application and license fees;

   b. Assistance with legal fees, if any; and

   c. The annual fee or percentage of profits the Accelerator Licensee will be required to pay the Accelerator-Endorsed Licensee for use of the Accelerator-Endorsed Licensee's brand, trade name, or trademarks.

3. Restrictions on Accelerator Licensee Business Operations. Any restrictions placed on the Accelerator Licensee's business operations, which may include, but are not limited to:

   a. Ingredients, formulas, and processes the Accelerator Licensee is required to use;

   b. Sources of products;

   c. Advertising; and

   d. Third party vendors the Accelerator-Endorsed Licensee contracted with that the Accelerator Licensee will also be required to utilize;

4. Accelerator-Endorsed Licensee Obligations. All assistance the Accelerator-Endorsed Licensee will provide which may include, but is not limited to:

    a. Assistance in hiring and training of employees;

    b. Establishing prices;

    c. Establishing administrative, bookkeeping, accounting, and inventory control procedures;

    d. Resolving operating problems; and

    e. Licensed Premises and equipment buildout.

5. Accelerator Licensee Obligations. If the Accelerator Licensee will be required to:

    a. Comply with branding;

    b. Utilize only the intellectual property of the Accelerator-Endorsed Licensee;

    c. Use of identified third-party vendors; and

    d. Selling product to specific purchasers.

6. Terms of Renewal, Termination, and Dispute Resolution. Any terms regarding renewal of the business relationship, termination of the business relationship, and dispute resolution. Any dispute resolution terms may not require Division or State Licensing Authority involvement.

7. Advertising. Any terms regarding advertising including the amount and methods of advertising, the distribution of costs for advertising, whether the Accelerator Licensee may do its own advertising, and how the costs of advertising will be distributed.

8. Agreements. All agreements between the Accelerator-Endorsed Licensee and Accelerator Licensee, including leases for property or equipment and any nondisclosure agreements.

C. Division of Liability.

1. Equipment. The Accelerator-Endorsed Licensee and the Accelerator licensee are individually and separately responsible for their own equipment.

2. Ingredients. The Accelerator-Endorsed Licensee and the Accelerator Licensee are individually and separately responsible for their own ingredients, unless otherwise expressly agreed to in the equity partnership agreement.

3. Inventory Tracking and Record Keeping. Both the Accelerator-Endorsed Licensee and the Accelerator Licensee are each required to comply with the Inventory Tracking Requirements in the 3-800 Series Rules and the Business Records in the 3-900 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements such as purchasing RFID tags for use by the Accelerator Licensee.

4. Security and Surveillance. The Accelerator-Endorsed Licensee and the Accelerator Licensee are individually and separately required to comply with security and surveillance

requirements in the 3-200 Series Rules. Nothing in this Rule prohibits an Accelerator-Endorsed Licensee from providing the Accelerator Licensee financial support to comply with these requirements.

5. Other.

a. Accelerator Licensee Liability. An Accelerator Licensee is solely liable and responsible for all conduct and any violations that occur on the Accelerator Licensee's Licensed Premises.

b. Accelerator-Endorsed Licensee Liability. An Accelerator-Endorsed Licensee that makes available a separate premises in the Accelerator-Endorsed Licensee's possession to an Accelerator Licensee and who is in compliance with the Marijuana Code and these Rules will only be liable and responsible for conduct and any violations that occur on the Accelerator-Endorsed Licensee's Licensed Premises.

D. Operational Control. The Accelerator-Endorsed Licensee and the Accelerator Licensee are each responsible for the operational control at their separate Licensed Premises.

E. Intellectual Property. An Accelerator-Endorsed Licensee must permit and require the Accelerator Licensee to use the Accelerator-Endorsed Licensee's intellectual property. The Accelerator-Endorsed Licensee will maintain ownership and control of its intellectual property. The Accelerator Licensee shall maintain ownership and control of intellectual property it creates.

Part 4 – Regulated Marijuana Testing Program

Basis and Purpose – 4-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the mandatory testing portion of the Division's Regulated Marijuana sampling and testing program. This Rule 4-105 was previously Rules M and R 1502, 1 CCR 212-1 and 1 CCR 212-2.

4-105 – Regulated Marijuana Testing Program: Mandatory Testing

A. Required Sample Submission. A Regulated Marijuana Business may be required by the Division to submit a Sample(s) of Regulated Marijuana it possesses to a Medical Marijuana Testing Facility or a Retail Marijuana Testing Facility at any time regardless of whether it has achieved a Reduced Testing Allowance and without notice.

1. Samples collected pursuant to this Rule may be tested for potency or contaminants which may include, but is not be limited to, Pesticide, microbials, mycotoxin, molds, elemental impurities, residual solvents, biological contaminants, and chemical contaminants.

2. When a Sample(s) is required to be submitted for testing, the Regulated Marijuana Business may not Transfer or process into a Medical Marijuana Concentrate or Medical Marijuana Product any Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product, or Transfer or process into a Retail Marijuana Concentrate or Retail Marijuana Product any Retail Marijuana, Retail Marijuana Concentrate or Retail

Marijuana Product, from the Inventory Tracking System package, Harvest Batch or Production Batch from which the Sample was taken, until it passes all required testing.

B. Methods for Determining Required Testing.

1. Random Testing. The Division may require Samples to be submitted for testing through any one or more of the following processes: random process, risk-based process, or other internally developed process, regardless of whether a Regulated Marijuana Business has achieved a Reduced Testing Allowance.

2. Inspection or Enforcement Tests. In addition, the Division may require a Regulated Marijuana Business to submit a Sample for testing if the Division has reasonable grounds to believe that:

a. Regulated Marijuana is contaminated or mislabeled;

b. A Regulated Marijuana Business is in violation of any product safety, health or sanitary statute, rule or regulation; or

c. The results of a test would further an investigation by the Division into a violation of any statute, rule, or regulation.

3. Beta Testing. The Division may require a Regulated Marijuana Business to submit Samples from certain randomly selected Harvest Batches or Production Batches for potency or contaminant testing prior to implementing mandatory testing.

C. Minimum Testing Standards. The testing requirements contained in this 4-100 Series are the minimum required testing standards. Regulated Marijuana Businesses are responsible for ensuring adequate testing on any Regulated Marijuana they produce or Transfer to ensure safety for human consumption.

D. Additional Sample Types. The Division may also require a Regulated Marijuana Business to submit Samples comprised of items other than Regulated Marijuana to be tested for contaminants which may include, but may not be limited to, Pesticide, microbials, molds, elemental impurities, residual solvents, biological contaminants, and chemical contaminants. The following is a non-exhaustive list of the types of Samples that may be required to be submitted for contaminant testing:

1. Specific Regulated Marijuana plant(s) or any portion of a Regulated Marijuana plant(s);

2. Any growing medium, water, or other substance used in the cultivation process;

3. Any water, solvent, or other substance used in the processing of a Regulated Marijuana Concentrate;

4. Any Ingredient or substance used in the manufacturing of a Regulated Marijuana Product; or

5. Swab of any equipment or surface.

E. R&D Testing.

1. R&D Tests. A Regulated Marijuana Business may submit Test Batches from a Harvest or Production Batch for R&D testing. R&D testing may be performed for any test required by these 4-100 Series Rules or any other test.

a. Passing R&D Test Results. If a Harvest or Production Batch passes an R&D test it shall not constitute a pass for the purposes of compliance with required contaminant or potency testing. If a Harvest or Production Batch passes an R&D test it shall not constitute a pass for purposes of achieving or maintaining a Reduced Testing Allowance. *See* Rules 4-120 and 4-125.

b. Failing R&D Test Results. If a Harvest or Production Batch fails an R&D test that is a contaminant or potency test required by these rules, it does not require compliance with failed test procedures. *See* Rule 4-135. A Licensee cannot achieve a Reduced Testing Allowance if a Harvest or Production Batch fails an R&D test that is required by contaminant and potency testing rules. *See* Rules 4-120 and 4-125. If a Licensee has a Reduced Testing Allowance, and fails an R&D test that is required by contaminant and potency testing rules, the Licensee must comply with Rules 4-120(F)(2) and 4-125(H)(2).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing sampling procedures and rules for the Division's Regulated Marijuana sampling and testing program. This Rule 4-110 was previously Rules M and R 1504, 1 CCR 212-1 and 1 CCR 212-2.

4-110 – Regulated Marijuana Testing Program: Sampling Procedures

A. Collection of Samples.

1. Sample Increment Collection. All Samples submitted for testing pursuant to this Rule must be collected by Division representatives or in accordance with the Division's sampling policy reflected in the marijuana laboratory testing reference library available at the Colorado Department of Public Health and Environment's website. This reference library may be continuously updated as new materials become available in accordance with section 25-1.5-106(3.5)(d), C.R.S.

2. Sample Increment Selection. The Division may elect, at its sole direction, to assign Division representatives to collect Sample Increments, or may otherwise direct Sample Increment selection, including, but not limited to, through Division designation of a Harvest Batch or Production Batch in the Inventory Tracking System from which a Regulated Marijuana Business shall select Samples for testing. A Regulated Marijuana Business, its Controlling Beneficial Owners, Passive Beneficial Owners, and employees shall not attempt to influence the Sample Increments selected by Division representatives. If the Division does not select the Harvest Batch or Production Batch to be tested, a Regulated Marijuana Business must collect and submit Sample Increments that are representative of the Harvest Batch or Production Batch being tested.

3. Adulteration or Alteration Prohibited. Pursuant to section 44-10-701(3)(b) and (9), C.R.S., it is unlawful for a Licensee or its agent to knowingly adulterate or alter, or attempt to adulterate or alter, any Sample Increments or Test Batches of Regulated Marijuana. The Sample Increments collected and submitted for testing must be representative of the

Harvest Batch or Production Batch being tested. A violation of this sub-paragraph (A)(3) shall be considered a license violation affecting public safety and the person who commits adulteration or alteration of Sample Increments or Test Batches commits a class 2 misdemeanor and may be punished as provided in section 18-1.3-501, C.R.S.

4. Timing of Sample Increments for Harvest Batches and Production Batches. A Licensee shall not collect Sample Increments or submit Test Batches for testing until the Test Batch has completed all required steps and is in its final form as outlined in the standard operating procedures of the Licensee submitting the Test Batch, with the exception of packaging and labeling requirements which shall comply with Rule 3-1025.

    a. The following examples illustrate various methods, which are not limited to those listed herein, that a Licensee's standard operating procedures may include to verify a Test Batch completed all required steps and is in its final form pursuant to this Rule:

        i. The Licensee's standard operating procedures may include procedures that ensure the addition of all Ingredients or Additives has occurred and that the Harvest Batch or Production Batch associated with the Test Batch is completely ready to be packaged pending results of testing required by these Rules. This also includes creating Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana;

        ii. For a Production Batch of Concentrate, the Licensee's standard operating procedure may include procedures that ensure the entire Production Batch associated with the Test Batch has completed all sifting, extracting, purging, winterizing, and steps to remove plant pigments and ensuring the addition of all Ingredients and Additives has occurred.

        iii. For a Production Batch of Regulated Marijuana Product, the Licensee's standard operating procedure may include procedures that ensure the addition of all Ingredients and Additives has occurred and the Production Batch associated with the Test Batch is completely ready to be packaged pending results of testing required by these Rules.

    b. A Test Batch from a Harvest Batch or Production Batch shall be packaged and labeled according to Series 3-1025 prior to Transfer to a Regulated Marijuana Testing Facility.

    c. This Rule 4-110(A)(4) does not apply for the submission of Test Batches submitted for R&D testing.

5. Vaporizer Delivery Device. This subsection (A)(5) is effective January 1, 2022. Retail Marijuana Concentrate that has been placed into a Vaporizer Delivery Device must be sampled and tested using a methodology that allows the laboratory to analyze the emission of the contents of the Vaporizer Delivery Device.

B. Designated Test Batch Collector Training, Documentation, and Designation.

1. Required Sample Increment Collection Training. To become a Designated Test Batch Collector an Owner Licensee or Employee Licensee involved in the Sample Increment Collection of Regulated Marijuana must be designated by a manager or Owner Licensee as such and must also complete either in-house training provided by the Regulated Marijuana Business or training from a third-party vendor. Nothing in this rule requires a

Designated Test Batch Collector to be employed by the Regulated Marijuana Business making the designation.

2. Designated Test Batch Collection Training Required Topics. The training required to become a Designated Test Batch Collector must include at least the following topics:

    a. Part 4–100 Rule Series - Regulated Marijuana Testing Program;

    b. The Marijuana Business's standard operating procedures on creating a Sampling Plan and Test Batches, and the CDPHE's Sampling Procedures.

    c. “Guidance on Marijuana Sampling Procedures” Training Video or an equivalent training covering the following subjects:

        i. Introduction to Sample Increment Collection:

            A. Cross contamination as it relates to Sample Increment Collection;

            B. Sample Increment Collection and how it works;

            C. Sample Increment Collection documentation and record keeping requirements;

            D. Penalties for Sample Increment or Test Batch adulteration or alteration;

            E. Use of and disinfection of the Designated Test Batch Collection Area; and

            F. Use of the Sample Plan.

3. Documentation of Designated Test Batch Collector Training. Any individual receiving the Designated Test Batch Collector training must sign and date a document which shall be maintained by the Regulated Marijuana Business as a business record pursuant to Rule 3-905. The document must acknowledge the following:

    a. The identity of the Person that created the training, such as the Regulated Marijuana Business or a third-party vendor; and

    b. That all required topics of the training identified in this Rule have been reviewed and understood by the Owner Licensee or Employee Licensee.

C. Test Batch Collection Requirements.

1. Required Minimum of Two Test Batch Collectors. At a minimum, two Designated Test Batch Collectors shall be involved in the collection of Sample Increments such that at least one Designated Test Batch Collector is responsible for collecting the Sample Increments and another Designated Test Batch Collector is responsible for reviewing documentation associated with the collection of Sample Increments in a timely manner and prior to any Transfer of the Production Batch or Harvest Batch from which Sample Increments were collected. This review can be completed in person or may be completed remotely by reviewing image(s) of the Test Batch and associated documentation.

2. Sample Plan Required. A Designated Test Batch Collector must establish a Sample Plan consistent with the Regulated Marijuana Business's Standard Operating Procedure for Sample Increment Collection. At a minimum, a Sample Plan must include the following:

    a. The date, amount or weight, and specific location for each Sample Increment collected;

    b. Identification of and acknowledgements from all Designated Test Batch Collectors involved in the Sample Increment Collection; and

    c. If applicable, the strain name(s) for each Harvest Batch from which Sample Increments are collected.

D. Minimum Number of Sample Increments Per Test Batch Submission. These sampling rules shall apply until such time as the State Licensing Authority revises these rules to implement a statistical sampling model. Unless a greater amount is required to comply with these rules or is required by a Regulated Marijuana Testing Facility to perform all requested testing, each Test Batch of Regulated Marijuana must contain at least the number of Sample Increments prescribed by this Section.

1. A Test Batch of Regulated Marijuana must be packaged and labeled according to Rule 3-1025.

2. The minimum number of Sample Increments required to be collected for each Test Batch from a Harvest Batch of Retail Marijuana or Medical Marijuana shall be determined by Table 4-110.D.2.T.

3. The minimum number of Sample Increments required to be collected for each Test Batch from a Production Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Audited Product and Alternative Use Product shall be determined by Table 4-110.D.2.T.

    a. The Retail Marijuana Products Manufacturer or Medical Marijuana Products Manufacturer shall determine what constitutes a "Serving" and thus how many Servings are contained in a Production Batch of Regulated Marijuana Product, except that no serving of Edible Retail Marijuana Product can contain more than 10mg of active THC

    b. Because all Test Batches of Regulated Marijuana Product, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana are required to be submitted for testing in their final form, in the event the required number of Sample Increments does not match up within a finished package, the manufacturer must increase the number of Sample Increments collected for the Test Batch such that only finished packages of Regulated Marijuana Products, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana are submitted for testing. For example, if a Production Batch of 4000 chocolate bars is manufactured, with each bar containing 100 mg THC and 10 servings per bar, the Production Batch would contain 40,000 Sample Increments which would require collection of at least 33 Sample Increments per Test Batch. But in this case, the manufacturer would have to collect 40 Sample Increments for testing (4 complete chocolate bars in final form).

    c. No matter how small the Production Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana a minimum of two finished packages in final form must be submitted for a Test Batch.

4. The minimum number of Sample Increments required to be collected for each Test Batch from a Production Batch of Retail Marijuana Concentrate or Medical Marijuana Concentrate shall be determined by Table 4-110.D.2.T.

   a. Because all Test Batches of Retail Marijuana Concentrate and Medical Marijuana Concentrate are required to be submitted for testing in their final form, in the event the required number of Sample Increments does not match up with the number of Sample Increments in a finished package, the manufacturer must increase the number of Sample Increments collected for the Test Batch such that only finished packages of Marijuana Concentrate are submitted for testing. For example, if a Production Batch of 4,000 Vaporizer Delivery Devices is manufactured, with each Vaporizer Delivery Device containing 500 milligrams of Marijuana Concentrate, the Production Batch would contain 2,000 grams of Marijuana Concentrate, which would require collection of at least 15 Sample Increments per Test Batch. But in this case, the manufacturer would have to collect 16 Sample Increments for testing (8 vaporizer Delivery Devices in final form).

   b. No matter how small the Production Batch of Retail Marijuana Concentrate or Medical Marijuana Concentrate, a minimum of two finished packages must be submitted for a Test Batch.

Table 4-110.D.2.T

Minimum Number of Sample Increments Required to be Collected per Test Batch	**Regulated Marijuana (Sample Increment = 0.5 grams)**		
	Total Weight of Harvest Batch (lbs)	Total Weight of Harvest Batch (grams)	**Minimum Weight of Test Batch (grams)**
5	0.000 -0.999	0.0 -453.5	**2.50**
8	1.00 -9.999	453.6 -4535.9	**4.00**
15	10.000 -19.999	4536.0 - 9071.8	**7.50**
22	20.000 -39.999	9071.9 - 18143.6	**11.00**
33	40.000 -99.999	18143.7 - 45359.2	**16.50**
43	100.000 - 199.999	45359.3 - 90718.4	**21.50**
53	200.000 - 499.999	90718.5 -226796.1	**26.50**
80	500 or more	226796.2 or more	**40.00**

Minimum Number of Sample Increments Required to be Collected per Test Batch	**Regulated Marijuana Concentrate (Sample Increment = 0.25 g)**		
	Total Weight of Production Batch (lbs)	Total Weight of Production Batch (grams)	**Minimum Weight of Test Batch (grams)**

5	0.000 -0.999	0.0-453.5	**1.25**
8	1.00 - 1.999	453.6-907.1	**2.00**
15	2.00 - 4.999	907.2-2267.9	**3.75**
22	5.000 - 14.999	2268.0-6803.8	**5.50**
33	15.000 – 49.999	6803.9-22679.6	**8.25**
43	50.000 – 99.999	22679.7-45359.2	**10.75**
53	100.000 – 249.999	45359.3-113398.0	**13.25**
80	250 or more	113398.1 or more	**20.00**

Minimum Number of Sample Increments Required to be Collected per Test Batch	**Regulated Marijuana Products (Sample Increment = 1 Serving)**				
	Number of Servings within Production Batch	**Minimum Number of Units for a Test Batch for a 5-Serving Unit***	**Minimum Number of Units for a Test Batch for a 10-Serving Unit***	**Minimum Number of Units for a Test Batch for a 20-Serving Unit***	**Minimum Number of Units for a Test Batch for a 100-Serving Unit***
5	0 - 99	**2**	**2**	**2**	**2**
8	100 - 999	**2**	**2**	**2**	**2**
15	1000 - 4999	**3**	**2**	**2**	**2**
22	5000 - 9999	**5**	**3**	**2**	**2**
33	10000 - 49999	**7**	**4**	**2**	**2**
43	50000 - 99999	**9**	**5**	**3**	**3**
53	100000 - 249999	**11**	**6**	**3**	**3**
80	250000 or more	**16**	**8**	**4**	**4**
*Other serving amounts per unit are acceptable. These are provided as examples.					

Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana		
Minimum	**Number of Pre-**	**Minimum Number of Pre-Rolls for a Test Batch when each Pre-Roll is**

Number of Sample Increments Required to be Collected per Test Batch	**Rolls within the Production Batch**	**< or = 0.39 g**	**0.40g to 0.50g**	**0.51g to 0.75g**	**0.76g - 1.00g**	**1.01g - 2.00g**	**2.01g - 3.00g**	**3.01g +**
5	0 - 99	5	4	3	2	2	2	2
8	100 - 999	8	5	4	3	2	2	2
15	1000 - 4999	15	10	8	5	4	2	2
22	5000 - 9999	22	14	11	8	6	3	2
33	10000 - 49999	33	21	17	11	9	5	3
43	50000 - 99999	43	27	22	15	11	6	4
53	100000 - 249999	53	34	26	18	14	7	5
80	250000 or more	80	50	40	27	20	10	7

E. Regulated Marijuana Testing Facility Selection. Unless otherwise restricted or prohibited by these rules or ordered by the State Licensing Authority, a Regulated Marijuana Business may select which Medical Marijuana Testing Facility or Retail Marijuana Testing Facility will test a Test Batch made up of Sample Increments collected pursuant to this Rule. However, the Division may elect, at its sole discretion, to assign a Regulated Marijuana Testing Facility to which a Regulated Marijuana Business must submit for testing any Test Batch made up of Sample Increments collected pursuant to this Rule.

F. Industrial Hemp Product Sampling Procedures. Absent sampling and testing standards established by the Colorado Department of Public Health and Environment for the sampling and testing of Industrial Hemp Product, a Person Transferring an Industrial Hemp Product to a Licensee pursuant to the Marijuana Code and these Rules shall comply with the sampling and testing standards set forth in these 4-100 Series Rules – Regulated Marijuana Testing Program and as required by these Rules.

G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish the portion of the Division's mandatory testing and sampling program that is applicable to Regulated Marijuana Businesses, and specifically Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities. While the Marijuana Code requires the State Licensing Authority to establish acceptable limits of potential contaminants, it also requires the State Licensing Authority to enact a plus or minus 15 percent potency

variance, which is also included in this rule. This Rule 4-115 was previously Rules M and R 712, 1 CCR 212-1 and 1 CCR 212-2.

4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program

A. Division Authority. The Division may require that a Test Batch be submitted to a specific Regulated Marijuana Testing Facility for testing to verify compliance, perform investigations, compile data or address a public health and safety concern.

1. Independent Third Party Review. The Division may require Regulated Marijuana to undergo an independent third-party review to verify that the Regulated Marijuana does not pose a threat to public health and safety when the Division, in consultation with the Colorado Department of Public Health and Environment, has objective and reasonable grounds to believe and finds, upon a full investigation, one of the following:

a. The Regulated Marijuana contains one or more substances known to cause harm; or

b. The Regulated Marijuana contains one or more substances that could be toxic as consumed or applied in accordance with the intended use.

2. The fact that Regulated Marijuana contains marijuana shall not constitute grounds to require an independent third-party review. Ingredients Generally Recognized as Safe by the U.S. Food & Drug Administration or that are regulated by the U.S. Food & Drug Administration under the Dietary Supplement Health and Education Act of 1994 that are included in Edible Medical Marijuana Product or Edible Retail Marijuana Product shall not constitute grounds to require an independent third-party review.

3. Quarantine. In addition to any other remedies provided by law, the Division may immediately quarantine Regulated Marijuana pursuant to Rule 4-135(A) in any one of the following circumstances:

a. The Division has objective and reasonable grounds to believe and finds, upon a full investigation, that a Regulated Marijuana Business has been guilty of deliberate and willful violations of these rules;

b. The Regulated Marijuana or Alternative Use Product poses a potential threat to public health and safety;

c. The Division has received one or more reports of an adverse event related to Regulated Marijuana or Alternative Use Product. For purpose of this Rule, adverse event means any untoward medical occurrence associated with the use of Regulated Marijuana or Alternative Use Product—this could include any unfavorable and unintended sign (including hospitalization, emergency department visit, doctor's visit, abnormal laboratory finding), symptom, or disease temporally associated with the use of a Regulated Marijuana or Alternative Use Product;

d. The Division determines the independent third-party audit submitted pursuant to Rules 5-325(B) or 6-325(B) does not meet the requirements of Rules 5-325 or 6-325; or

e. The Regulated Marijuana Products Manufacturer has violated or is not in compliance with all of the requirements in Rules 5-325 or 6-325.

4. Any quarantine pursuant to subparagraph (A)(3) above shall remain in effect unless the Regulated Marijuana undergoes an independent third-party review to verify the Regulated Marijuana does not pose a risk to public health and safety.

5. For the purpose of this Rule, full investigation means a reasonable ascertainment of the underlying facts on which the agency action is based.

B. Standard Minimum Weight of Test Batches and Photo Documentation.

1. Standard Minimum Weight of Test Batches.

a. Regulated Marijuana and Regulated Marijuana Concentrate. A Medical Marijuana Testing Facility must establish a standard minimum weight of Medical Marijuana and Medical Marijuana Concentrate, and a Retail Marijuana Testing Facility must establish a standard minimum weight of Retail Marijuana and Retail Marijuana Concentrate that must be included in a Test Batch for every type of test that it conducts.

b. Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana. Regulated Marijuana Testing Facilities must establish a standard number of Samples required to be included in each Test Batch of Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana for every type of test that it conducts. *See* Rule 4-110 – Regulated Marijuana Testing Program – Sampling Procedures.

2. Photo Documentation of Test Batches.

a. A Regulated Marijuana Testing Facility shall digitally photograph each Test Batch it receives to document the Sample Increments collected, condition of the Test Batch, and compliance with these rules. *See* Rule 4-110(A)(5) -Test Batch Container and Packaging.

b. The Regulated Marijuana Testing Facility must maintain the digital photographs of each Test Batch as business records. *See* Rule 3-905 - Required Business Records.

c. Upon request by the Division, a Regulated Marijuana Testing Facility must provide copies of the digital photographs of Test Batches within seven days of the request unless a different deadline is agreed to.

C. Rejection of Test Batches.

1. A Regulated Marijuana Testing Facility may not accept a Test Batch that is smaller than its standard minimum amount.

2. A Regulated Marijuana Testing Facility may not accept a Test Batch that it knows was not taken in accordance with these rules or proceed with testing of a Test Batch for which adulteration is suspected, unless otherwise permitted by Rule 4-105(E), and except a Regulated Marijuana Testing Facility may accept a Test Batch that was collected by Division representatives or that was collected by a Licensee pursuant to Division direction.

D. Permissible Levels of Contaminants. If Regulated Marijuana is found to have a contaminant in levels exceeding those established as permissible under this Rule, then it shall be considered to have failed contaminant testing. Notwithstanding the permissible levels established in this Rule,

the Division reserves the right to determine, upon good cause and reasonable grounds, that a particular Test Batch presents a risk to the public health or safety and therefore shall be considered to have failed a contaminant test.

1. Microbials (Bacteria, Fungus)

Substance	**Acceptable Limits**	**Product to be Tested**
–Shiga-toxin producing *Escherichia coli* (STEC)*-Bacteria	Absent in 1 g	• Regulated Marijuana flower, shake, and trim (other than wet whole plant allocated for extraction); • Regulated Marijuana Products (other than Audited Product); • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana; • Physical Separation-Based, Heat/Pressure-Based, and Food-Based Medical Marijuana Concentrate; • Physical Separation-Based, Heat/Pressure-Based, and Food-Based Retail Marijuana Concentrate; • Industrial Hemp Products; • Pressurized Metered Dose Inhalers; • Vaporizer Delivery Device; • Solvent-Based Medical Marijuana Concentrate produced through Remediation; • Solvent-Based Retail Marijuana Concentrate produced through Remediation; • Solvent-Based Medical Marijuana Concentrate produced from Regulated Marijuana wet whole plant that was not tested for microbials; • Solvent-Based Retail Marijuana Concentrate produced from Regulated Marijuana wet whole plant that was not tested for microbials; • Re-testing of Regulated Marijuana flower, shake, and trim that has undergone Decontamination.
Salmonella species* – Bacteria	Absent in 1 g	
Aspergillus (A. fumigatus, A. flavus, A. niger, A. terreus)	Absent in 1 g	
Total Yeast and Mold	$< 10^4$ Colony Forming Unit (CFU) per 1 ml or 1 g	
	$\leq 10^1$ CFU/ml or $\leq 10^1$ CFU/g	Audited Product: administration by metered dose nasal spray or vaginal administration
	$\leq 10^2$ CFU/ml or $\leq 10^2$ CFU/g	Audited Product: rectal administration

Total aerobic microbial count	≤10^2 CFU/ml or ≤10^2 CFU/g	Audited Product: administration by metered dose nasal spray or vaginal administration
	≤10^3 CFU/ml or ≤10^3 CFU/g	Audited Product: rectal administration
Staphylococcus aureus	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray or vaginal administration
Pseudomonas aeruginosa	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray or vaginal administration
Bile tolerant gram negative bacteria	Absent in 1 ml or 1 g	Audited Product: administration by metered dose nasal spray
Candida albicans	Absent in 1 ml or 1 g	Audited Product: vaginal administration

*The Regulated Marijuana Testing Facility shall contact the Colorado Department of Public Health and Environment when STEC and Salmonella are detected beyond the acceptable limits.

1.5 Water Activity

Substance	**Acceptable Limits**	**Product to be Tested**
Water Activity	0.65 aW	• Regulated Marijuana flower shake, and trim (other than wet whole plant); • Retesting of Regulated Marijuana flower, shake, and trim that has undergone Decontamination; • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana.

2. Mycotoxins

Substance	**Acceptable Limits**	**Product to be Tested**
Aflatoxins (B1, B2, G1, and G2)	< 20 Parts Per Billion (PPB) (total of B1 + B2 + G1 + G2)	• Solvent-Based Medical Marijuana Concentrate manufactured from Medical Marijuana flower or trim that failed microbial testing; • Solvent-Based Retail Marijuana Concentrate manufactured from Retail Marijuana flower or trim that failed microbial testing; • Solvent-Based Medical Marijuana Concentrate produced from Regulated
Ochratoxin A	< 20 PPB	

		Marijuana wet whole plant that was not tested for microbials; • Solvent-Based Retail Marijuana Concentrate produced from Regulated Marijuana wet whole plant that was not tested for microbials; • Regulated Marijuana flower, shake, and trim that has undergone Decontamination.

3. Residual Solvents

Substance	**Acceptable Limits**	**Product to be Tested**
Acetone	< 1,000 Parts Per Million (PPM)	• Solvent-Based Medical Marijuana Concentrate; • Solvent-Based Retail Marijuana Concentrate; • Industrial Hemp Product (if a solvent was used)
Butanes	< 1,000 PPM	
Ethanol***	< 1,000 PPM	
Heptanes	< 1,000 PPM	
Isopropyl Alcohol	< 1,000 PPM	
Propane	< 1,000 PPM	
Benzene**	< 2 PPM	
Toluene**	< 180 PPM	
Pentane	< 1,000 PPM	
Hexane**	< 60 PPM	
Total Xylenes (m,p, o-xylenes)**	< 430 PPM	
Methanol**	< 600 PPM	
Ethyl Acetate	< 1000 PPM	
Any other solvent not permitted for use pursuant to Rules 5-315 and 6-315.	None Detected	

** Note: These solvents are not approved for use. Due to their possible presence in the solvents approved for use per Rule 6-315, limits have been listed here accordingly.

***Note: Solvent-Based Medical Marijuana Concentrate and Solvent-Based Retail Marijuana Concentrate that exceeds the acceptable limit for ethanol may only be used in Medical Marijuana Concentrate or Medical Marijuana Product, or Retail Marijuana Concentrate or Retail Marijuana Product, which intended use is oral consumption, skin and body products, a vaporizer delivery device, pressurized metered dose inhaler, or Audited Product.

4. Elemental Impurities

Substance	**Acceptable Limits Based on Intended Use**	**Product to be Tested**

Elemental Impurities (Arsenic, Cadmium, Lead and Mercury)	**Inhaled Product or Audited Product: administration by metered dose nasal spray** Lead – Max Limit: < .5 PPM Arsenic – Max Limit: < 0.2 PPM Cadmium – Max Limit: < 0.2 PPM Mercury – Max Limit: < 0.1 PPM	• Regulated Marijuana flower, shake, trim, and wet whole plant; • Physical Separation-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Medical Marijuana Concentrate; • Physical Separation-Based, Food-Based, Heat/Pressure-Based and Solvent Based Retail Marijuana Concentrate; • Regulated Marijuana Product; • Pre-Rolled Marijuana; • Infused Pre-Rolled Marijuana; • Pressurized Metered Dose Inhaler; • Vaporizer Delivery Device; • Audited Product; • Industrial Hemp Product
	Topical and/or Transdermal Lead – Max Limit: < 10 PPM Arsenic – Max Limit: < 3 PPM Cadmium – Max Limit: < 3 PPM Mercury – Max Limit: < 1 PPM	
	Oral Consumption or Audited Product: rectal or vaginal administration Lead – Max Limit: < 1 PPM Arsenic – Max Limit: < 1.5 PPM Cadmium – Max Limit: < 0.5 PPM Mercury – Max Limit: < 1.5 PPM	

5. Pesticides

6. Other Contaminants

Pesticide	If the Test Batch is found to contain banned prohibited Pesticide not listed in paragraph (5) above, or the improper application of a permitted Pesticide, then that Test Batch shall be considered to have failed contaminant testing.
Chemicals	If the Test Batch is found to contain levels of any chemical that could be toxic if consumed or as applied, then the Division may determine that the Test Batch has failed contaminant testing.
Microbials	If the Test Batch is found to contain levels of any microbial that could be toxic if consumed or present, then the Division may determine that the Test Batch has failed contaminant testing.
Elemental Impurities	If the Test Batch is found to contain levels of any elemental impurities that could be toxic if consumed or present then the Division may determine that the Test Batch has failed contaminant testing.

7. Division Notification. A Regulated Marijuana Testing Facility must notify the Division by timely input in the Inventory Tracking System if a Test Batch is found to contain levels of a contaminant not listed within this Rule that could be injurious to human health if consumed. *See* Rule 3-825.

E. Potency Testing.

1. Cannabinoids Potency Profiles. A Regulated Marijuana Testing Facility may test and report results for any Cannabinoid provided the test is conducted in accordance with the Regulated Marijuana Testing Facility's standard operating procedure.

2. Reporting of Results.

a. For potency tests on Regulated Marijuana, Regulated Marijuana Concentrate, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana, results must be reported by listing a single percentage concentration for each Cannabinoid that represents an average of all Samples within the Test Batch. This includes reporting the Total THC in addition to each Cannabinoid required in Rule 4-125.

b. For potency tests conducted on Regulated Marijuana Product, whether conducted on each individual Production Batch or via a Reduced Testing Allowance per Rule 4-125, results must be reported by listing the total number of milligrams contained within a single Regulated Marijuana Product unit for sale for each Cannabinoid and stating whether the THC content is homogenous as defined in Paragraphs 3 and 4 of this subparagraph E.

c. Effective Date for Reporting D8-THC, D10-THC, and Exo-THC. Requirements for reporting potency test results for D8-THC, D10-THC, and Exo-THC shall take effect on July 1, 2022.

3. Failed Potency Tests for Medical Marijuana Product.

a. If the Cannabinoid content of Medical Marijuana Product is determined not to be homogeneous, then it shall be considered to have failed potency testing. A Production Batch of Medical Marijuana Product shall be considered homogeneous if a minimum of a total of four servings from two packaged units of a Test Batch has a relative standard deviation of less than 10 percent for each Cannabinoid listed on the label. A Production Batch of Medical Marijuana Product shall be considered homogenous if a minimum of a total of four servings from four individual single serve packaged units of a Test Batch has a relative

standard deviation of less than 10 percent for each Cannabinoid listed on the label.

i. The four servings must also test within the allowed potency variance set forth in subparagraph E(5) of this Rule 4-115.

ii. Any Cannabinoid that makes up less than 10 percent of the total amount of Cannabinoids in the Medical Marijuana Product shall not be subject to the requirements set forth in this subparagraph (E)(3).

b. If an individually packaged Edible Medical Marijuana Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, then the Test Batch shall be considered to have failed potency testing. Except that the potency variance provided for in subparagraph (E)(5) of this Rule 4-115 shall apply to potency testing.

4. Failed Potency Tests for Retail Marijuana Product.

a. If the Cannabinoid content of Retail Marijuana Product is determined not to be homogeneous, then it shall be considered to have failed potency testing. A Production Batch of Retail Marijuana Product shall be considered homogeneous if a minimum of a total of four servings from two packaged units of a Test Batch has a relative standard deviation of less than 10 percent for each Cannabinoid listed on the label. A Production Batch of Retail Marijuana Product shall be considered homogenous if a minimum of a total of four servings from four individual single serve packaged units of a Test Batch has a relative standard deviation of less than 10 percent for each Cannabinoid listed on the label.

i. The four servings must also test within the allowed potency variance set forth in subparagraph E(5) of this Rule 4-115.

ii. Any Cannabinoid that makes up less than 10 percent of the total amount of Cannabinoids in the Retail Marijuana Product shall not be subject to the requirements set forth in this subparagraph (E)(4).

b. If an individually packaged Edible Retail Marijuana Product is determined to have more than 100 milligrams of THC within it, then the Test Batch shall be considered to have failed potency testing. If an individually packaged Edible Retail Marijuana Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, then the Test Batch shall be considered to have failed potency testing. If a single serving in an individually packaged Edible Retail Marijuana Product is determined to have more than 10 milligrams of THC then the Test Batch shall be considered to have failed potency testing. Except that the potency variance provided for in subparagraph (E)(5) of this Rule 4-115 shall apply to potency testing.

5. Potency Variance. Regulated Marijuana Product provided to the Regulated Marijuana Testing Facility must comply with the following potency variance:

a. For Regulated Marijuana Product with a Target Potency or making a potency claim for any cannabinoid of more than 2.5 milligrams per serving the potency variance shall differ no more than plus or minus 15 percent.

b. For Regulated Marijuana Product with a Target Potency or making a potency claim for any cannabinoid of 2.5 milligrams or less per serving the potency variance shall differ no more than the greater of plus or minus 0.5 mg or 40 percent per serving.

F. Testing Regulated Marijuana Ready for Transfer. All tests must occur at the time the Regulated Marijuana is ready for Transfer to another Regulated Marijuana Business, according to the required steps outlined in the standard operating procedures of the Licensee submitting the Test Batch.

Basis and Purpose – 4-120

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the contaminant testing and related Reduced Testing Allowance portion of the Division's Regulated Marijuana sampling and testing program. This Rule 4-120 was previously Rules M and R 1501, 1 CCR 212-1 and 1 CCR 212-2.

4-120 – Regulated Marijuana Testing Program: Contaminant Testing

A. Contaminant Testing Required.

1. A Regulated Marijuana Business shall not Transfer or process Regulated Marijuana, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Regulated Marijuana Concentrate or Regulated Marijuana Product unless Test Batches from each Harvest Batch or Production Batch from which that Regulated Marijuana was derived has been tested by a Regulated Marijuana Testing Facility for contaminants and passed all contaminant tests required by this Rule, except as permitted in Rule 5-205(C), 6-205(C), or the cultivation or production process has achieved a Reduced Testing Allowance under this Rule.

B. Reduced Testing Allowance and Ongoing Testing – Contaminant Testing.

1. Regulated Marijuana. A Regulated Marijuana Cultivation Facility's cultivation process may achieve a Reduced Testing Allowance for contaminant testing if every Harvest Batch that it produced during at least a six-week period but no longer than a 12-week period passed all contaminant tests required by Paragraph (C) of this Rule. This must include at least six Test Batches. A Medical Marijuana Cultivation Facility, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator can achieve a Reduced Testing Allowance for all contaminants listed in paragraph (C) of this Rule at the same time or separately for each contaminant.

a. Visual Microbial Growth. If a Regulated Marijuana Cultivation Facility is aware that a Harvest Batch contains visual microbial contamination, the Regulated Marijuana Cultivation Facility shall subject the Harvest Batch to microbial contaminant testing pursuant to Rule 4-120(C)(1). If the Test Batch fails testing, then the Harvest Batch shall be subject to the requirements in Rule 4-135(C). The Licensees must also follow Rule 4-120(F)(2).

2. Regulated Marijuana Concentrate, Regulated Marijuana Product, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana. A Regulated Marijuana Business's production process may achieve a Reduced Testing Allowance for contaminant testing if for a particular type of Regulated Marijuana Concentrate, Regulated Marijuana Product, or Pre-Rolled Marijuana

or Infused Pre-Rolled Marijuana every Production Batch that it produced during at least a four-week period but no longer than an eight-week period passed all contaminant tests required by Paragraph (C) of this Rule. This must include Test Batches from at least four Production Batches. If a Regulated Marijuana Concentrate or Regulated Marijuana Product is manufactured using a different extraction process or infusion process or using any different Additives or Botanically Derived Compounds, it will be considered a different type of Regulated Marijuana Concentrate or Regulated Marijuana Product and therefore must separately achieve a Reduced Testing Allowance. If Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana is produced using different input materials, such as a different marijuana category (e.g. flower or trim), different wrapper materials, different processes, or different equipment, they must achieve separate Reduced Testing Allowances.

3. Reduced Testing Allowances are Effective for One Year. Once a Regulated Marijuana Business has successfully achieved a Reduced Testing Allowance for each of the contaminants listed in paragraph (C) of this Rule, the Reduced Testing Allowance is effective for one year from the date of the first passing harvest date or production date required to satisfy the Reduced Testing Allowance requirements.

4. Regulated Marijuana Ongoing Contaminant Testing. After successfully achieving a Reduced Testing Allowance, once every 30 days a Regulated Marijuana Business shall subject at least one Harvest Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period the Regulated Marijuana Business does not possess a Harvest Batch that is ready for testing, the Regulated Marijuana Business must subject its first Harvest Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Regulated Marijuana. If a Harvest Batch subject to ongoing contaminant testing fails contaminant testing, the Regulated Marijuana Business shall follow the procedure in Paragraph (F)(2) of this Rule. Ongoing contaminant testing pursuant to this Rule 4-120 shall be subject to the requirements in Rule 4-110. *See* Rule 4-110(A) – Collection of Samples.

    a. The Division may reduce the frequency of ongoing contaminant testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

    b. If the Licensee fails to comply with paragraph (B)(4) of this Rule, the Regulated Marijuana Business is no longer authorized a Reduced Testing Allowance.

5. Regulated Marijuana Concentrate, Regulated Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana Ongoing Contaminant Testing. After successfully achieving a Reduced Testing Allowance, once every 30 days the Regulated Marijuana Business shall subject at least one Production Batch to all contaminant testing required by Paragraph (C) of this Rule. If during any 30-day period the Regulated Marijuana Business does not possess a Production Batch that is ready for testing, the Regulated Marijuana Business must subject its first Production Batch that is ready for testing to the required contaminant testing prior to Transfer or processing of the Regulated Marijuana. If a Production Batch submitted for ongoing contaminant testing fails contaminant testing, the Regulated Marijuana Business shall follow the procedure in Paragraph (F)(2) of this Rule.

    a. The Division may reduce the frequency of ongoing contaminant testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity

to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

b. If the Licensee fails to comply with paragraph (B)(5) of this Rule, the Regulated Marijuana Business is no longer authorized under a Reduced Testing Allowance.

C. Required Contaminant Tests.

1. Microbial Contaminant Testing. Harvest Batches of Regulated Marijuana, flower, shake, and trim, re-testing of Regulated Marijuana flower, shake, and/or trim that has undergone Decontamination, Production Batches of Physical Separation-, Heat/Pressure-, or Food-Based Medical Marijuana Concentrate, Production Batches of Physical Separation-, Heat/Pressure-, or Food-Based Retail Marijuana Concentrate, Solvent-Based Medical Marijuana Concentrate produced through Remediation, Solvent-Based Retail Marijuana Concentrate produced through Remediation, Regulated Marijuana Product, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Industrial Hemp Products, Pressurized Metered Dose Inhalers, Vaporizer Delivery Devices, and Audited Product must be tested for microbial contamination by a Regulated Marijuana Testing Facility at the frequency established by Paragraphs (A) and (B) of this Rule. The microbial contamination test must include, but need not be limited to, testing to determine the presence of and/or amounts present of microbial contaminants listed in Rule 4-115(D)(1): Shiga-toxin producing Escherichia coli (STEC)*- Bacteria, *Aspergillus (A. fumigatus, A. flavus, A. niger, A. terreus),* Salmonella species* – Bacteria, Total Yeast and Mold, Total aerobic microbial count, *Staphylococcus Aureus, Pseudomonas aeruginosa, Bile tolerant gram negative bacteria and Candida albicans*.

a. Effective Date for Required *Aspergillus* Testing. Requirements for *Aspergillus* testing pursuant to this rule shall take effect on July 1, 2022.

1.5 Water Activity Testing. Harvest Batches of Regulated Marijuana, flower, shake, and trim (other than wet whole plant), re-testing of Regulated Marijuana flower, shake, and/or trim that has undergone Decontamination, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana at the frequency established by Paragraphs (A) and (B) of this Rule.

2. Residual Solvent Contaminant Testing. Production Batches of Solvent-Based Medical Marijuana Concentrate, Solvent-Based Retail Marijuana Concentrate, and Audited Product that contains any Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate produced by a Regulated Marijuana Products Manufacturer must be tested by a Regulated Marijuana Testing Facility for residual solvent contamination at the frequency established by Paragraphs (A) and (B) of this Rule. The residual solvent contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of acetone, butane, ethanol, heptanes, isopropyl alcohol, propane, benzene*, toluene*, pentane, hexane*, methanol*, ethyl acetate, and total xylenes* (m, p, o – xylenes).

* Note: These solvents are not approved for use. Testing is required for these solvents due to their possible presence in the solvents approved for use per Rule 5-315 and 6-315.

3. Mycotoxin Contaminant Testing. As part of Remediation, each Production Batch of Solvent-Based Medical Marijuana Concentrate produced by a Medical Marijuana Products Manufacturer or Solvent-Based Retail Marijuana Concentrate produced by a Regulated Marijuana Products Manufacturer from Regulated Marijuana that failed microbial contaminant testing produced must be tested by a Regulated Marijuana Testing Facility for mycotoxin contamination. Each failed Harvest Batch of Regulated Marijuana

flower, shake, and/or trim and each failed Production Batch of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana that has undergone Decontamination must be tested by a Regulated Marijuana Testing Facility for mycotoxin contamination. Each Production Batch of Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contamination must be tested for mycotoxin contamination. The mycotoxin contaminant test must include, but need not be limited to, testing to determine the presence of, and amounts present of, aflatoxins (B1, B2, G1, and G2) and ochratoxin A. This is in addition to all other contaminant testing required by this Paragraph (C). This contaminant test cannot be exempt from testing by a Reduced Testing Allowance in accordance with subparagraph (B)(2) of this Rule, except Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contamination pursuant to Rule 4-121.

4. Pesticide Contaminant Testing. Harvest Batches of Regulated Marijuana, Production Batches of Regulated Marijuana Concentrate, Production Batches of Pre-Rolled Marijuana, and Production Batches of Infused Pre-Rolled Marijuana must be tested for Pesticide contamination by a Regulated Marijuana Testing Facility at the frequency established by this Rule 4-120(A) and (B). The Pesticide contamination test must include, but need not be limited to, testing to determine the presence of, and amounts present of, the Pesticides listed in Rule 4-115(E)(5).

    a. Effective Date for Required Pesticide Contaminant Testing for Production Batches of Regulated Marijuana Concentrate: Requirements for Pesticide contaminant testing for Production Batches of Regulated Marijuana Concentrate pursuant to this rule shall take effect on July 1, 2021.

5. Elemental Impurities Testing.

    a. Each Harvest Batch and Production Batch of Regulated Marijuana must be tested for elemental impurities by a Regulated Marijuana Testing Facility at the frequency established in paragraphs (A) and (B) of this Rule. The elemental impurities test must include, but need not be limited to, testing to determine the presence of, and amounts present of, arsenic, cadmium, lead, and mercury.

    b. Emissions Testing. This subsection (C)(5)(b) is effective January 1, 2022. Each Harvest Batch and Production Batch of Regulated Marijuana Concentrate in a Vaporized Delivery Device must be tested for elemental impurities via emissions testing by a Regulated Marijuana Testing Facility at the frequency established in subparagraphs (A) and (B) of this Rule. The elemental impurities test must include, but need not be limited to, testing to determine the presence and amounts of arsenic, cadmium, lead, and mercury.

D. Additional Required Tests. The Division may require additional tests to be conducted on a Harvest Batch or Production Batch prior to a Regulated Marijuana Cultivation Facility or Regulated Marijuana Products Manufacturer Transferring or processing any Regulated Marijuana from that Harvest Batch or Production into a Regulated Marijuana Concentrate or Regulated Marijuana Product. Additional tests may include, but need not be limited to, screening for Pesticide, chemical contaminants, biological contaminants, or other types of microbials, molds, elemental impurities, or residual solvents.

E. Exemptions.

1. Medical Marijuana Concentrate.

a. A Medical Marijuana Products Manufacturer who combines multiple Production Batches of Solvent-Based Medical Marijuana Concentrate into a Production Batch of Solvent-Based Medical Marijuana Concentrate shall be considered exempt from residual solvent testing pursuant to this Rule only if all original Production Batches passed residual solvent testing. This does not apply if a solvent, Additive, or any other Ingredient was introduced during the combination of the Production Batches.

b. A Production Batch of Medical Marijuana Concentrate shall be considered exempt from contaminant testing requirements pursuant to this Rule if the Medical Marijuana Products Manufacturer that produced it does not Transfer any portion of the Production Batch and uses the entire Production Batch to manufacture Medical Marijuana Product, except that a Solvent-Based Medical Marijuana Concentrate must still be submitted for residual solvent contaminant testing and Medical Marijuana Concentrate must still be submitted for pesticide contaminant testing. The manufactured Medical Marijuana Product shall be subject to mandatory testing under this Rule.

2. Retail Marijuana Concentrate.

a. A Retail Marijuana Products Manufacturer or Accelerator Manufacturer who combines multiple Production Batches of Solvent-Based Retail Marijuana Concentrate into a Production Batch of Solvent-Based Retail Marijuana Concentrate shall be considered exempt from residual solvent testing pursuant to this Rule only if all original Production Batches passed residual solvent testing. This does not apply if a solvent, Additive or any other Ingredient was introduced during the combination of the Production Batches.

b. A Production Batch of Retail Marijuana Concentrate shall be considered exempt from contaminant testing requirements pursuant to this Rule if the Retail Marijuana Products Manufacturer that produced it does not Transfer any portion of the Production Batch and uses the entire Production Batch to manufacture Retail Marijuana Product, except that a Solvent-Based Retail Marijuana Concentrate must still be submitted for residual solvent contaminant testing and Retail Marijuana Concentrate must still be submitted for pesticide contaminant testing. The manufactured Retail Marijuana Product shall be subject to testing under this Rule.

F. Events Requiring Re-Authorization for a Reduced Testing Allowance - Contaminants.

1. Material Change. If a Licensee makes a Material Change to its cultivation or production process or its standard operating procedures , then it must have the first five Harvest Batches or Production Batches produced using the new procedures tested for all of the contaminants required by Paragraph (C) of this Rule regardless of whether its process has previously achieved a Reduced Testing Allowance regarding contaminants. If any of those tests fail, then the Regulated Marijuana Business's process must achieve a new Reduced Testing Allowance.

a. Pesticide or other Agricultural Substances. It is a Material Change if a Regulated Marijuana Cultivation Facility begins using a new or different Pesticide or other agricultural substances (e.g. nutrients, fertilizers) during its cultivation process.

b. Solvents. It is a Material Change if a Regulated Marijuana Products Manufacturer begins using a new or different solvent or combination of solvents or changes any parameters for equipment related to the solvent purging process, including but not limited to, time, temperature, or pressure.

c. Cultivation. It is a Material Change if a Regulated Marijuana Cultivation Facility begins using a new or different method for any material part of the cultivation process, including, but not limited to, changing from one growing medium to another.

d. Environmental Conditions. It is a Material Change if a Regulated Marijuana Cultivation Facility changes parameters associated with environmental conditions, including temperature, humidity, or lighting.

e. Cleaning and Sanitation. It is a Material Change if a Regulated Marijuana Cultivation Facility makes changes to cleaning or sanitation processes.

f. Inputs and Contact Surfaces. It is a Material Change if a Regulated Marijuana Cultivation Facility changes materials that have direct contact with product components, including but not limited to, ingredients, additives, or hardware such as Vaporizer Delivery Devices.

g. Testing Required Prior to Transfer or Processing. When a Harvest Batch or Production Batch is required to be submitted for testing pursuant to this Rule, the Licensee that produced it may not Transfer or process Regulated Marijuana, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Regulated Marijuana Concentrate or Regulated Marijuana Product unless the Harvest Batch or Production Batch passes all required testing.

2. Failed Contaminant Testing and Reduced Testing Allowance. Failed contaminant testing may constitute a violation of these rules.

a. If a Test Batch is required to be tested by these Rules or required to be tested by the Division pursuant to Rule 4-120(A) and fails contaminant testing, the Licensee shall follow the procedures in Rule 4-135(B) for any Inventory Tracking System package, Harvest Batch, or Production Batch from which the failed Sample was taken.

b. The Licensee shall also submit Test Batches from three new Harvest Batches or Production Batches of the Regulated Marijuana for contaminant testing by a Regulated Marijuana Testing Facility within no more than 30 days. If any one of the three submitted Test Batches fails contaminant testing, the Licensee shall achieve a new Reduced Testing Allowance for contaminants.

G. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-121

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to establish requirements and exemptions for contaminant testing for wet whole plant.

4-121 – Regulated Marijuana Testing Program: Wet Whole Plant Contaminant Testing

A. Microbial Contaminant Testing. A Regulated Marijuana Cultivation Facility shall not Transfer wet whole plant or process wet whole plant into Regulated Marijuana Concentrate unless Test

Batches from each Harvest Batch of Regulated Marijuana wet whole plant were tested for microbial contamination by a Regulated Marijuana Testing Facility and passed all microbial contaminant tests except as permitted in Rules 5-205(C), 6-205(C), or the cultivation process has achieved a Reduced Testing Allowance under this Rule. The microbial contamination test must include, but need not be limited to, testing to determine the presence of and/or amounts present of microbial contaminants listed in Rule 4-115(D)(1): Shiga-toxin producing Escherichia coli (STEC)*- Bacteria, *Aspergillus (A. fumigatus, A. flavus, A. niger, A. terreus),* Salmonella species* – Bacteria, Total Yeast and Mold.

B. Reduced Testing Allowance and Ongoing Testing – Microbial Contaminant Testing. A Regulated Marijuana Cultivation Facility's cultivation process for wet whole plant shall be deemed acceptable for a Reduced Testing Allowance for microbial contaminant testing if every Harvest Batch of wet whole plant that it produced during at least a six-week period but no longer than a 12-week period passed all microbial contaminant tests required by this Rule. This must include at least six Test Batches. A Medical Marijuana Cultivation Facility, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator can achieve a Reduced Testing Allowance for contaminants listed in this Rule 4-121.

C. Reduced Testing Allowances are Effective for One Year. Once a Regulated Marijuana Business has successfully achieved a Reduced Testing Allowance for a contaminant test, the Reduced Testing Allowance is effective for one year from the date of the first passing harvest date or required to satisfy the Reduced Testing Allowance requirements.

D. Regulated Marijuana Ongoing Contaminant Testing. After successfully achieving a Reduced Testing Allowance, once every 30 days a Regulated Marijuana Cultivation Facility shall subject at least one Harvest Batch of wet whole plant to microbial contaminant testing. If during any 30-day period a Regulated Marijuana Cultivation Facility does not possess a Harvest Batch of wet whole plant that is ready for testing, the Regulated Marijuana Cultivation Facility must subject its first Harvest Batch of wet whole plant that is ready for testing to a microbial contaminant testing prior to Transfer or processing of the Regulated Marijuana wet whole plant. If a Harvest Batch of wet whole plant subject to ongoing contaminant testing fails contaminant testing, the Regulated Marijuana Cultivation Facility shall follow the procedure in Paragraph (F)(2) of Rule 4-120. Ongoing contaminant testing pursuant to this Rule shall be subject to the requirements in Rule 4-110. *See* Rule 4-110(A) – Collection of Samples.

1. The Division may reduce the frequency of ongoing contaminant testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing contaminant testing to the Licensee's last electronic mailing address provided to the Division.

2. If the Licensee fails to comply with Paragraph (D) of this Rule, the Regulated Marijuana Cultivation Facility is no longer authorized a Reduced Testing Allowance.

E. Testing Exemptions for Wet Whole Plant.

1. Harvest Batches of Regulated Marijuana wet whole plant are exempt from required water activity testing.

2. Harvest Batches of Regulated Marijuana wet whole plant is exempt from required microbial contaminant testing if a Regulated Marijuana Cultivation Facility Transfers the Regulated Marijuana wet whole plant for the purposes of extraction to a Regulated Marijuana Business with at least one identical Controlling Beneficial Owner and in accordance with this Rule. If a Regulated Marijuana wet whole plant Harvest Batch is not

tested for microbial contamination, each resulting Regulated Marijuana Concentrate Production Batch shall be tested for microbial contamination pursuant to Rule 4-120.

F. Regulated Marijuana Concentrate Produced from Wet Whole Plant That Was Not Tested for Microbial Contaminants.

1. Required Testing. Each Production Batch of Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contaminants in accordance with the exemption in paragraph (E)(2) of this Rule must be tested for microbial contaminants and mycotoxins. In addition, the Regulated Marijuana Concentrate must be tested in accordance with Rule 4-120 for other contaminants, including pesticides, elemental impurities, and residual solvents if applicable.

2. Regulated Marijuana Concentrate Produced from Wet Whole Plant Not Tested for Microbial Contamination. A Regulated Marijuana Business that produces Regulated Marijuana Concentrate may achieve a Reduced Testing Allowance for a Regulated Marijuana Concentrate produced from wet whole plant that was not tested for microbial contamination, subject to the following requirements:

a. Qualification Form. The Regulated Marijuana Business that produces Regulated Marijuana Concentrate from wet whole plant not tested for microbial contamination shall obtain a completed qualification form from the Regulated Marijuana Business that cultivated the wet whole plant. The qualification form must detail the following information related to the cultivation of the wet whole plant:

i. Implemented quality management systems;

ii. Record keeping;

iii. Notification of Material Change;

iv. Notification of a wet whole plant microbial Test Batch failure;

v. Cultivation and post-harvest procedures;

vi. Cleaning; and

vii. Corrective action and preventative action.

b. Completion Required. The Regulated Marijuana Business that wishes to Transfer the wet whole plant that was not tested for microbial contamination must provide a completed qualification form detailing the information listed above.

c. Approval. The Regulated Marijuana Business that receives a Transfer of wet whole plant is responsible for ensuring it conforms with specified approval requirements, which shall include but is not limited to the following:

i. The receiving Regulated Marijuana Business has confirmed it has not received notification by the Regulated Marijuana Cultivation Facility of a Material Change to its cultivation process;

ii. The receiving Regulated Marijuana Business has inspected the wet whole plant Harvest Batch for visual microbial contamination. If visual microbial contamination is identified in the Harvest Batch of wet whole

plant, the Licensee shall subject the Harvest Batch to microbial contaminant testing pursuant to Rule 4-121. If the Test Batch fails testing, then the Harvest Batch shall be subject to the requirements in Rule 4-135(C).; and

iii. The receiving Regulated Marijuana Business has obtained evidence of compliance with testing requirements for the wet whole plant and proof of any Reduced Testing Allowances, if appliable.

d. Origin Verification. Verification of the Regulated Marijuana Business that cultivated the wet whole plant used to manufacture the Regulated Marijuana Concentrate.

3. Recordkeeping Requirements. A Regulated Marijuana Business shall maintain copies of documents and other records evidencing compliance with this Rule as part of its business books and records. *See* Rule 3-905 – Business Records Required.

G. Pesticide and Elemental Impurities Testing for Regulated Marijuana Wet Whole Plant. Each Harvest Batch of Regulated Marijuana wet whole plant must be tested for Pesticide and Elemental Impurities testing in accordance with Rule 4-120.

H. Events Requiring Re-Authorization for a Reduced Testing Allowance. A Regulated Marijuana Cultivation Facility must follow Rule 4-120 for any events that would require a Re-Authorization for a Reduced Testing Allowance. That may include a failed test or a Material Change described in Rule 4-120 (F). The Licensee must act in accordance with Rule 4-120 (F)(2) if either scenario occurs.

Basis and Purpose – 4-125

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing the potency testing and related Reduced Testing Allowance portion of the Division's Regulated Marijuana sampling and testing program. This Rule 4-125 was previously Rules M and R 1503, 1 CCR 212-1 and 1 CCR 212-2.

4-125 – Regulated Marijuana Testing Program: Potency Testing

A. Potency Testing – General.

1. Test Batches. A Test Batch submitted for potency testing may only be comprised of sample increments that are of the same strain of Medical Marijuana or Retail Marijuana or from the same Production Batch of Medical Marijuana Concentrate or Medical Marijuana Product, or from the same Production Batch of Retail Marijuana Concentrate or Retail Marijuana Product, or from the same Production Batch of Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana.

2. Cannabinoid Profile. A potency test conducted pursuant to this Rule must at least determine the level of concentration of D8-THC, D9-THC, D-10 THC, Exo-THC, THCA, CBD, CBDA, and CBN.

B. Potency Testing for Regulated Marijuana.

1. Initial Potency Testing. A Regulated Marijuana Cultivation Facility must have potency tests conducted by a Regulated Marijuana Testing Facility on four Harvest Batches, created a minimum of one week apart, for each strain of Regulated Marijuana that it cultivates. *See* Rule 4-105(B).

    a. The first potency test must be conducted on each strain prior to the Regulated Marijuana Cultivation Facility Transferring or processing into a Medical Marijuana Concentrate any Medical Marijuana of that strain, or into a Retail Marijuana Concentrate any Retail Marijuana of that strain.

    b. All four potency tests must be conducted on each strain no later than December 1, 2014 or six months after the Regulated Marijuana Cultivation Facility begins cultivating that strain, whichever is later.

2. Ongoing Potency Testing. After the initial four potency tests, a Regulated Marijuana Cultivation Facility shall have each strain of Regulated Marijuana that it cultivates tested for potency at least once per quarter.

    a. If the Licensee fails to comply with paragraph (B)(2) of this Rule, the Regulated Marijuana Cultivation Facility is no longer authorized for a Reduced Testing Allowance.

C. Potency Testing for Regulated Marijuana Concentrate except Kief.

1. A Medical Marijuana Cultivation Facility or a Medical Marijuana Products Manufacturer must have a potency test conducted by a Medical Marijuana Testing Facility on every Production Batch of Medical Marijuana Concentrate that it produces prior to Transferring or processing into a Medical Marijuana Product any of the Medical Marijuana Concentrate from that Production Batch.

2. A Retail Marijuana Cultivation Facility, Accelerator Cultivator, Retail Marijuana Products Manufacturer, or an Accelerator Manufacturer must have a potency test conducted by a Retail Marijuana Testing Facility on every Production Batch of Retail Marijuana Concentrate that it produces prior to Transferring or processing into a Retail Marijuana Product any of the Retail Marijuana Concentrate from that Production Batch.

D. Repealed.

E. Potency Testing for Regulated Marijuana Product.

1. Potency Testing Required for Regulated Marijuana Product. A Regulated Marijuana Products Manufacturer shall have potency tests conducted by a Regulated Marijuana Testing Facility on every Production Batch of each type of Regulated Marijuana Product that it produces prior to Transferring any of the Regulated Marijuana Product from that Production Batch, unless the Regulated Marijuana Products Manufacturer has successfully achieved a Reduced Testing Allowance for potency and homogeneity for the particular type of Regulated Marijuana Product.

2. Required Tests. Potency and homogeneity tests conducted on Regulated Marijuana Product must determine the level of concentration of the required Cannabinoids and whether or not THC is homogeneously distributed throughout the product.

3. Partially Infused Regulated Marijuana Products. If only a portion of a Regulated Marijuana Product is infused with Regulated Marijuana, then the Regulated Marijuana Products Manufacturer must inform the Regulated Marijuana Testing Facility of exactly

which portions of the Regulated Marijuana Product are infused and which portions are not infused.

E.1. Potency Testing Required for Pre-Rolled Marijuana.

1. A Regulated Marijuana Business shall have potency tests conducted by a Regulated Marijuana Testing Facility on every Production Batch of each type of Pre-Rolled Marijuana product that it produces prior to Transferring or selling any of the Pre-Rolled Marijuana from that Production Batch if the Regulated Marijuana Business is using multiple strains from different sources (e.g. self-grown source, wholesale source) and/or selecting only a part of the Harvest Batch(es) that is not representative of the entire Harvest Batch each time they produce a certain type of Pre-Rolled Marijuana (e.g. using only the shake/trim out of a Harvest Batch).

2. A Regulated Marijuana Business shall have potency tests conducted according to paragraph (F)(2)(a) and (b) of this Rule by a Regulated Marijuana Testing Facility for each type of Pre-Rolled Marijuana product that it produces prior to Transferring or selling any of the Pre-Rolled Marijuana from a Production Batch if each type of Pre-Rolled Marijuana is created using select parts of a single strain (e.g. flower only, shake/trim only) or a specific ratio of strains from specified sources (e.g. self-grown source, wholesale source) defined by the Regulated Marijuana Business' standard operating procedures.

    a. Initial Potency Testing. Initial potency tests shall be conducted by a Regulated Marijuana Testing Facility on four Production Batches, created a minimum of one week apart, for each type of Pre-Rolled Marijuana that is created using a single strain or a specific ratio of strains defined by the Regulated Marijuana Business' standard operating procedures.

    b. Ongoing Potency Testing. After the initial four potency tests, ongoing potency tests shall be conducted by a Regulated Marijuana Testing Facility at least once per quarter for each type of Pre-Rolled Marijuana that is created using a single strain or a specific ratio of strains defined by the Regulated Marijuana Business' standard operating procedures.

        i. If the Licensee fails to comply with Paragraph (F)(2) of this Rule, the Regulated Marijuana Business is no longer granted a Reduced Testing Allowance for the ongoing potency testing requirement.

3. A Regulated Marijuana Business shall be considered exempt from potency testing if the Pre-Rolled Marijuana Production Batch uses a single strain and uses all parts of the Harvest Batch that were included in the potency testing of the Harvest Batch prior to creating the Pre-Rolled Marijuana Production Batches. In this case, the potency test results of the Harvest Batch shall be used for the Pre-Rolled Marijuana Production Batch.

4. Production Batches of Pre-Rolled Marijuana are exempt from homogeneity testing.

E.2. Potency Testing Required for Infused Pre-Rolled Marijuana.

1. A Regulated Marijuana Business shall have potency tests conducted by a Regulated Marijuana Testing Facility on every Production Batch of Infused Pre-Rolled Marijuana product that it produces prior to Transferring any of the Infused Pre-Rolled Marijuana from that Production Batch.

2. Production Batches of Infused Pre-Rolled Marijuana are exempt from homogeneity testing.

F. Reduced Testing Allowance - Potency and Homogeneity.

1. A Retail Marijuana Products Manufacturer or Accelerator Manufacturer may achieve a Reduced Testing Allowance for potency and homogeneity for each type of Retail Marijuana Product it manufactures.

    a. For Edible Retail Marijuana Products a potency test result that is within 15 percent of the target potency will count towards a Reduced Testing Allowance.

        i. For Edible Retail Marijuana Products that contain 2.5 milligrams of THC or less per serving, a potency test result that is within the greater of plus or minus 0.5 milligrams or 40 percent per serving will count towards a Reduced Testing Allowance.

2. A Medical Marijuana Products Manufacturer may achieve a Reduced Testing Allowance for potency and homogeneity for each type of non-Edible Medical Marijuana Product and each type of Edible Medical Marijuana Product that it manufactures.

    a. For Edible Medical Marijuana Products that contain 100 milligrams of THC or less per Container, a potency test result that is within 15 percent of the target potency will count towards a Reduced Testing Allowance.

        i. For Edible Medical Marijuana Products that contain 2.5 milligrams of THC or less per serving and less than 100 milligrams of THC per Container, a potency test result that is within the greater of plus or minus 0.5 milligrams or 40 percent per serving will count towards a Reduced Testing Allowance.

    b. For Edible Medical Marijuana Products that contain between 101 and 500 milligrams of THC per Container, a potency test result that is within 10 percent of the target potency will count towards a Reduced Testing Allowance.

    c. For Edible Medical Marijuana Products that contain 501 milligrams of THC or more per Container, a potency test result that is within 5 percent of the target potency will count towards a Reduced Testing Allowance.

3. A Regulated Marijuana Products Manufacturer's production process for a particular type of Regulated Marijuana Product shall be deemed acceptable for a Reduced Testing Allowance for potency and homogeneity testing if every Production Batch that it produces for that particular type of Regulated Marijuana Product during at least a four-week period but no longer than an eight-week period passes all potency and homogeneity tests required by Rule 4-125. This must include at least four Test Batches.

4. Expiration of a Reduced Testing Allowance. A Regulated Marijuana Products Manufacturer is required to achieve a new Reduced Testing Allowance every 12 months from the date the Reduced Testing Allowance is achieved, after which point the Reduced Testing Allowance expires. When the Reduced Testing Allowance expires, the Regulated Marijuana Business shall comply with the requirements of this Rule.

5. Regulated Marijuana Product Ongoing Potency and Homogeneity Testing. After successfully achieving a Reduced Testing Allowance, once per quarter a Regulated Marijuana Products Manufacturer shall subject at least one Production Batch of each type of Medical Marijuana Product or Retail Marijuana Product that it produces to potency and homogeneity testing required by Paragraph (D) of this Rule. If during any quarter the Regulated Marijuana Products Manufacturer does not possess a Production Batch that is

ready for testing, the Licensee must subject its first Production Batch that is ready for testing to the required potency and homogeneity testing prior to Transfer or processing of the Regulated Marijuana. If a Test Batch submitted for ongoing potency and homogeneity testing fails potency and homogeneity testing, the Licensee shall follow the procedure in Paragraph (H) of this Rule. Ongoing potency and homogeneity testing pursuant to this Rule 4-125 shall be subject to the requirements in Rule 4-110. *See* Rule 4-110(A) – Collection of Samples.

a. The Division may reduce the frequency of ongoing potency and homogeneity testing required if the Division has reasonable grounds to believe Medical Marijuana Testing Facilities and Retail Marijuana Testing Facilities have reached maximum capacity to perform testing required by this Rule. The Division will provide notification of any reduction to the frequency of ongoing potency and homogeneity testing to the Licensee's last electronic mailing address provided to the Division.

b. If the Licensee fails to comply with paragraph (F)(5) of this Rule, the Regulated Marijuana Cultivation Facility is no longer authorized for a Reduced Testing Allowance.

G. Exemption. Any Regulated Marijuana that will be allocated for extraction in the Inventory Tracking System shall be considered exempt from potency testing pursuant to this Rule.

H. Events Requiring Re-Authorization for a Reduced Testing Allowance - Potency and Homogeneity - Regulated Marijuana Product.

1. Material Change. If a Regulated Marijuana Products Manufacturer elects to achieve a Reduced Testing Allowance for any Regulated Marijuana Products for potency and homogeneity and it makes a Material Change to its production process for that particular type of Regulated Marijuana Product, then the Regulated Marijuana Products Manufacturer shall achieve a new Reduced Testing Allowance.

a. New Equipment. It is a Material Change if the Regulated Marijuana Products Manufacturer begins using new or different equipment for any material part of the production process.

b. Notification. A Regulated Marijuana Products Manufacturer must notify the Regulated Marijuana Testing Facility of a Material Change.

c. Testing Required Prior to Transfer. When a Production Batch is required to be submitted for testing pursuant to this Rule, the Regulated Marijuana Products Manufacturer that produced it may not Transfer Regulated Marijuana Product from that Production Batch unless it obtains a passing test.

2. Failed Potency Testing. Failed potency testing may constitute a violation of these rules.

a. If a Test Batch is required to be tested by these Rules or required to be tested by the Division pursuant to Rule 4-115(A) and fails potency testing, the Regulated Marijuana Products Manufacturer shall follow the procedures in Rule 4-135(C) for any Inventory Tracking System package or Production Batch associated with the failed Sample.

b. The Regulated Marijuana Products Manufacturer shall also submit Test Batches from three new Production Batches of the Regulated Marijuana Product t for potency testing by a Regulated Marijuana Testing Facility within no more than 30

days. If any one of the three submitted Test Batches fails potency testing, the Regulated Marijuana Products Manufacturer shall achieve a new Reduced Testing Allowance.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 4-130

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules requiring Regulated Marijuana Businesses to cover certain costs associated with the Division's Regulated Marijuana Sampling and Testing Program. This Rule 4-130 was previously Rules M and R 1506, 1 CCR 212-1 and 1 CCR 212-2.

4-130 – Regulated Marijuana Testing Program: Costs

The cost for all sampling and tests conducted pursuant to these rules shall be the financial responsibility of the Regulated Marijuana Business that is required to submit the Sample for testing.

Basis and Purpose – 4-135

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1)(b), 44-10-504(2), 44-10-601(4), 44-10-602(4), 44-10-603(6), 44-10-604(1)(b), and 44-10-604(2), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII). The purpose of this rule is to protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for Division's Regulated Marijuana Sampling and Testing Program. This Rule 4-135 was previously Rules M and R 1507, 1 CCR 212-1 and 1 CCR 212-2.

4-135 – Regulated Marijuana Testing Program: Contaminated Product and Failed Test Results and Procedures

A. Quarantining of Product.

1. If the Division has reasonable grounds to believe that a particular Harvest Batch, Production Batch, or Inventory Tracking System package of Regulated Marijuana is contaminated or presents a risk to public safety, then the Division may require a Regulated Marijuana Business to quarantine it until the completion of the Division's investigation, which may include, but is not limited to, the receipt of any test results.

2. If a Regulated Marijuana Business is notified by any local or state agency, or by a Regulated Marijuana Testing Facility that a Test Batch failed a contaminant or potency testing, then the Regulated Marijuana Business shall quarantine any Regulated Marijuana from any Inventory Tracking System package, Harvest Batch or Production Batch associated with that failed Test Batch and must follow the procedures established pursuant to this Rule.

3. Except as provided by this Rule, Regulated Marijuana that has been quarantined pursuant to this Rule must be physically separated from all other inventory and the Licensee may not Transfer or further process the Regulated Marijuana.

4. In addition to any other method authorized by law, the Division may implement the quarantine through the Inventory Tracking System by (a) indicating failed test results and (b) limiting the Licensee's ability to Transfer the quarantined Regulated Marijuana unless otherwise permitted by these rules.

B. Failed Contaminant Testing: All Contaminant Testing Except Microbial and Water Activity Testing of Regulated Marijuana Flower, Trim, Pre-Rolled Marijuana, Infused Pre-Rolled Marijuana, Pesticide Testing, and Elemental Impurities Testing of Regulated Marijuana Flower or Trim. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch failed contaminant testing (except microbial and water activity testing of Regulated Marijuana flower or trim, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana, Pesticide testing, and elemental impurities testing of Regulated Marijuana flower or trim), then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch or Production Batch pursuant to Rule 3-230 – Waste Disposal;

2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Such testing must comport with the sampling procedures under Rule 4-110.

   a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities;

   b. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana or Regulated Marijuana Product associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, or Retail Marijuana Product;

   c. If one or both of the Test Batches do not pass contaminant testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch included in that Test Batch pursuant to Rule 3-230 – Waste Disposal.

3. The Regulated Marijuana Business may Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch that failed contaminant testing to another Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, or an Accelerator Manufacturer for Decontamination, if possible, and create two new Test Batches after Decontamination has occurred, each containing the requisite number of Samples, and have those Test Batches tested for the required contaminant test that failed. Such testing must comport with the sampling procedures under Rule 4-110.

   a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit

the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities;

b. If both new Test Batches pass the required contaminant testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana or Regulated Marijuana Product associated with each Test Batch may be Transferred or processed into a Medical Marijuana Concentrate, Retail Marijuana Concentrate, Medical Marijuana Product, or Retail Marijuana Product;

c. If one or both of the Test Batches do not pass contaminant testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch included in that Test Batch pursuant to Rule 3-230 – Waste Disposal.

C. Failed Contaminant Testing: Microbial Testing of Regulated Marijuana Flower, Wet Whole Plant, Trim, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana flower, wet whole plant, trim, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana failed microbial testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 2-230 – Waste Disposal;

2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for microbial contaminant testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a mycotoxin and water activity test prior to Transfer. The mycotoxin and water activity testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed microbial testing. If a Test Batch fails mycotoxin or water activity testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (B) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.

a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.

b. If both Test Batches pass the required microbial testing, then the Inventory Tracking System package, Harvest Batch, , or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

c. If one or both of the Test Batches do not pass microbial testing, then the Regulated Marijuana Business must:

i. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal;

ii. Decontaminate and re-test in accordance with this Paragraph (C)(2); or

iii. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch for Decontamination or Remediation pursuant to Paragraph (C)(3)(b) below.

3. In lieu of Decontamination pursuant to Paragraph (C)(2) above, the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages, Harvest Batches, and Production Batches associated with that failed Test Batch to a Regulated Marijuana Cultivation Facility for Decontamination, or may Transfer such Regulated Marijuana to a Regulated Marijuana Products Manufacturer for Decontamination and/or Remediation. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana back to the originating Regulated Marijuana Business following the Decontamination procedures, then the originating Regulated Marijuana Business is responsible for all required testing. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana to a different Regulated Marijuana Business or further processes the Regulated Marijuana following Decontamination, then the receiving Regulated Marijuana Business that performed the Decontamination is responsible for all required testing.

a. Decontamination. The Regulated Marijuana Business may Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for microbial contaminant testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a mycotoxin and water activity test prior to Transfer. The mycotoxin and water activity testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed microbial testing. If a Test Batch fails mycotoxin or water activity testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (B) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.

i. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities

ii. If both Test Batches pass the required microbial testing, then the Inventory Tracking System packages, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

iii. If one or both of the Test Batches that were created from Harvest Batches or Production Batches pursuant to Paragraph (C)(3)(a) do not pass microbial testing, the Regulated Marijuana Business must either:

A. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 Waste Disposal;

B. Decontaminate and re-test in accordance with this paragraph;

C. Attempt Remediation pursuant to Paragraph (C)(3)(b), except for Production Batches of Infused Pre-Rolled Marijuana; or

D. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana for Decontamination or Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana for Remediation pursuant to Paragraph (C)(3)(b).

b. Remediation. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments. The new Test Batches are required to be re-tested for Microbial, Mycotoxin, and Water Activity contaminant testing. Such testing must comport with sampling procedures under Rule 4-110.

i. For Remediation, the Regulated Marijuana Business shall process the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana associated with the failed Test Batch into a Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

ii. The Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) shall undergo all required contaminant testing pursuant to Rule 4-120(C) – Regulated Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to microbial and mycotoxins contamination. Such testing must comport with the sampling procedures under Rule 4-110.

iii. If the Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) fails contaminant testing, the Regulated Marijuana Business shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate pursuant to Rule 3-230 – Waste Disposal.

4. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.

C.5. Failed Contaminant Testing: Water Activity Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana flower, trim, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana failed water activity testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 2-230 – Waste Disposal; or

2. Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for water activity testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a microbial contaminant test prior to Transfer. The microbial contaminant test is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed water activity testing. If a Test Batch fails microbial contaminant testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (C) above. Pursuant to Rule 4-120(E), wet whole plant is exempt from water activity testing.

    a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.

    b. If both Test Batches pass the required water activity testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

    c. If one or both of the Test Batches do not pass water activity testing, then the Regulated Marijuana Business must:

        i. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal;

        ii. Decontaminate and re-test in accordance with this Paragraph (C.5)(2); or

        iii. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch for Decontamination or Remediation pursuant to Paragraph (C)(3)(b) below.

3. In lieu of Decontamination pursuant to Paragraph (C.5)(2) above, the Regulated Marijuana Business may Transfer all Regulated Marijuana from the Inventory Tracking System packages, Harvest Batches, or Production Batches associated with that failed Test Batch to a Regulated Marijuana Cultivation Facility for Decontamination, or may Transfer such Regulated Marijuana to a Regulated Marijuana Products Manufacturer for Decontamination and/or Remediation. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana back to the originating Regulated Marijuana Business following the Decontamination procedures, then the originating Regulated Marijuana Business is responsible for all required testing. If the Regulated Marijuana Business receiving the Regulated Marijuana for Decontamination will Transfer the Regulated Marijuana to a different Regulated Marijuana Business or further process the Regulated Marijuana following Decontamination, then the receiving Regulated Marijuana Business that performed the Decontamination is responsible for all required testing.

    a. Decontamination. The Regulated Marijuana Business may Decontaminate the Inventory Tracking System package, Harvest Batch, or Production Batch, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments, and submit those Test Batches for water activity testing. Such testing must comply with the sampling procedures under Rule 4-110. If the Inventory Tracking System package, Harvest Batch, or Production Batch has undergone Decontamination, then it must also pass a microbial contaminant test

prior to Transfer. The microbial contaminant testing is not required to occur until after the Inventory Tracking System package, Harvest Batch, or Production Batch has passed water activity testing. If a Test Batch fails microbial contaminant testing the Regulated Marijuana Business must follow the failed contaminant testing procedures pursuant to Paragraph (C) above. Pursuant to Rule 4-120(C), wet whole plant is exempt from water activity testing.

i. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Medical Marijuana Testing Facilities or Retail Marijuana Testing Facilities

ii. If both Test Batches pass the required testing, then the Inventory Tracking System packages, Harvest Batch, or Production Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

iii. If one or both of the Test Batches that were created from Harvest Batches or Production Batches pursuant to Paragraph (C.5)(3)(a) do not pass water activity testing, the Regulated Marijuana Business must either:

A. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 Waste Disposal;

B. Decontaminate and re-test in accordance with this paragraph;

C. Attempt Remediation pursuant to Paragraph (C.5)(3)(b), except for Production Batches of Infused Pre-Rolled Marijuana; or

D. Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana for Decontamination or Transfer the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana for Remediation pursuant to Paragraph (C.5)(3)(b).

b. Remediation. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana, if possible, and create two new Test Batches, each containing the requisite number of Sample Increments. The new Test Batches are required to be re-tested for Microbial, Mycotoxin, and Water Activity contaminant testing. Such testing must comport with sampling procedures under Rule 4-110.

i. For Remediation, the Regulated Marijuana Business shall process the Inventory Tracking System package, Harvest Batch, or Production Batch of Pre-Rolled Marijuana associated with the failed Test Batch into a Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate.

ii. The Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C)(3)(b) shall undergo all required contaminant testing

pursuant to Rule 4-120(C) – Regulated Marijuana Testing Program – Contaminant Testing, potency testing pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to microbial and mycotoxins contamination. Such testing must comport with the sampling procedures under Rule 4-110.

iii. If the Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate that was manufactured pursuant to Paragraph (C.5)(3)(b) fails contaminant testing, the Regulated Marijuana Business shall destroy and document the destruction of the Inventory Tracking System package(s) or Production Batch(es) of Solvent-Based Medical Marijuana Concentrate or Solvent-Based Retail Marijuana Concentrate pursuant to Rule 3-230 – Waste Disposal.

4. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.

D. Failed Contaminant Testing: Pesticide Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch failed Pesticide testing, then for each Inventory Tracking System package, Harvest Batch, or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal; or

2. Request that the Regulated Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule 4-110.

a. If both retesting analyses pass the required Pesticide testing, then the Inventory Tracking System package, Harvest Batch, or Production Batch of Regulated Marijuana, Regulated Marijuana Concentrate, Regulated Marijuana Product, Pre-Rolled Marijuana or Infused Pre-Rolled Marijuana may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

b. If one or both of the retesting analyses do not pass Pesticide testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package, Harvest Batch, or Production Batch pursuant to Rule 3-230 – Waste Disposal.

D.1. Failed Contaminant Testing: Elemental Impurities Testing of Regulated Marijuana Flower, Wet Whole Plant, and Trim. If a Regulated Marijuana Business is notified by the Division or a Testing Facility that a Test Batch of Regulated Marijuana flower, wet whole plant, or trim failed elemental impurities testing, then for each Inventory Tracking System package or Harvest Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 Waste Disposal.

2. Request that the Regulated Marijuana Testing Facility that reported the original fail conduct two additional analyses of the original Test Batch submitted in accordance with Rule 4-110.

a. If both retesting analyses pass the required elemental impurities testing, then the Inventory Tracking System package or Harvest Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

b. If one or both of the retesting analyses do not pass elemental impurities testing, then the Regulated Marijuana Business must either destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 – Waste Disposal or Remediate the Inventory Tracking System package or Harvest Batch pursuant to Paragraph (3).

3. If the failed Test Batch is not deemed hazardous waste per the Resource Conservation and Recovery Act or other applicable federal, state, or local regulations, then the Regulated Marijuana Business may transfer all Regulated Marijuana from the Inventory Tracking System packages or Harvest Batch associated with that failed Test Batch to a Regulated Marijuana Products Manufacturer for Remediation.

a. The Regulated Marijuana Business that Transfers the Retail Marijuana that failed elemental impurities testing must comply with the requirement to pay excise tax pursuant to article 28.8 of title 39, C.R.S.

b. The Regulated Marijuana Products Manufacturer may Remediate the Inventory Tracking System package or Harvest Batch associated with the failed Test Batch by processing it into a Regulated Marijuana Concentrate. The Regulated Marijuana Products Manufacturer is prohibited from adding any other Regulated Marijuana to the Regulated Marijuana Concentrate it manufactures pursuant to this Rule.

c. In addition to all applicable regulations, the Regulated Marijuana Products Manufacturer must comply with 3-230 (C)(1), 5-315(D)(9), and 6-315 (D)(9).

d. The Regulated Marijuana Concentrate that was manufactured pursuant to Paragraph (D.1)(2)(b) shall undergo all required contaminant testing pursuant to Rule 4-120(C) Regulated Marijuana Testing Program Contaminant Testing, potency testing pursuant to Rule 4-125 - Regulated Marijuana Testing Program - Potency Testing, and any other testing required or allowed by the Marijuana Code or these rules, including but not limited to elemental impurities testing. Such testing must comport with the sampling procedures under Rule 4- 110.

e. For elemental impurities testing, the Regulated Marijuana Business must create two new Test Batches from the Remediated Production Batch, each containing the requisite number of Samples, and have those Test Batches tested. Such testing must comport with the sampling procedures under Rule 4-110.

i. A Licensee must either (1) submit both new Test Batches to the same Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Marijuana Testing Facilities.

ii. If both Test Batches pass the required elemental impurities testing, then the Inventory Tracking System package or Harvest Batch associated with each Test Batch may be Transferred or processed into a Regulated Marijuana Concentrate or Regulated Marijuana Product.

iii. If one or both of the Test Batches do not pass elemental impurities testing, then the Regulated Marijuana Business must destroy and document the destruction of the Inventory Tracking System package or Harvest Batch pursuant to Rule 3-230 - Waste Disposal.

f. All Production Batches undergoing Remediation for elemental impurities must be tested and are not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

4. Nothing in this Rule eliminates or alters the responsibility of the Retail Marijuana Business Transferring the Retail Marijuana that failed elemental impurities testing from complying with the requirement to pay excise tax pursuant to article 28.8 of Title 39, C.R.S.

E. Failed Potency Testing. If a Regulated Marijuana Business is notified by the Division or a Regulated Marijuana Testing Facility that a Test Batch of Regulated Marijuana Product failed potency testing, then for each Inventory Tracking System package or Production Batch associated with that failed Test Batch the Regulated Marijuana Business must either:

1. Destroy and document the destruction of the Inventory Tracking System package or Production Batch pursuant to Rule 3-230 – Waste Disposal; or

2. Attempt corrective measures, if possible, and create two new Test Batches each containing the requisite number of Samples, and have those Test Batches tested for the required potency test that failed. Such testing must comport with the sampling procedures under Rule 4-110.

a. A Licensee must either (1) submit both new Test Batches to the same Regulated Marijuana Testing Facility that reported the original failed test result, or (2) submit the new Test Batches to two different Regulated Marijuana Testing Facilities.

b. If both new Test Batches pass potency testing, then the Inventory Tracking System package or Production Batch associated with each Test Batch may be Transferred.

c. If one or both of the Test Batches do not pass potency testing, then the Regulated Marijuana Products Manufacturer must destroy and document the destruction of Inventory Tracking System package or Production Batch pursuant to Rule 3-230 – Waste Disposal.

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Part 5 – Medical Marijuana Business License Types

5-100 Series – Medical Marijuana Stores

Basis and Purpose – 5-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-313(7), 44-10-313(4), 44-10-401(2)(a)(I), 44-10-501, and 44-10-505, C.R.S. The purpose of this rule is to establish a Medical Marijuana Store's license privileges. This Rule 5-105 was previously Rule M 401, 1 CCR 212-1.

5-105 – Medical Marijuana Store: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Medical Marijuana Business and Retail Marijuana Business – Shared Licensed Premises and Operational Separation, a Medical Marijuana Store may share a Licensed Premises with a commonly-owned Retail Marijuana Store. However, a separate license is required for each specific business or business entity, regardless of geographical location.

B. Authorized Sources of Medical Marijuana. A Medical Marijuana Store may only Transfer Medical Marijuana that was obtained from a Medical Marijuana Business.

C. Authorized Transfers. A Medical Marijuana Store may only Transfer Medical Marijuana to a patient, a primary caregiver, another Medical Marijuana Store, a Medical Marijuana Cultivation Facility, a Medical Marijuana Products Manufacturer, or a Medical Marijuana Testing Facility.

D. Samples Provided for Testing. A Medical Marijuana Store may provide Samples of its products to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Store shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

E. Authorized On-Premises Storage. A Medical Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

F. Authorized Marijuana Transport. A Medical Marijuana Store is authorized to utilize a licensed Medical Marijuana Transporter for transportation of its Medical Marijuana so long as the place where transportation orders are taken and delivered is a licensed Medical Marijuana Business. Nothing in this Rule prevents a Medical Marijuana Store from transporting its own Medical Marijuana.

G. Performance-Based Incentives. A Medical Marijuana Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

H. Authorized Transfers of Industrial Hemp Products. This rule is effective July 1, 2020. A Medical Marijuana Store may Transfer Industrial Hemp Product to a patient only after it has verified:

1. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Rule Series at a Medical Marijuana Testing Facility; and

2. That the Person Transferring the Industrial Hemp Product to the Medical Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

I. Medical Marijuana Store Delivery Permit. A Medical Marijuana Store with a valid delivery permit may accept delivery orders and deliver Medical Marijuana to a patient who is 21 years of age or older, or the patient's parent or guardian who is also the patient's primary caregiver pursuant to Rule 3-615. A Medical Marijuana Store that does not possess a valid delivery permit cannot deliver Medical Marijuana to a patient, parent, or guardian.

J. Automated Dispensing Machines. A Medical Marijuana Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to patients without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to patients.

K. Walk-up or Drive-Up Window. A Medical Marijuana Store may serve patients through a walk-up window or drive-up window pursuant to the requirements of this rule.

1. Modification of Premises Required. Before accepting orders for sales of Medical Marijuana to a patient through either a walk-up window or a drive-up window, a Medical Marijuana Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or a drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

   a. Prior to accepting an order or Transferring Medical Marijuana to a patient, the Employee Licensee or Owner Licensee must physically view and inspect the patient's identification and the patient's registry identification card.

   b. The Medical Marijuana Store may accept internet or telephone orders or may accept orders from the patient at the walk-up or drive-up window.

   c. All orders received through a walk-up window or drive-up window must be placed by the patient from a menu. The Medical Marijuana Store may not display Medical Marijuana at the walk-up window or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods are permitted for payment for Medical Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Medical Marijuana Store's video surveillance must enable the recording of the patient's identity (and patient's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the patient's identification, registry identification card, and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. A Medical Marijuana Store utilizing a walk-up or drive-up window must ensure that all Medical Marijuana is packaged and labeled in accordance with Rules 3-1010 and Rule 3-1015 prior to Transfer to the patient.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Licensing Authority.

Basis and Purpose – 5-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-313(7), 44-10-313(4), 44-10-401(2)(a)(I), and 44-10-501, C.R.S. The purpose of this rule is to establish the requirements and processes applicable to a Medical Marijuana Store registering patients for primary store purposes. This Rule 5-110 was previously Rule M 402, 1 CCR 212-1.

5-110 – Registration of a Primary Medical Marijuana Store

A. Patient Designation Required. A Medical Marijuana Store may possess in the aggregate, only the amount of Medical Marijuana permitted by Rule 5-115 for each patient who has designated the Medical Marijuana Store as being his or her primary store. A patient's designation of a Medical Marijuana Store as his or her primary Medical Marijuana Store in accordance with these Rules establishes the Medical Marijuana Store registration requirements set forth in section 25-1.5-106(8)(f), C.R.S.

B. Change Only Allowed Every 30 Days. A Medical Marijuana Store shall not register a patient as being the patient's primary store if the patient has designated another Medical Marijuana Store as his or her primary store in the preceding 30 days. The Medical Marijuana Store and its employees must require a patient to sign in writing that he or she has not designated another Medical Marijuana Store as his or her primary store before including that patient's Medical Marijuana in its maximum allowed on-hand Medical Marijuana inventory calculation under Rule 5-115.

C. Notification to Former Medical Marijuana Store. A Medical Marijuana Store must maintain a copy of a written or electronic notification that it provided to a patient's former primary Medical Marijuana Store advising that the Medical Marijuana Store has been designated as the patient's new primary Medical Marijuana Store.

D. Documents Required. The new primary Medical Marijuana Store shall maintain written authorization from the patient, any relative plant count waiver to support the number of ounces of Medical Marijuana (excluding Medical Marijuana Products and Medical Marijuana Concentrate) included in its on-hand inventory for that patient, a hard or electronic copy of the patient's registry card, and a copy of the patient's proof of identification. *See also* Rule 3-905 – Business Records Required.

E. Violation Affecting Public Safety. Notwithstanding the provisions in Rule 5-110(B), it may be considered a violation affecting public safety for a Medical Marijuana Store and its employees to become a patient's primary store when the patient already had designated one or more other Medical Marijuana Stores as his or her primary store.

Basis and Purpose – 5-115

The statutory authority for this includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-313(7), 44-10-313(4), 44-10-401(2)(a)(I), 44-10-501, and 44-10-505, 44-10-501(10) C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 14(4). The purpose of this rule is to clarify those acts that are prohibited, or limited in some fashion, by a licensed Medical Marijuana Store.

The sales limitations provision reflects the sales limitation imposed by statute. Clarifying the limitations on sales provides Medical Marijuana Stores and their employees with necessary information to avoid being complicit in a patient acquiring more Medical Marijuana than is lawful under the Colorado Constitution pursuant to Article XVIII, Subsection 14(4).

This Rule 5-115 was previously Rule M 403, 1 CCR 212-1.

5-115 – Medical Marijuana Sales: General Limitations or Prohibited Acts

A. Possession Limits. A Medical Marijuana Store may only possess at its Licensed Premises the number of ounces of Medical Marijuana (excluding Medical Marijuana Products and Medical Marijuana Concentrate) that equals the greater of: 1) twice the total, aggregate ounces of Medical Marijuana all of its registered patients are allowed to possess, or 2) the total, aggregate ounces of Medical Marijuana that the Medical Marijuana Store Transferred to patients in the thirty (30) previous calendar days. Under no circumstance shall a Medical Marijuana Store possess more Medical Marijuana than permitted by this subparagraph.

B. Medical Marijuana Products Manufacturers. A Medical Marijuana Store may also contract for the manufacture of Medical Marijuana Product with Medical Marijuana Products Manufacturer Licensees utilizing a contract as provided for in Rule 5-310 – Medical Marijuana Products Manufacturer: General Limitations or Prohibited Acts (Infused Product Contracts). Medical Marijuana distributed to a Medical Marijuana Products Manufacturer by a Medical Marijuana Store pursuant to such a contract for use solely in Medical Marijuana Product(s) that are returned to the contracting Medical Marijuana Store shall not be included for purposes of determining compliance with paragraph A.

B.5 Standard Operating Procedures. A Medical Marijuana Store must establish written standard operating procedures for the management and storage of Medical Marijuana inventory and the sale of Medical Marijuana to patients. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

C. Patient Sales Requirements. A Medical Marijuana Store shall comply with the sales and Inventory Tracking requirements in Rule 5-125.

C.5. Educational Resource. When completing a sale of Medical Marijuana Concentrate, a Medical Marijuana Store shall provide the patient with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate

D. Repealed.

E. Transfer Restriction.

1. Sampling Units. A Medical Marijuana Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. A Medical Marijuana Store shall not Transfer any Medical Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

F. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Medical Marijuana to a patient.

G. Delivery Outside Colorado Prohibited. A Medical Marijuana Store holding a valid delivery permit shall not deliver Medical Marijuana to an address that is outside the state of Colorado.

H. Storage and Display Limitations. A Medical Marijuana Store shall not display Medical Marijuana outside of a designated Restricted Access Area or in a manner in which Medical Marijuana can be seen from outside the Licensed Premises. Storage of Medical Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

I. Transfer of Expired Product Prohibited. A Medical Marijuana Store shall not Transfer any expired Medical Marijuana Product to a patient.

J. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit

1. The Transfer of Edible Medical Marijuana Product in the following shapes is prohibited:

    a. The distinct shape of a human, animal, or fruit; or

    b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Medical Marijuana Business. Nothing in this subparagraph (L)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Packaging, Labeling, and Product Safety.

3. Edible Medical Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Medical Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

K. Adverse Health Event Reporting. A Medical Marijuana Store must report Adverse Health Events pursuant to Rule 3-920.

L. Corrective and Preventive Action. This paragraph L shall be effective January 1, 2021. A Medical Marijuana Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

M. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-120

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(b), 44-10-203(1)(k), and 44-10-203(3)(h), C.R.S. The purpose of this rule is to establish that a Medical Marijuana Store must control and safeguard access to certain areas where Medical Marijuana will be sold, and to prevent diversion to non-patients. This Rule 5-120 was previously Rule M 404, 1 CCR 212-1.

5-120 – Point of Sale: Restricted Access Area

A. Identification of Restricted Access Area. All areas where Medical Marijuana is sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – Only Medical Marijuana Patients Allowed."

B. Patients in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times to ensure that only persons with a valid patient registry card, primary caregivers of minors with a valid patient registry card (which may include guardians or parents of minors), advising caregivers who accompany patients that hold a valid registry card and whom they are advising, or transporting caregivers permitted to deliver Medical Marijuana to homebound patients as permitted by section 25-1.5-106(9)(e), C.R.S., are present in the Restricted Access Area. When allowing a patient or caregiver access to a Restricted Access Area, Employee Licensees shall make reasonable efforts to limit the number of patients and caregivers in relation to the number of Employee Licensees in the Restricted Access Area at any time.

C. Display of Medical Marijuana. The display of Medical Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the patient must be supervised by the Employee Licensee at all times when patients are present.

D. Pregnancy Warning. Medical Marijuana Stores must post, at all times and in a prominent place inside the Restricted Access Area, a warning that is at minimum three inches high and six inches wide that reads:

> **WARNING:** Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.

Basis and Purpose– 5-125

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), 44-10-313(7), 44-10-313(4), 44-10-401(2)(a)(I), 44-10-501, and 44-10-505, C.R.S. The purpose of this rule is to identify Medical Marijuana Store sales requirements including patient quantity limits, Inventory Tracking System requirements to identify discrepancies with daily authorized quantity limits and THC potency authorizations and to require that Medical Marijuana Stores provide an educational resource to patients regarding the use of Medical Marijuana Concentrate.

5-125 – Patient Sale Requirements

A. Sales Limitations.

1. A Medical Marijuana Store and its employees shall not sell to a patient in a single business day, individually or in any combination, more than:

a. Two ounces of medical marijuana flower; or

b. Eight grams of Medical Marijuana Concentrate for a patient over 21 years old, or two grams of Medical Marijuana Concentrate for a patient between 18 and 20 years old; or

c. Medical Marijuana Products containing a combined total of 20,000 mg.

2. A Medical Marijuana Store and its employees shall not sell more than:

a. Six Immature plants unless the patient has designated the Medical Marijuana Store as his or her primary store and supplied it with documentation from the patient's physician allowing the patient more than six plants;

b. One half of the patient's extended plant count to a patient who has designated the Medical Marijuana Store as his or her primary store and supplied it with documentation from the patient's physician allowing the patient more than six plants; or

c. Six Medical Marijuana plant seeds unless the patient has designated the Medical Marijuana Store as his or her primary store and supplied it with documentation from the patient's physician allowing the patient more than six Medical Marijuana seeds. One Medical Marijuana plant is equivalent to one Medical Marijuana seed.

3. Exemptions to Sales Limitations.

a. A Medical Marijuana Store may sell Medical Marijuana or Medical Marijuana Product in an amount that exceeds the sales limitation in subparagraph (C)(1) of this Rule if:

i. The patient has received a physician recommendation for more than two ounces of Medical Marijuana flower and the patient has designated the Medical Marijuana Store as his or her primary store;

ii. The patient has received a physician recommendation exempting the patient from the Medical Marijuana Product sales limitation and the patient has designated the Medical Marijuana Store as his or her primary store;

iii. The patient has designated the Medical Marijuana Store as his or her primary store and the patient has received a physician recommendation exempting the patient from the Medical Marijuana Concentrate sales limitation because:

A. The patient is homebound;

B. The uniform certification form specifically states that the patient needs more than eight grams of Medical Marijuana Concentrate if a patient is over 21 years old or two grams of Medical Marijuana Concentrate if the patient is between 18 and 20 years old;

C. It would be a significant Physical or Geographic Hardship for the patient to make a daily purchase; or

D. The patient had a registry identification card prior to 18 years of age.

b. Significant Physical Hardship: A patient's physician who has a bona fide patient-physician relationship may provide an exemption to the patient's daily Medical Marijuana Concentrate sales limits based on the physician's determination that the patient has a significant physical hardship. The physician's determination of a significant physical hardship must be documented on the patient's uniform certification form which must be signed by the patient's physician. The circumstances that constitute a significant physical hardship are as follows:

i. The patient has been diagnosed with a chronic or debilitating disease or disabling medical condition or limited physical condition that restricts the mobility of the patient;

ii. The patient does not have the ability to obtain a driver's license based on the patient's medical condition; or

iii. The patient cannot use, or it would be onerous for the patient to use, public transportation or another ride sharing service based on the patient's medical condition.

c. Significant Geographic Hardship: A patient's physician who has a bona fide patient-physician relationship may provide an exemption to the patient's daily Medical Marijuana Concentrate sales limits based on the physician's determination that the patient has a significant geographic hardship. The physician's determination of a significant geographic hardship must be documented on the patient's uniform certification form which must be signed by the patient's physician. The circumstances that constitute a significant geographic hardship are as follows:

i. The patient does not reside in the following counties: Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Jefferson, Larimer, or Pueblo; and

ii. At least one of the following circumstances:

A. The patient resides in a county that does not permit the operation of Medical Marijuana Stores and that county is not listed above; or

B. The patient does not have a means of transportation and resides in an area without public transportation or Medical Marijuana Stores cannot be accessed by a patient using public transportation; or

C. The physician recommended a Medical Marijuana Concentrate that is not available from a Medical Marijuana Store located in the patient's county of residence.

B. Multiple Transactions. For purposes of Rule 5-125(A), a single transaction to a patient includes multiple Transfers to the same patient during the same business day where the Medical Marijuana Store employee knows or reasonably should know that such Transfer would result in the patient possessing more than the quantities of Medical Marijuana set forth above. In determining the imposition of any penalty for violation of this Rule 5-125(A), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

C. Inventory Tracking Requirements.

1. Before Completing a Transfer of Medical Marijuana to a patient, a Medical Marijuana Store and its Employee Licensee shall access and retrieve real-time sales data based on the patient identification number to verify that a sale to the patient will not exceed the daily authorized sales limit. The Medical Marijuana Store and Employee Licensee shall decline to complete the Transfer of Medical Marijuana to the patient if it would exceed the patient's daily authorized purchase limit which may be determined by a user error message from the Inventory Tracking System.

2. At the time of the sale to the patient the Medical Marijuana Store and its Employee Licensee shall record the sale in real time in the Inventory Tracking System. A Medical Marijuana Store may use a secondary software platform to transmit patient sale data to the Inventory Tracking system.

3. Temporary Outage of Inventory Tracking System. A Medical Marijuana Store may rely on the uniform certification form and is not responsible for any unintentional sale in excess of the authorized Medical Marijuana quantity limit that occurs during the outage, provided that the Medical Marijuana Store uploads its sales data into the Inventory Tracking System as soon as reasonably practicable after the end of the outage. A temporary outage is any event in which there is a technology-related inability to enter or retrieve real time sales data from the Inventory Tracking System.

D. Educational Resource. When completing a sale of Medical Marijuana Concentrate, a Medical Marijuana Store shall provide the patient with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

E. Confidentiality. All data collected pursuant to Rule, including any personal identifying patient information, is subject to the confidentiality requirements of 44-10-204, C.R.S.

F. Violation Affecting Public Safety. Violation of this Rule may be considered a license violation affecting public safety

5-200 Series – Medical Marijuana Cultivation Facility: License Privileges

Basis and Purpose – 5-205

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(II), 44-10-313, 44-10-502(5), and 44-10-503, C.R.S. The purpose of this rule is to establish a Medical Marijuana Cultivation Facility's license privileges in addition to the privileges outlined in these rules. This Rule 5-205 was previously Rule M 501, 1 CCR 212-1.

5-205 – Medical Marijuana Cultivation Facility: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Business – Shared Licensed Premises and Operational Separation, a Medical Marijuana Cultivation Facility may share a Licensed Premises with a commonly owned Retail Marijuana Cultivation Facility. However, a separate license is required for each specific business entity regardless of geographical location. In addition, a Medical Marijuana Cultivation Facility may share and operate at the same Licensed Premises as a Marijuana Research and Development Facility so long as:

1. Each business or business entity holds a separate license;

2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

3. Both the Marijuana Research and Development Facility and the Medical Marijuana Cultivation Facility comply with all terms and conditions of the R&D Co-Location Permit; and

4. Both the Marijuana Research and Development Facility and the Medical Marijuana Cultivation Facility comply with all applicable rules. *See* 5-700 Series Rules.

B. Cultivation of Medical Marijuana and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Medical Marijuana Concentrate Authorized. A Medical Marijuana Cultivation Facility may propagate, cultivate, harvest, prepare, cure, package, store, and label Medical Marijuana and Physical Separation-Based Medical Marijuana Concentrate. A Medical Marijuana Cultivation Facility may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Medical Marijuana Concentrate.

C. Authorized Transfers. A Medical Marijuana Cultivation Facility may Transfer Medical Marijuana and Physical Separation-Based Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility, a Medical Marijuana Store, a Medical Marijuana Products Manufacturer, a Medical Marijuana Testing Facility, a Marijuana Research and Development Facility, or a Pesticide Manufacturer.

1. A Medical Marijuana Cultivation Facility shall not Transfer Flowering plants. A Medical Marijuana Cultivation Facility may only Transfer Vegetative plants as authorized pursuant to Rule 3-605.

2. A Medical Marijuana Cultivation Facility may Transfer Sampling Units of Medical Marijuana or Medical Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-502(5), C.R.S., and Rule 5-230.

3. A Medical Marijuana Cultivation Facility may Transfer Medical Marijuana or Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility prior to testing required by these rules only if such Transfer is in accordance with one of the two options below.

a. The Medical Marijuana Cultivation Facility may Transfer Medical Marijuana or Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility prior to testing if such Transfer is for the purpose of Decontamination and only after all other steps outlined in the Medical Marijuana Cultivation Facility's standard operating procedures have been completed, including but not limited to drying, curing, and trimming; or

b. The Medical Marijuana Cultivation Facility may Transfer Medical Marijuana or Medical Marijuana Concentrate to another Medical Marijuana Cultivation Facility prior to testing, drying, curing, trimming, or completion of any other steps in the Medical Marijuana Cultivation Facility's standard operating procedures, subject to the following additional requirements:

i. The Medical Marijuana Cultivation Facility receiving the Transfer is identified as a centralized processing hub in the Inventory Tracking System and must have identical Controlling Beneficial Owner(s) with the originating Medical Marijuana Cultivation Facility;

ii. An originating Medical Marijuana Cultivation Facility may only Transfer Medical Marijuana to one receiving Medical Marijuana Cultivation Facility that will be serving as a centralized processing hub.

iii. The Medical Marijuana or Medical Marijuana Concentrate is weighed prior to leaving the originating Medical Marijuana Cultivation Facility and immediately upon receipt at the receiving Medical Marijuana Cultivation Facility and in accordance with Rule 3-605;

iv. The Transfer, weighing and entry into the Inventory Tracking System are all completed within 24 hours from initiating the Transfer;

v. The receiving Medical Marijuana Cultivation Facility is responsible for compliance with all testing requirements regardless of any testing performed prior to Transfer. If the receiving Medical Marijuana Cultivation Facility is pursuing a Reduced Testing Allowance, a Reduced Testing Allowance must be achieved separately for Medical Marijuana received from each originating Medical Marijuana Cultivation Facility. A Medical Marijuana Cultivation Facility that has achieved a Reduced Testing Allowance must maintain and produce complete testing records that can verify that facility's compliance with testing and Reduced Testing Allowance requirements; and

vi. The standard operating procedures for the originating Medical Marijuana Cultivation Facility and receiving Medical Marijuana Cultivation Facility clearly reflect the steps taken by each facility to Transfer, transport, receive, process, and test Harvest Batches.

D. Packaging Processed Medical Marijuana. Processed Medical Marijuana plants shall be packaged in units of ten pounds or less and labeled pursuant to the 3-1000 Series Rules – Labeling, Packaging, and Product Safety, and securely sealed in a tamper-evident manner.

E. Authorized Marijuana Transport. A Medical Marijuana Cultivation Facility is authorized to utilize a licensed Medical Marijuana Transporter for transportation of its Medical Marijuana so long as the place where transportation orders are taken is a Medical Marijuana Business and the transportation order is delivered to a licensed Medical Marijuana Business or Pesticide Manufacturer. Nothing in this Rule prevents a Medical Marijuana Cultivation Facility from transporting its own Medical Marijuana.

F. Performance-Based Incentives. A Medical Marijuana Cultivation Facility may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Medical Marijuana Cultivation Facility may not compensate a Sampling Manager using Sampling Units. *See* Rule 5-230 – Sampling Unit Protocols.

G. Authorized Sources of Medical Marijuana, Seeds, and Immature Plants. A Medical Marijuana Cultivation Facility shall only obtain Medical Marijuana seeds or Immature Plants from its own Medical Marijuana, properly Transferred Retail Marijuana cultivated at a Retail Marijuana Cultivation Facility with at least one identical Controlling Beneficial Owner, or properly Transferred from another Medical Marijuana Business pursuant to the inventory tracking requirements in the Rule 3-800 Series. A Medical Marijuana Cultivation Facility may also receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility or Accelerator Cultivator in compliance with Rules 5-235, 6-230, and 6-730. A Medical Marijuana Cultivation facility may not bring seeds, Immature Plants, or other marijuana that is not Regulated Marijuana onto the Licensed Premises at any time.

H. Centralized Distribution Permit. A Medical Marijuana Cultivation Facility may apply to the State Licensing Authority for a Centralized Distribution Permit for authorization to temporarily store Medical Marijuana Concentrate and Medical Marijuana Product received from a Medical Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Medical Marijuana Stores.

1. For purposes of a Centralized Distribution Permit only, the term "commonly owned" means at least one natural person who is disclosed to the Division who has a minimum of five percent ownership in both the Medical Marijuana Cultivation Facility possessing a Centralized Distribution Permit and the Medical Marijuana Store to which the Medical Marijuana Concentrate and Medical Marijuana Product will be Transferred.

2. To apply for a Centralized Distribution Permit, a Medical Marijuana Cultivation Facility may submit an addendum to its new or renewal application or a separate addendum prior to a renewal application on forms prepared by the Division to request a Centralized Distribution Permit. The Medical Marijuana Cultivation Facility shall send a copy of its Centralized Distribution Permit addendum to the Local Licensing Authority in the jurisdiction in which the Centralized Distribution Permit is proposed at the same time it submits the addendum to the State Licensing Authority.

3. A Medical Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit and has obtained all required approvals from the local licensing jurisdiction where it is located, if any, may accept Transfers of Medical Marijuana Concentrate and Medical Marijuana Product from a Medical Marijuana Products Manufacturer for the sole purpose of temporary storage and Transfer to commonly owned Medical Marijuana Stores.

    a. A Medical Marijuana Cultivation Facility may only accept Medical Marijuana Concentrate and Medical Marijuana Product that is packaged and labeled for sale to a patient pursuant to the 3-1000 Series Rules.

    b. A Medical Marijuana Cultivation Facility storing Medical Marijuana Concentrate and Medical Marijuana Product pursuant to a Centralized Distribution Permit shall not store such Medical Marijuana Concentrate or Medical Marijuana Product on the Medical Marijuana Cultivation Facility's Licensed Premises for more than 90 days from the date of receipt.

    c. All Transfers of Medical Marijuana Concentrate and Medical Marijuana Product by a Medical Marijuana Cultivation Facility shall be without consideration.

4. All security and surveillance requirements that apply to a Medical Marijuana Cultivation Facility apply to activities conducted pursuant to the privileges of a Centralized Distribution Permit.

I. Transition Permit. A Medical Marijuana Cultivation Facility may only operate at two geographical locations pursuant to Rule 2-255(D).

Basis and Purpose – 5-210

The statutory authority for this rule includes but is not limited to sections 44-10-201, 44-10-202(1)(c), 44-10-203(1)(k), 44-10-313, 44-10-401(2)(a)(II), 44-10-501, 44-10-502, 44-10-503, and 44-10-505, C.R.S. The purpose of this rule is to clarify what activity is or is not allowed at a Medical Marijuana Cultivation Facility. This Rule 5-210 was previously Rule M 502, 1 CCR 212-1.

5-210 – Medical Marijuana Cultivation Facility: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. A Medical Marijuana Cultivation Facility is prohibited from Transferring Medical Marijuana and Medical Marijuana Concentrate that is not packaged and labeled in accordance with these rules. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. Transfer to Patient Prohibited. A Medical Marijuana Cultivation Facility is prohibited from Transferring Medical Marijuana to a patient. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-502(5), C.R.S., and Rule 5-230.

C. Inventory Limit. A Medical Marijuana Cultivation Facility shall not possess more plants than it is permitted to possess based on its production management class. *See* Rule 5-225 – Medical Marijuana Cultivation Facility: Production Management.

D. Corrective and Preventive Action. This paragraph D shall be effective January 1, 2021. A Medical Marijuana Cultivation Facility shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

E. Adverse Health Event Reporting. A Medical Marijuana Cultivation Facility must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 5-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(i), 44-10-203(2)(d)(I)-(VI), 44-10-502(3), and 44-10-401(2)(a)(II), C.R.S. The purpose of this rule is to permit laboratory testing of Medical Marijuana for Medical Marijuana Cultivation Facilities. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Businesses. This Rule 5-215 was previously Rule M 505, 1 CCR 212-1.

5-215 – Medical Marijuana Cultivation Facility: Testing

A. Samples on Demand. Medical Marijuana Cultivation Facility shall, upon request of the Division, submit a sufficient quantity of Medical Marijuana to a Medical Marijuana Testing Facility to enable laboratory or chemical analysis thereof. The Division will notify the Licensee of the results of the analysis. *See* Rule 3-805 – Regulated Marijuana Business: Inventory Tracking System and Rule 3-405 – Business Records Required.

B. Samples Provided for Testing. A Medical Marijuana Cultivation Facility may provide Samples of its Medical Marijuana to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Cultivation Facility shall maintain the testing results as part of its business books and records. *See* Rule 3-405 – Business Records Required.

Basis and Purpose – 5-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(d), 44-10-203(1)(k), 44-10-203(1)(c), 44-10-203(2)(d)(I)-(VI), and 44-10-401(2)(a)(II), C.R.S. The purpose of this rule is to establish the categories of Medical Marijuana Concentrate that may be produced at a Medical Marijuana Cultivation Facility and standards for the production of those concentrate. This Rule 5-220 was previously Rule M 506, 1 CCR 212-1.

5-220 – Medical Marijuana Cultivation Facility: Medical Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Medical Marijuana Concentrate. A Medical Marijuana Cultivation Facility may only produce Physical Separation-Based Medical Marijuana Concentrate on its Licensed Premises and only in an area clearly designated as a Limited Access Area. *See* Rule 3-405- Business Records Required. No other method of production or extraction for Medical Marijuana Concentrate may be conducted within the Licensed Premises of a Medical Marijuana Cultivation Facility unless the Controlling Beneficial Owner(s) of the Medical Marijuana Cultivation Facility also has a valid Medical Marijuana Products Manufacturer license and the room in which Medical Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If a Medical Marijuana Cultivation Facility produces Physical Separation-Based Medical Marijuana Concentrate, then all areas in which those concentrates are produced and all Owner Licensees and Employees Licensees engaged in the production of those concentrate shall be subject to all of requirements imposed upon a Medical Marijuana Products Manufacturer that produces Medical Marijuana Concentrate, including general requirements. *See* 3-300 Series Rules – Health and Safety Regulations and Rule 5-315 Medical Marijuana Products Manufacturer: Medical Marijuana Concentrate Production.

C. Possession of Other Categories of Medical Marijuana Concentrate.

1. It shall be considered a violation of this Rule if a Medical Marijuana Cultivation Facility possesses a Medical Marijuana Concentrate other than a Physical Separation-Based Medical Marijuana Concentrate on its Licensed Premises unless: the Controlling Beneficial Owner(s) of the Medical Marijuana Cultivation Facility also has a valid Medical Marijuana Products Manufacturer license, or the Medical Marijuana Cultivation Facility has been issued a Centralized Distribution Permit and is in possession of the Medical Marijuana Concentrate in compliance with Rule 5-205(H).

2. Notwithstanding subparagraph (C)(1) of this Rule 5-220, a Medical Marijuana Cultivation Facility shall be permitted to possess Solvent-Based Medical Marijuana Concentrate only when the possession is due to the Transfer of Medical Marijuana flower or trim that failed microbial testing to a Medical Marijuana Products Manufacturing Facility for processing into a Solvent-Based Medical Marijuana Concentrate, and the Medical Marijuana

Products Manufacturer Transfers the resultant Solvent-Based Medical Marijuana Concentrate back to the originating Medical Marijuana Cultivation Facility.

a. The Medical Marijuana Cultivation Facility shall comply with all requirements in Rule 4-135(C) when having Solvent-Based Medical Marijuana Concentrate manufactured out of Medical Marijuana flower or trim that failed microbial testing.

b. The Medical Marijuana Cultivation Facility is responsible for submitting the Solvent-Based Medical Marijuana Concentrate for all required testing for contaminants pursuant to Rule 4-120 – Medical Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule 4-125 – Medical Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Rules or Marijuana Code.

D. Production of Alternative Use Product or Audited Product Prohibited. A Medical Marijuana Cultivation Facility shall not produce an Alternative Use Product or Audited Product.

E. Possession of Alternative Use Product or Audited Product. A Medical Marijuana Cultivation Facility is authorized to possess or Transfer Alternative Use Product and/or Audited Product only if the Medical Marijuana Cultivation Facility received the Alternative Use Product and/or Audited Product pursuant to a Centralized Distribution Permit from a Medical Marijuana Products Manufacturer that is manufacturing and Transferring the Alternative Use Product or Audited Product in accordance with Rule 5-325.

Basis and Purpose – 5-225

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(5), 44-10-401(2)(a)(II), 44-10-502, C.R.S. The rule establishes a means by which to manage the overall production of Medical Marijuana. The intent of this rule is to encourage responsible production to meet demand for Medical Marijuana, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the sale of illegal marijuana. This Rule 5-225 was previously Rule M 507, 1 CCR 212-1.

5-225 – Medical Marijuana Cultivation Facility: Production Management

A. One Medical Marijuana Cultivation Facility per Licensed Premises. Except as permitted by subparagraph (B)(1)(b), a Licensed Premises shall only have one Medical Marijuana Cultivation Facility license and each Licensed Premises must be located at a distinct address recognized by the local jurisdiction.

1. Existing Medical Marijuana Cultivation Facilities that have Multiple Licenses at a single Licensed Premises.

a. Mandatory Collapse for Licenses with Identical Controlling Beneficial Owner Percentages.

i. Medical Marijuana Cultivation Facilities that have multiple licenses at a single Licensed Premises and that have identical Controlling Beneficial Owners holding identical ownership percentages are subject to mandatory collapse. Such Licensees shall notify the Division prior to June 30, 2019 which Medical Marijuana Cultivation Facility license they desire to survive. The Medical Marijuana Cultivation Facility license identified as the surviving license will remain active after July 1, 2019; all

other Medical Marijuana Cultivation Facility licenses shall be surrendered effective July 1, 2019.

ii. The production management class for the surviving Medical Marijuana Cultivation Facility license will be calculated pursuant to subparagraph (B)(3) below using the aggregate average plants actually cultivated by all Medical Marijuana Cultivation Facility licenses that were located at the Licensed Premises during the period January 1, 2018 to December 31, 2018.

b. Optional Collapse for Licenses with Non-Identical Controlling Beneficial Owner Percentages. Medical Marijuana Cultivation Facilities that have multiple licenses at a single Licensed Premises and that do not have identical Controlling Beneficial Owners holding identical ownership percentages as of July 1, 2019, may continue operating all Medical Marijuana Cultivation Facility licenses that existed at that Licensed Premises prior to July 1, 2019. The maximum plant count for each such Medical Marijuana Cultivation Facility will be calculated pursuant to subparagraph (B)(3) below based on the number of average plants actually cultivated by that Medical Marijuana Cultivation Facility during the period January 1, 2018 to December 31, 2018.

i. Medical Marijuana Cultivation Facilities that are permitted to continue operating multiple licenses at a single Licensed Premises after July 1, 2019, may collapse through one or more approved change of ownership applications, or one or more voluntary license surrenders, establishing identical Controlling Beneficial Owners holding identical ownership percentages for all Medical Marijuana Cultivation Facilities at the single Licensed Premises.

ii. For any change of ownership application or voluntary license surrender seeking collapse after July 1, 2019, the Medical Marijuana Cultivation Facility shall identify the license that will survive. The Medical Marijuana Cultivation Facility license identified as the surviving license will remain after collapse; all other Medical Marijuana Cultivation Facility licenses will be surrendered at the time of collapse.

iii. The class for the surviving Medical Marijuana Cultivation Facility license will be determined according to subparagraph (B)(3) below based on the aggregate average number of Medical Marijuana plants actually cultivated by all Medical Marijuana Cultivation Facility Licensees that were located at the Licensed Premises during the 180 days prior to the collapse.

2. Collapse after July 1, 2019. After July 1, 2019, Medical Marijuana Cultivation Facility licenses shall be permitted to collapse at a single Licensed Premises through an approved change of location application if all Medical Marijuana Cultivation Facility licenses for which collapse is sought meet the following requirements:

a. All Medical Marijuana Cultivation Facility licenses sought to be collapsed have been consistently operating for at least 180 days prior to the proposed collapse;

b. All Medical Marijuana Cultivation Facility licenses sought to be collapsed have identical Controlling Beneficial Owners holding identical ownership percentages;

c. There is no pending administrative action regarding any of Medical Marijuana Cultivation Facility licenses sought to be collapsed;

d. The class for the surviving Medical Marijuana Cultivation Facility license has not been decreased in the 180 days prior to the change of location application;

e. All Medical Marijuana Cultivation Facility Licensees identify the desired surviving license and agree that all other Medical Marijuana Cultivation Facility licenses will be surrendered at the time of collapse; and

f. Determining Class for Surviving License.

i. Surviving License Class Will Not Decrease. The class for the surviving license will not be decreased as a result of any approved change of location application.

ii. Surrendered License is Class 1, Class 2, or Class 3. For the surviving license to increase one class or one increment of 3,000 plants if already higher than class 3, during the 180 days prior to the change of location application, the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time.

iii. Surrendered License is Higher than Class 3. For the surviving license to increase by the maximum authorized plant count of the surrendered license, during the 180 days prior to the change of location application the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time. If during the 180 days prior to the change of location application, the surrendering license did not cultivate at least 50% of the maximum authorized plant count and Transfer at least 85% of the inventory it produced, the surviving license will only increase one class or one increment of 3,000 plants if already higher than class 3.

iv. Division Determination of Class. If a collapse results in a maximum authorized plant count in the middle of a class, the surviving license's maximum authorized plant count will be rounded up to the top of that class.

B. Production Management.

1. Production Management Classes.

a. Class 1: 1 – 500 plants

b. Class 2: 501 – 1,500 plants

c. Class 3: 1,501 – 3,000 plants

i. The maximum authorized plant count above 3,000 plants shall increase in one or two increments of 3,000 plants. A Medical Marijuana Cultivation Facility may be allowed to increase its maximum authorized plant count one or two increments of 3,000 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule 5-225.

2. All initial Medical Marijuana Cultivation Facility licenses issued on or after July 1, 2019 will be issued as a Class 1 License.

3. Each Medical Marijuana Cultivation Facility with a license(s) granted before July 1, 2019, at a minimum, will be placed into the production management class that includes the average number of plants it cultivated during the period January 1, 2018 to December 31, 2018.

    a. Medical Marijuana Cultivation Facilities with less than 180 days of consistent cultivation history will be placed into the class 1 production management class.

    b. Any Medical Marijuana Cultivation Facility that artificially increases plant count or otherwise misrepresents any data in connection with its plant count will be placed into the class the Division determines it would have been placed into without the artificial increase or misrepresentation. In addition, any such artificial increase of plant count or other misrepresentation is a public safety violation that may result in administrative action.

4. Immature Plants. For purposes of calculating the maximum number of authorized plants, Immature Plants are excluded but must be fully accounted for in the Inventory Tracking System.

5. Ground for Denial. The Division may deny an application for additional plants pursuant to paragraph E of this Rule if the Licensee exceeded the authorized plant count during the relevant time period for production.

6. Violation Affecting Public Safety. It may be considered a license violation affecting public safety for a Licensee to exceed the authorized plant count pursuant to these Rules.

C. Inventory Management.

1. Inventory Management for Medical Marijuana Cultivation Facilities that Have One or Two Harvest Seasons a Year. Beginning the 721st day from the commencement of its first cultivation activities, a Medical Marijuana Cultivation Facility that has one or two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Medical Marijuana flower and trim the Licensee produced that was Transferred to another Medical Marijuana Business in the previous 720 days.

2. Inventory Management for Medical Marijuana Cultivation Facilities That Have More Than Two Harvest Seasons a Year. Beginning the 181st day from the commencement of its first cultivation activities, a Medical Marijuana Cultivation Facility that has more than two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Medical Marijuana flower and trim the Licensee produced that was Transferred to another Medical Marijuana Business in the previous 180 days.

D. Class Decrease. For any Medical Marijuana Cultivation Facility that is authorized to cultivate more than 500 plants, the Division may review the purchases, Transfers, and cultivated plant count in connection with the license renewal process or after an investigation. Based on the Division's review, it may reduce the Licensee's maximum allowed plant count to a lower production management class identified in subparagraph (B)(1) of this Rule 5-225. When determining whether to reduce the maximum authorized plant count, the Division may consider the following non-exhaustive factors including but not limited to:

1. The Licensee Transferred less than 70% of the inventory it reported as packaged in the Inventory Tracking System during any 180 day review period;

2. On average during the previous 180 days, the Licensee actually cultivated less than 90% of the maximum number of plants authorized by the next lower production management class;

3. Whether the plants/inventory suffered a catastrophic event during the review period;

4. Existing inventory and inventory history;

5. Sales contracts;

6 Number of patients registered to any commonly owned Medical Marijuana Store; and

7. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

E. Application for Additional Plants.

1. Medical Marijuana Cultivation Facilities That Have One or Two Harvest Seasons Per Year.

a. After one harvest season during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated, the Licensee may apply to the Division for a production management class increase to be authorized to cultivate the number of plants in the next highest production management class. The Licensee must demonstrate:

i. That during the previous harvest season, prior to the class increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count;

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System in the previous 360 days to another Medical Marijuana Business;

iii. The Division may consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the previous 360 days, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count; and

iv. Any other information requested to aid the Division in its evaluation of the production management class increase application.

b. If the Division approves the production management class increase application, the Licensee shall pay the applicable Expanded Production Management Class Fee prior to cultivating the additional authorized plants. *See* Rule 2-205 – Fees.

c. For a Licensee with an authorized plant count in Classes 2 or 3 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Medical Marijuana Cultivation Facility license fee and the applicable expanded production management class fee at license renewal. *See* Rule 2-205 – Fees.

d. After one harvest season during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management classes, or (b) if

already authorized to cultivate at a class 3, two increments of 3,000 plants (6,000 plants total), every 360 days. It is within the Division's discretion to determine whether or not to grant the requested two classes or two increments of 3,000 plant (6,000 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count, and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Medical Marijuana Business;

C. If the Medical Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking System during that time period and/or Transfers into the Medical Marijuana Cultivation Facility or related Medical Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Medical Marijuana Cultivation Facility currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two classes or two increments of 3,000 plants;

B. The Medical Marijuana Cultivation Facility cultivated on average at least 90% of its authorized plant count and during the preceding 360 days the Medical Marijuana Cultivation Facility and/or one or more commonly owned Medical Marijuana Stores Transferred in Medical Marijuana from one or more unrelated Medical Marijuana Cultivation Facility(ies);

C. The Medical Marijuana Cultivation Facility has entered into written agreement(s) or contract(s) for the sale of Medical Marijuana in the next 360 days supporting the requested two production management class increase or two increments of 3,000 plants; or

D. An established history of responsible cultivation and Transfer by the Medical Marijuana Cultivation Facility;

E. Any history of noncompliance with the Medical Code, Marijuana Code, and/or Rules by the Medical Marijuana Cultivation Facility, or any commonly owned Medical Marijuana Business, and/or any investigation of, or administrative action against, the Medical Marijuana Cultivation Facility or any commonly owned Medical Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

2. Medical Marijuana Cultivation Facilities That Have More Than Two Harvest Seasons per Year.

a. After a 180-day period during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated, the Licensee may apply to the Division for a production management class increase to be authorized to cultivate the number of plants in the next highest production management class. The Division may consider the following in determining whether to approve the production management class increase:

i. That for the 180 days prior to the production management class increase application, the Licensee consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count, and

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Medical Marijuana Business.

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the 180-day time period, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count.

iv. Any other information requested to aid the Division in its evaluation of the production management class increase application.

b. If the Division approves the production management class increase application, the Licensee shall pay the applicable Expanded Production Management class License Fee prior to cultivating the additional authorized plants. *See* Rule 2-205 – Fees.

c. For a Licensee with an authorized plant count in Class 2 or Class 3 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Medical Marijuana Cultivation Facility license fee and the applicable expanded production management class fee at license renewal. *See* Rule 2-205 – Fees.

d. After accruing 180 days during which the Medical Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management classes, or (b) if already authorized to cultivate at a class 3, two increments of 3,000 plants (6,000 plants total) every 180 days. It is within the Division's discretion to determine whether or not to grant the requested two classes or increments of 3,000 plants (6,000 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Medical Marijuana Business;

C. If the Medical Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a packing in the Inventory Tracking System during that time period and/or Transfers into the Medical Marijuana Cultivation Facility or related Medical Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Medical Marijuana Cultivation Facility currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two classes or two increments of 3,000 plants;

B. The Medical Marijuana Cultivation Facility cultivated on average at least 90% of its authorized plant count and during the preceding 180 days the Medical Marijuana Cultivation Facility and/or one or more commonly owned Medical Marijuana Stores Transferred in Medical Marijuana from one or more unrelated Medical Marijuana Cultivation Facility(ies);

C. The Medical Marijuana Cultivation Facility has entered into a written agreement(s) or contract(s) for the sale of Medical Marijuana in the next 180 days supporting the requested two production management class increase or two increments of 3,000 plants;

D. An established history of responsible cultivation and Transfer by the Medical Marijuana Cultivation Facility;

E. Any history of noncompliance with the Medical Code, Marijuana Code, and/or Rules by the Medical Marijuana Cultivation Facility, or any commonly owned Medical Marijuana Business, and/or any investigation of, or administrative action against, the Medical Marijuana Cultivation Facility or any commonly owned Medical Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

e. A Medical Marijuana Cultivation Facility that does not have 180 days of cultivating history may apply to increase its plant count to a Class 2 or Class 3 pursuant only to this subparagraph (E)(2)(e). A Medical Marijuana Cultivation Facility applying for a production management class increase request under this subparagraph (E)(2)(e) must demonstrate all of the following at the time of application:

i. The Medical Marijuana Cultivation Facility making the class increase request also owns at least three Medical Marijuana Stores with identical Controlling Beneficial Owners;

ii. The Controlling Beneficial Owners of the Medical Marijuana Cultivation Facility and three Medical Marijuana Stores used to support the class increase request have owned the aforementioned Medical Marijuana Store licenses for at least the preceding 180 days;

iii. The three Medical Marijuana Stores used to support the class increase request have consistently Transferred Regulated Marijuana to consumers in the preceding 180 days and have a history of wholesale purchases that justify the need for a class increase above a class 1;

iv. In the 180 days preceding the Licensee's class increase request pursuant to this subparagraph (e), the Medical Marijuana Cultivation Facility, three Medical Marijuana Stores, and identical Controlling Beneficial Owners have not been subject to administrative action by the State Licensing Authority;

v. The Medical Marijuana Cultivation Facility making the class increase request has an established history of responsible cultivation and Transfers of its Regulated Marijuana inventory; and

vi. The Medical Marijuana Cultivation Facility subject to the class increase request has not previously requested a class increase pursuant to this subparagraph (e).

3. Application for Class Increase. Applications for a class increase shall be submitted on Division forms, and shall be complete and accurate. Applications for a class increase that include any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation will be denied. In addition to denial, any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation is a public safety violation that may result in administrative action.

F. Maximum Allowed Medical Marijuana Cultivation Facility Licenses.

1. A Person that is a Controlling Beneficial Owner with an Interest in Three or More Medical Marijuana Cultivation Facility Licenses. For every multiple of three Medical Marijuana Cultivation Facility licenses in which a Person is a Controlling Beneficial Owner, the Person must also be a Controlling Beneficial Owner in at least one Medical Marijuana Store. For example: (1) a Person that is a Controlling Beneficial Owner in three, four, or five Medical Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least one Medical Marijuana Store; (2) a Person that is a Controlling Beneficial Owner in six, seven, or eight Medical Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least two Medical Marijuana Stores; (3) a Person that is a Controlling Beneficial Owner in nine, ten, or eleven Medical Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least three Medical Marijuana Stores; etcetera.

2. A Person that is a Controlling Beneficial Owner in Less than Three Medical Marijuana Cultivation Facility Licenses. A Person that is a Controlling Beneficial Owner in less than three Medical Marijuana Cultivation Facility licenses shall not be required to be a Controlling Beneficial Owner in a Medical Marijuana Store.

G. The State Licensing Authority, in his or her sole discretion, may adjust any of the plant limits described in this Rule 5-225 on an industry-wide aggregate basis for all Medical Marijuana Cultivation Facilities subject to that limitation.

Basis and Purpose – 5-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(II), and 44-10-502(5), C.R.S. The purpose of this rule is to establish the circumstances under which a Medical Marijuana Cultivation Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Medical Marijuana Cultivation Facility that Transfer Sampling Units. This Rule 5-230 was previously Rule M 508, 1 CCR 212-1.

5-230 – Medical Marijuana Cultivation Facility: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Medical Marijuana Cultivation Facility may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Medical Marijuana Cultivation Facility who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual designated as a Sampling Manager by a Medical Marijuana Cultivation Facility must possess a valid patient registry card.

3. An individual may be designated as a Sampling Manager by more than one Regulated Marijuana Business.

4. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

5. A Medical Marijuana Cultivation Facility that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-502(5), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 5-230. *See also* Rule 3-905 – Business Records Required. A Medical Marijuana Cultivation Facility shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Harvest Batch or Production Batch. A Sampling Unit shall not be designated until the Harvest Batch or Production Batch has satisfied the testing requirements in 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Medical Marijuana flower or trim shall not exceed one gram.

2. A Sampling Unit of Medical Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Medical Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Medical Marijuana Cultivation Facility as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than one ounce of Medical Marijuana or fifteen grams of Medical Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Medical Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, a Medical Marijuana Cultivation Facility shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limits established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

D. Compensation Prohibited. A Medical Marijuana Cultivation Facility may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-502(5), C.R.S.

G. Recordkeeping Requirements. A Medical Marijuana Cultivation Facility shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, a Medical Marijuana Cultivation Facility shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. A Medical Marijuana Cultivation Facility shall also maintain copies of the Medical Marijuana Cultivation Facility's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-235

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(II), and 44-10-502(9)(a)-(c) and 38-28.8-302(2)(b), C.R.S. The purpose of this rule is to allow a Medical Marijuana Cultivation Facility to receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from "Retail" to "Medical."

5-235 – Medical Marijuana Cultivation Facility: Ability to Change Designation from Retail Marijuana to Medical Marijuana

A. Changing Designation: Beginning July 1, 2022, a Medical Marijuana Cultivation Facility may accept Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from Retail Marijuana to Medical Marijuana pursuant to the following requirements:

1. The Medical Marijuana Cultivation Facility may only accept Retail Marijuana that has passed all required testing;

2. The Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility are co-located;

3. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner;

4. The Medical Marijuana Cultivation Facility must receive the Transfer and designate the inventory as Medical Marijuana in the Inventory Tracking System the same day. The Medical Marijuana Cultivation Facility must assign and attach an RFID tag reflecting its Medical Marijuana license number to the Medical Marijuana following completion of the Transfer in the Inventory Tracking System;

5. After the designation change, the Medical Marijuana cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules;

6. Both the Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility must remain at, or under, its inventory limit before and after the Retail Marijuana changes its designation to Medical Marijuana; and

7. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

Basis and Purpose – 5-240

The Statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(j.5), 44-10-203(1)(k), 44-10-401(2)(a)(II), and 44-10-502(10)(a)-(c). The purpose of this rule is to allow a Medical Marijuana Cultivation Facility Licensee that plans to cultivate Medical Marijuana outdoors to submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event.

5-240 Medical Marijuana Cultivation Facility: Contingency Plan for Outdoor Cultivation

A. Submission of Contingency Plan.

1. Beginning January 1, 2022, Medical Marijuana Cultivation Facility Licensees that plan to cultivate Medical Marijuana outdoors may submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event. The Medical Marijuana Cultivation Facility shall also submit a copy of the plan to the Local Licensing Authority in the local jurisdiction where the Licensee operates, and if Transferring Medical Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

2. A Medical Marijuana Cultivation Facility may submit a contingency plan at any time, but it must be filed at least 7 days prior to taking action pursuant to the contingency plan and must be approved by the State Licensing Authority prior to taking action pursuant to the contingency plan.

3. After initial submission and approval of a contingency plan, a contingency plan must be submitted with the Medical Marijuana Cultivation Facility's license renewal application. Any material change to a contingency plan prior to a renewal application must be submitted for review and approval pursuant to subsection (A)(2) above prior to taking action pursuant to the revised contingency plan.

4. The Division shall notify the appropriate Local Licensing Authorities of the approval of the contingency plan.

B. Requirements for Outdoor Contingency Plans.

1. Identification of the type of Adverse Weather Event that the plan applies to, including any deviations based on the type of Adverse Weather Event.

2. Primary Contact. A primary contact for the Medical Marijuana Cultivation Facility must be identified on the contingency plan, including the: name, title, phone number, and email address of the primary contact. The Medical Marijuana Cultivation Facility shall notify the Division of any change to the primary contact or required contact information within 48 hours of the change.

3. Transport Manifest. If the contingency plan provides for the Transfer of Medical Marijuana, a Medical Marijuana Cultivation Facility shall submit a standing transport manifest that could be used by a Licensee upon approval during an Adverse Weather Event if creating a transport manifest through the Inventory Tracking System is impracticable. The standing transport manifest shall include: identification and address of the receiving Licensee.

4. Disclosure of Receiving Licensed Premises.

a. Medical Marijuana may only be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or an off-premises storage facility.

b. If Medical Marijuana will be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility pursuant to a contingency plan, that plan must include the name, ownership, and address of the receiving Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility, along with a diagram of the proposed receiving Licensed Premises.

c. The receiving Licensed Premises shall be an existing location that currently holds an approved state and local license or an off-premises storage facility permit. The receiving Licensee is not required to share any Controlling Beneficial Owners with the Transferring Medical Marijuana Cultivation Facility.

d. A Medical Marijuana Cultivation Facility that cultivates outdoors may identify and Transfer Medical Marijuana to no more than five receiving Licensed Premises' as part of a contingency plan.

5. Disclosure of Modifications to the Premises and Security and Surveillance. Proposed modifications to the Licensed Premises and any anticipated impacts to compliance with security and surveillance requirements pursuant to Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6).

C. License Requirements when Acting Pursuant to a Contingency Plan. To the extent that this subsection (C) conflicts with other rule sections, this subsection shall control during the time that a Licensee is acting pursuant to a contingency plan.

1. Notification.

   a. Notification of action pursuant to an approved contingency plan shall be made to the Division within 24 hours after initiating action pursuant to a contingency plan. A Medical Marijuana Cultivation Facility that cultivates outdoors must also notify the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Medical Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

   b. Notification of ceasing action pursuant to the approved contingency plan shall be made to the Division within 24 hours of returning to normal business operations. If action will continue more than 7 days after initiating action pursuant to a contingency plan the licensee shall contact the Division and explain why they cannot return to normal business operations.

   c. Any notification shall be made in writing and can be made by email to the Division.

2. Production Management. Medical Marijuana Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility pursuant to a contingency plan is not included in the receiving Licensed Premises' inventory limit until the Medical Marijuana Cultivation Facility acting pursuant to the contingency plan returns to normal business operations.

3. Modification of Premises. An application for a modification of a Licensed Premises is not required as part of a contingency plan unless the modification or change in premises becomes a permanent modification. If that change becomes a permanent change, a modification of premises application must be submitted within 14 days.

4. Security Requirements. All security and surveillance requirements that apply to a Medical Marijuana Cultivation Facility apply to activities conducted pursuant to the contingency plan. If the contingency plan does not require the Transfer of Regulated Marijuana to another Licensed Premises, but requires plants to be covered or video surveillance to be otherwise temporarily obstructed, exemptions to the video surveillance requirements in Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6) may be approved as part of the contingency plan.

5. Inventory Tracking Requirements. Licensees must use the Inventory Tracking System to ensure Medical Marijuana is identified and tracked during all times that action is being taken pursuant to a contingency plan. If a Medical Marijuana Cultivation Facility harvests, Transfers, or packages Medical Marijuana it must be fully reconciled in the Inventory Tracking System within 48 hours of initiating action pursuant to the contingency plan.

a. Harvest Requirements. If Medical Marijuana is harvested, the weight of Medical Marijuana can be captured on a per harvest level and equally applied to individual plants rather than requiring the initial wet weight of each plant. This initial harvest weight may be captured at a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility upon arrival at the Licensed Premises approved as part of the contingency plan. Harvest Batches and Inventory Tracking System packages must be reported by the Medical Marijuana Cultivation Facility acting pursuant to the contingency plan in the Inventory Tracking System.

b. Transport Manifest. The Medical Marijuana Cultivation Facility acting pursuant to the contingency plan must report all Medical Marijuana that is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility on a transport manifest.

i. A Licensee may use the approved standing transport manifest during an Adverse Weather Event only when using the Inventory Tracking System is not possible.

ii. The Licensee shall manually fill out the dates, times, and individual transporting Medical Marijuana on a copy of the standing transport manifest.

iii. The Licensee shall ensure the standing transport manifest and copy of the approved Contingency plan remain in the Licensee's possession during any transport of Medical Marijuana when it is not possible to use an Inventory Tracking System generated transportation manifest at the time of the Adverse Weather Event.

6. Transfers. If Medical Marijuana is Transferred to another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility it is exempted from the packaging and labeling requirements in Rule 3-1005(B).7. Virtual and Physical Separation. If Medical Marijuana is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility that inventory must be virtually separated by Harvest Batch and must also be virtually and physically separated from the receiving Licensee's inventory. Harvest Batches must also be clearly identified at the receiving Licensed Premises with the Harvest Batch name and date of harvest.

8. Finishing Product. After Transferring Medical Marijuana to another Licensed Premises, a Medical Marijuana Cultivation Facility may finish that harvest at the receiving Licensed Premises if all Medical Marijuana is accounted for in the Inventory Tracking System and the Licensed Premises is in compliance with all surveillance requirements.

9. Testing. The originating Licensee acting pursuant to a contingency plan is responsible for the submission of Test Batch(es).

a. Each Harvest Batch or Production Batch Transferred pursuant to a contingency plan must be submitted for all required tests and is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

b. Any passing or failing tests of a Harvest Batch or Production Batch Transferred pursuant to a contingency plan will not count for or against a Licensee's Reduced Testing Allowance.

5-300 Series – Medical Marijuana Products Manufacturers

Basis and Purpose – 5-305

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(d)(I)-(VI), and 44-10-503, C.R.S. The purpose of this rule is to establish a Medical Marijuana Products Manufacturer's license privileges. This Rule 5-305 was previously Rule M 601, 1 CCR 212-1.

5-305 – Medical Marijuana Products Manufacturer: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Products Manufacturer may share and operate at the same Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Medical Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises as a Marijuana Research and Development Facility so long as:

1. Each business or business entity holds a separate license;

2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

3. Both the Marijuana Research and Development Facility and the Medical Marijuana Products Manufacturer comply with all terms and conditions of the R&D Co-Location Permit; and

4. Both the Marijuana Research and Development Facility and the Medical Marijuana Products Manufacturer comply with all applicable rules. *See* 5-700 Series Rules.

B. Authorized Transfers. A Medical Marijuana Products Manufacturer is authorized to Transfer Medical Marijuana as follows:

1. Medical Marijuana Concentrate and Medical Marijuana Product.

a. A Medical Marijuana Products Manufacturer may Transfer its own Medical Marijuana Product and Medical Marijuana Concentrate to Medical Marijuana Stores, other Medical Marijuana Products Manufacturers, Medical Marijuana Testing Facility, Marijuana Research and Development Facility and Pesticide Manufactures.

b. A Medical Marijuana Products Manufacturer may Transfer Medical Marijuana Product and Medical Marijuana Concentrate to a Medical Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit.

i. Prior to any Transfer pursuant to this Rule 5-305(B)(1)(b), a Medical Marijuana Products Manufacturer shall verify Medical Marijuana Cultivation Facility possesses a valid Centralized Distribution Permit. *See* Rule 5-205 – Medical Marijuana Cultivation Facility: License Privileges.

ii. For any Transfer pursuant to this Rule 5-305(B)(1)(b), A Medical Marijuana Products Manufacturer shall only Transfer Medical Marijuana Product and Medical Marijuana Concentrate that is packaged and labeled for Transfer to a patient. *See* 3-1000 Series Rules.

2. Medical Marijuana.

a. A Medical Marijuana Products Manufacturer may Transfer Medical Marijuana to another Medical Marijuana Products Manufacturer, a Medical Marijuana Store, a Marijuana Research and Development Facility or a Pesticide Manufacturer.

3. Sampling Units. A Medical Marijuana Products Manufacturer may also Transfer Sampling Units of its own Medical Marijuana Products and Medical Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-503(10), C.R.S., and Rule 5-320.

C. Manufacture of Medical Marijuana Concentrate, Medical Marijuana Product, Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana Authorized. A Medical Marijuana Products Manufacturer may manufacture, prepare, package, and label Medical Marijuana Concentrate Medical Marijuana Product comprised of Medical Marijuana and other Ingredients intended for use or consumption, such as Edible Medical Marijuana Products, ointments, or tinctures. A Medical Marijuana Products Manufacturer may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

1. Industrial Hemp Product Authorized. This subparagraph (C)(1) is effective July 1, 2020. A Medical Marijuana Products Manufacturer that uses Industrial Hemp Product as an Ingredient in the manufacture and preparation of Medical Marijuana Product must comply with this subparagraph (C)(1) of this Rule.

a. Prior to accepting and taking possession of any Industrial Hemp Product for use as an Ingredient in a Medical Marijuana Product the Medical Marijuana Products Manufacturer shall verify the following:

i. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Medical Marijuana Testing Facility; and

ii. That the Person Transferring the Industrial Hemp Product to the Medical Marijuana Products Manufacturer is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

D. Location Prohibited. A Medical Marijuana Products Manufacturer may not manufacture, prepare, package, store, or label Medical Marijuana Product in a location that is operating as a retail food establishment.

E. Samples Provided for Testing.

1. A Medical Marijuana Products Manufacturer may provide samples of its Medical Marijuana Concentrate or Medical Marijuana Product to a Medical Marijuana Testing Facility for testing and research purposes. The Medical Marijuana Products Manufacturer shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. A Medical Marijuana Products Manufacturer is authorized to utilize a Medical Marijuana Transporter for transportation of its Medical Marijuana Product or Medical Marijuana Concentrate so long as the place where transportation orders are taken is a licensed Medical Marijuana Business and the transportation order is delivered to a Medical Marijuana Business, or Pesticide Manufacturer. Nothing in this Rule prevents a Medical Marijuana Products Manufacturer from transporting its own Medical Marijuana or Medical Marijuana Concentrate.

G. Performance-Based Incentives. A Medical Marijuana Products Manufacturer may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Medical Marijuana Products Manufacturer may not compensate a Sampling Manager using Sampling Units. *See* Rule 5-320 – Sampling Unit Protocols.

Basis and Purpose – 5-310

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(III), and 44-10-503, C.R.S. The Marijuana Code sets forth minimum requirements for written agreements between Medical Marijuana Products Manufacturers and Medical Marijuana Stores. Specifically, the written agreements must set forth the total amount of Medical Marijuana obtained from a Medical Marijuana Store to be used in the manufacturing process, and the total amount of Medical Marijuana Product to be manufactured from the Medical Marijuana obtained from the Medical Marijuana Store. This rule clarifies that the Division must approve such written agreements to ensure they meet those requirements. This rule also provides those acts that are generally limited or prohibited. This Rule 5-310 was previously Rule M 602, 1 CCR 212-1.

5-310 – Medical Marijuana Products Manufacturer: General Limitations or Prohibited Acts

A. Contract Required. Any contract required pursuant to section 44-10-503(3), C.R.S., shall contain such minimum requirements as to form and substance as required by statute. All contracts need to be current and available for inspection on the Licensed Premises by the Division when requested. *See* Rule 3-905 – Business Records and Reporting.

B. Packaging and Labeling Standards Required. A Medical Marijuana Products Manufacturer is prohibited from Transferring Medical Marijuana Concentrate or Medical Marijuana Product that are not properly packaged and labeled. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety

C. Transfer to Patient Prohibited. A Medical Marijuana Products Manufacturer is prohibited from Transferring Medical Marijuana to a patient. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-503(10), C.R.S., and Rule 5-320.

D. Adequate Care of Perishable Product. A Medical Marijuana Products Manufacturer must provide adequate refrigeration for perishable Medical Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

E. Homogeneity of Edible Medical Marijuana Product. A Medical Marijuana Products Manufacturer must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Medical Marijuana Product is homogenous.

F. Use of Ingredients. A Medical Marijuana Products Manufacturer must obtain and maintain certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers.

G. Corrective and Preventive Action. This paragraph G shall be effective January 1, 2021. A Medical Marijuana Products Manufacturer shall establish and maintain written procedures for

implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

H. Adverse Health Event Reporting. A Medical Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 5-315

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(i), 44-10-401(2)(a)(III), and 44-10-503, C.R.S. The purpose of this rule is to establish the categories of Medical Marijuana Concentrate that may be produced at a Medical Marijuana Products Manufacturer and establish standards for the production of those concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S. This Rule 5-315 was previously Rule M 605, 1 CCR 212-1.

5-315 – Medical Marijuana Products Manufacturer: Medical Marijuana Concentrate Production.

A. Permitted Categories of Medical Marijuana Concentrate Production.

1. A Medical Marijuana Products Manufacturer may produce Physical Separation-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate, and Heat/Pressure-Based Medical Marijuana Concentrate

2. A Medical Marijuana Products Manufacturer may also produce Solvent-Based Medical Marijuana Concentrate using only the following solvents: butane, propane, CO_2, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless it is approved by the Division.

3. A Medical Marijuana Products Manufacturer may submit a request to the Division to consider the approval of solvents not permitted for use under this Rule during the next formal rulemaking.

B. General Applicability. A Medical Marijuana Products Manufacturer that engages in the production of Medical Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Medical Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. *See* Rule 3-905 – Business Records Required.

2. Ensure that all applicable sanitary rules are followed. *See* 3-300 Series Rules.

3. Ensure that the standard operating procedure for each method used to produce a Medical Marijuana Concentrate includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:

a. Conduct all necessary safety checks prior to commencing production;

b. Prepare Medical Marijuana for processing;

c. Extract Cannabinoids and other essential components of Medical Marijuana;

d. Purge any solvent or other unwanted components from a Medical Marijuana Concentrate,

e. Clean all equipment, counters and surfaces thoroughly; and

f. Dispose of any waste produced during the processing of Medical Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. *See* Rule 3-230 – Waste Disposal.

4. Establish written and documentable quality control procedures designed to maximize safety for Owner Licensees and Employee Licensees and minimize potential product contamination.

5. Establish written emergency procedures to be followed by Owner Licensees or Employee Licensees in case of a fire, chemical spill or other emergency.

6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Medical Marijuana Concentrate. The training manual must include, but need not be limited to, the following topics:

a. All standard operating procedures for each method of concentrate production used;

b. The Medical Marijuana Products Manufacturer’s quality control procedures;

c. The emergency procedures;

d. The appropriate use of any necessary safety or sanitary equipment;

e. The hazards presented by all solvents used as described in the safety data sheet for each solvent;

f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and

g. Any additional periodic cleaning required to comply with all applicable sanitary rules.

7. Provide adequate training to every Owner Licensee or Employee Licensee prior to that individual undertaking any step in the process of producing a Medical Marijuana Concentrate.

a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.

b. The individual training an Owner Licensee or Employee Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner Licensee or Employee Licensee can safely produce a Medical Marijuana Concentrate. *See* Rule 3-905 – Business Records Required.

c. The Owner Licensee or Employee Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional periodic cleaning required to maintain compliance with all applicable sanitary rules. *See* Rule 3-905 – Business Records Required.

8. Maintain clear and comprehensive records of the name, signature and Owner Licensee or Employee License number of every individual who engaged in any step related to the creation of a Production Batch of Medical Marijuana Concentrate and the step that individual performed. *See* Rule 3-905 – Business Records Required.

C. Physical Separation-Based Medical Marijuana Concentrate, Food-Based Medical Marijuana Concentrate, and Heat/Pressure-Based Medical Marijuana Concentrate. Medical Marijuana Products Manufacturer that engages in the production of a Medical Marijuana Concentrate must:

1. Ensure that all equipment, counters, and surfaces used in the production of a Medical Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.

2. Ensure that all equipment, counters, and surfaces used in the production of a Medical Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.

3. Ensure that any room in which dry ice is stored or used in processing Medical Marijuana into a Medical Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO_2.

4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Medical Marijuana Concentrate.

5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Physical Separation-Based Medical Marijuana Concentrate.

6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Medical Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.

7. Follow all of the rules related to the production of a Solvent-Based Medical Marijuana Concentrate if a pressurized system is used in the production of a Medical Marijuana Concentrate.

D. Solvent-Based Medical Marijuana Concentrate. A Medical Marijuana Products Manufacturer that engages in the production of Solvent-Based Medical Marijuana Concentrate must:

1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a local jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (http://www.iccsafe.org), the International Fire Code of 2012 (http://www.iccsafe.org) or the National Electric Code of 2014 (http://www.nfpa.org), as appropriate. Note that this Rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, which are available to the public;

   a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Medical Marijuana into a Medical Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:

      i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules, and regulations.

      ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights, junction boxes, must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules, and regulations.

      iii. Determine whether a gas monitoring system must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

      iv. Determine whether fire suppression system must be installed within the room in which Medical Marijuana Concentrate are to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

   b. CO_2 Solvent Determination. If CO_2 is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO_2 gas monitoring system must be installed within the room in which Medical Marijuana Concentrate are to be produced or CO_2 is stored, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Medical Marijuana Concentrate are to be produced, and if required the system's specifications, in accordance with applicable laws, rules, and regulations.

d. Material Change. If a Medical Marijuana Products Manufacturer makes a Material Change to its equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its equipment as well.

e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Medical Marijuana Products Manufacturer by the designer or manufacturer of any equipment used in the processing of Medical Marijuana into a Medical Marijuana Concentrate.

f. Records Retention. A Medical Marijuana Products Manufacturer must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule, or regulation, compliance with this Rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Medical Marijuana Concentrate.

2. Ensure that all equipment, counters, and surfaces used in the production of a Solvent-Based Medical Marijuana Concentrate must be food-grade and must not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds, and fungi and can be easily cleaned;

3. Ensure that the room in which Solvent-Based Medical Marijuana Concentrate shall be produced must contain an emergency eye-wash station;

4. Ensure that a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Medical Marijuana Concentrate;

a. UL or ETL Listing.

i. If the system is UL or ETL listed, then a Medical Marijuana Products Manufacturer may use the system in accordance with the manufacturer's instructions.

ii. If the system is UL or ETL listed but the Medical Marijuana Products Manufacturer intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Medical Marijuana Products Manufacturer must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

b. Ethanol or Isopropanol. A Medical Marijuana Products Manufacturer Facility need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Medical Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.

5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;

a. A Medical Marijuana Products Manufacturer must obtain a safety data sheet for each solvent used or stored on the Licensed Premises. A Medical Marijuana Products Manufacturer must maintain a current copy of the safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. *See* Rule 3-905 – Business Records Required.

b. A Medical Marijuana Products Manufacturer is prohibited from using denatured alcohol to produce a Medical Marijuana Concentrate, unless the denaturant is an approved solvent listed in Rule 5-315(A)(2) and the alcohol and the denaturant meet all other requirements set forth in this Rule.

6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may a Medical Marijuana Products Manufacturer store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;

7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Solvent-Based Medical Marijuana Concentrate; and

8. Ensure that a trained Owner Licensee or Employee Licensee is present at all times during the production of a Solvent-Based Medical Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.

9. Medical Marijuana Products Manufacturers Engaged in the Remediation of Medical Marijuana for elemental impurities. Medical Marijuana Products Manufacturers engaged in the Remediation of Medical Marijuana for elemental impurities shall:

a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

i. If potentially contaminated equipment, ingredients, or solvents used in the Remediation process are used for processing other 'non Remediated' material, the subsequent Production Batch made using the equipment, ingredients, or solvent must then be tested for elemental impurities, and the Production Batch made using that equipment, ingredients, or solvents is not eligible for testing exemptions through a Reduced Testing Allowance or otherwise exempt from required testing.

ii. Manufacturers must document the equipment and lots of ingredients/solvents used in Remediation to ensure this requirement is met.

b. Register as a hazardous waste generator, obtain a U.S. Environmental Protection Agency ID number for manifesting hazardous waste, and must have a disposal contract in place with a hazardous waste management company prior to attempting Remediation.

c. Have a staff member who has received basic training in hazardous waste identification, storage, and disposal procedures, or hire a consultant who satisfies this criteria.

d. Regardless of which type of analyte, if the Medical Marijuana flower, wet whole plant, or trim has failed elemental impurities testing, the Licensee must implement Standard Operating Procedures to ensure:

i. That contaminated material is stored in a labelled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

ii. That when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards Institute (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

A. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

e. Additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the Licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

f. These steps must be documented in the Licensee's respiratory protection program that all employees exposed to plant material or waste products contaminated with elemental impurities must be trained on.

g. The Licensee must establish and train employees on standard operating procedures designed to safely handle this contaminated material and prevent cross contamination.

h. Mercury poses additional workplaces hazards since it is easily volatilized and since mercury vapor is highly toxic. Before attempting to remediate any

Regulated Marijuana flower, wet whole plant, or trim that has failed elemental impurities testing and contains mercury, Licensees must additionally:

i. Work with a certified industrial hygienist to develop and implement some form of monitoring program that is capable of detecting mercury vapor concentrations in the areas where material contaminated with mercury will be processed and can be used to generate time weighted average exposures to mercury vapor. The monitoring system must be sufficient to ensure airborne concentrations of mercury do not exceed Occupational Safety and Health Administration Permissible Exposure Limits for Airborne Contaminants.

ii. Have a certified industrial hygienist approve the Licensee's air handling system for managing mercury vapors in a fashion that is compliant with the Occupational Safety and Health Administration, and other applicable federal, state, and local regulations.

iii. Utilize a National Institute for Occupational Safety and Health rated half mask respirator with cartridges rated specifically for mercury vapor.

i. A Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

E. Ethanol and Isopropanol. If a Medical Marijuana Products Manufacturer only produces Solvent-Based Medical Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from the requirements in paragraph D of this Rule and instead must follow the requirements in paragraph C of this Rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used. The Medical Marijuana Products Manufacturer shall comply with contaminant testing required in Rule 4-120(C)(3).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-320

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(III), and 44-10-503 C.R.S. The purpose of this rule is to establish the circumstances under which a Medical Marijuana Products Manufacturer may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting, and recordkeeping requirements on a Medical Marijuana Products Manufacturer that Transfer Sampling Units. This Rule 5-320 was previously Rule M 606, 1 CCR 212-1.

5-320 – Medical Marijuana Products Manufacturer: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Medical Marijuana Products Manufacturer may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Medical Marijuana Products Manufacturer who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual designated as a Sampling Manager by a Medical Marijuana Products Manufacturer must possess a valid patient registry card.

3. An individual may be designated as a Sampling Manager by more than one Medical Marijuana Business.

4. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

5. A Medical Marijuana Products Manufacturer that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-503(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 5-320. *See also* Rule 3-905 – Business Records Required. A Medical Marijuana Products Manufacturer shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Production Batch. A Sampling Unit shall not be designated until the Production Batch has satisfied the testing requirements in 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Edible Medical Marijuana Product shall not exceed one serving size. Before designating any Sampling Units, a Medical Marijuana Products Manufacturer shall establish the specific serving size for each Edible Medical Marijuana Product it produces and maintain a record of the serving size in its standard operating procedures provided pursuant to subparagraph (A)(5).

2. A Sampling Unit of non-Edible Medical Marijuana Product shall not exceed the equivalent of one serving size. Before designating any Sampling Units, a Medical Marijuana Products Manufacturer shall establish the specific serving size for each non-Edible Medical Marijuana Product it produces and maintain a record of the serving size in its standard operating procedures provided pursuant to subparagraph (A)(5).

3. A Sampling Unit of Medical Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Medical Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Medical Marijuana Products Manufacturer as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than:

a. Fourteen servings of Medical Marijuana Products; and

b. Fifteen grams of Medical Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Medical Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, a Medical Marijuana Products Manufacturer shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limit established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any Person designated as a Sampling Manager.

D. Compensation Prohibited. A Medical Marijuana Products Manufacturer may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-503(10), C.R.S.

G. Record keeping requirements. A Medical Marijuana Products Manufacturer shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, A Medical Marijuana Products Manufacturer shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. A Medical Marijuana Products Manufacturer shall also maintain copies of the Medical Marijuana Products Manufacturer's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-325

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(i), 44-10-203(3)(b), 44-10-203(2)(d), 44-10-203(3)(a), 44-10-401(2)(a)(III), 44-10-503, and 44-10-701(3)(c), C.R.S. The purpose of this rule is to define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Medical Marijuana Products Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule 3-1015 may raise public health concerns that outweigh its manufacturer or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for Medical Marijuana Products Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Medical Marijuana Product that is not within an intended use identified in Rule 3-1015. This Rule 5-325 was previously Rule M 607, 1 CCR 212-1.

5-325 – Medical Marijuana Products Manufacturer: Audited Product and Alternative Use Product

A. General Rule. A Medical Marijuana Products Manufacturer shall not Transfer Audited Product to a Medical Marijuana Store, another Medical Marijuana Products Manufacturer, or a Medical Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit except in accordance with all requirements of this Rule 5-325. The requirements of this Rule 5-325 are in addition to all other Rules that apply to Medical Marijuana Products Manufacturers; except where the context otherwise clearly requires this Rule 5-325 controls.

B. Audited Products – Mandatory Audit Prior to Transfer. Following submission of an independent third-party audit to the Division and to the Local Licensing Authority as required by this Rule, a Medical Marijuana Products Manufacturer may Transfer Audited Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (4) rectal administration to another Medical Marijuana Products Manufacturer, a Medical Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit, or a Medical Marijuana Store.

1. A written audit report from an independent third-party auditor that was completed within the last twenty-four (24) months shall be submitted to the Division and to the Local Licensing Authority: (i) before the first Transfer of Audited Product to any Medical Marijuana Store, (ii) prior to Transfer of any Audited Product following a Material Change to any standard operating procedure or master formulation record regarding the Audited Product, and (iii) with the Medical Marijuana Products Manufacturer's renewal application if the Medical Marijuana Products Manufacturer will Transfer Audited Product after renewal.

2. The independent third-party audit shall be performed by either a certified quality auditor or a certified GMP auditor. The Medical Marijuana Products Manufacturer shall be responsible for all costs associated with obtaining the independent third-party audit.

3. The independent third-party written audit report shall include the following minimum requirements:

    a. The independent third-party auditor's qualifications and an attestation that the certified quality auditor or certified GMP auditor has no conflict of interest;

    b. Establish that the Medical Marijuana Products Manufacturer and the Audited Product meet all requirements of this Rule 5-325, including but not limited to the specific requirements of this Rule 5-325(C), 5-325(D), 5-325(E), 5-325(G), and 5-325(H);

    c. Verify the written standard operating procedure(s) for Audited Product include sufficient and detailed step-by-step instructions on how to produce the Audited Product in a manner that prevents contamination and protects the public health and safety;

    d. Verify, based upon a physical inspection, the manufacture of Audited Product by the Medical Marijuana Products Manufacturer adheres to all applicable standard operating procedures;

    e. Verify, based upon a physical inspection, of any Licensed Premises that such Licensed Premises complies with the requirements of this Rule 5-325(E), including any Limited Access Area where the Audited Product is to be manufactured;

    f. Include the independent third-party auditor's findings;

g. Include the plan of correction identifying any corrective actions and/or preventative actions implemented as a result of the findings of the independent third-party audit; and

h. Include the independent third-party auditor's assessment that the Medical Marijuana Products Manufacturer demonstrated compliance with all requirements of Rule 5-325 and with the requirements of all standard operating procedures, master formulation records, and Batch manufacturing records that apply to the Audited Product.

C. Products Liability Insurance. Any Medical Marijuana Products Manufacturer that intends to Transfer Audited Product shall first obtain products liability insurance providing coverage for liability arising from manufacture or Transfer of Audited Product and shall provide an unredacted certificate of product liability insurance to the Division and the independent third-party auditor.

D. Audited Product Requirements. Audited Product shall meet the following minimum product requirements:

1. Inactive Ingredients. Audited Product must meet the requirements outlined in Rule 3-335 – Production of Regulated Marijuana Products.

a. If the Audited Product contains a fungicidal or bactericidal Ingredient listed in, and with a concentration that is at or below the maximum concentration permitted in, the Federal Food and Drug Administration Inactive Ingredients Database, https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, the Audited Product is not required to undergo microbial contaminant testing required by Rules 4-115 and 4-120.

2. Required Product Development Testing. The Medical Marijuana Products Manufacturer must establish the Audited Product meets the following through independent third-party testing:

a. The Audited Product must deliver the amount of each cannabinoid identified on the label throughout the entire volume of the Audited Product using the intended delivery device and in accordance with the instructions provided by the Medical Marijuana Products Manufacturer, as demonstrated by testing at a Medical Marijuana Testing Facility.

i. For Audited Product with an intended use of metered dose nasal spray, compliance with this requirement shall be established by test results verifying the delivered dose of each cannabinoid identified on the label using the methods described in The United States Pharmacopeia Physical Test and Determination Chapter 601, *Aerosols, Nasal Sprays, Metered-Dose Inhalers, and Dry Powder Inhalers*.

ii. For Audited Product with an intended use of either vaginal administration or rectal administration, compliance with this testing requirement shall be established by test results demonstrating that each cannabinoid identified on the label is within +/- 15% of the amount identified on the label.

b. The expiration date identified on the label of the Audited Product is appropriate when the Audited Product is stored at room temperature, as demonstrated by testing from a Medical Marijuana Testing Facility.

c. Identification of all non-marijuana derived Ingredients and constituents in the Audited Product at concentrations of 1%, which verification is obtained from one or more of the following:

i. Testing by a Medical Marijuana Testing Facility;

ii. Testing by a laboratory that is ISO 17025 accredited but is not a Medical Marijuana Testing Facility, except that no Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product may be Transferred to such a laboratory; and/or

iii. One or more certificate(s) of analysis from the manufacturer of any Ingredient or constituent included in the Audited Product.

E. Additional Production Requirements for Audited Product. In addition to all other requirements applicable to Medical Marijuana Products Manufacturers, a Medical Marijuana Products Manufacturer that manufactures and Transfers Audited Product shall meet the following additional requirements:

1. Personnel Training. All personnel directly involved in the manufacture and handling of Audited Product must be trained, must demonstrate competency, and must undergo annual refresher training, which shall be documented and maintained at the Medical Marijuana Products Manufacturer's Licensed Premises. Personnel directly involved in the manufacture and handling of Audited Product must be trained and demonstrate proficiency in hand hygiene, cleaning and sanitizing, performing necessary calculations, measuring and mixing, and documenting the manufacturing process including master formulation records and batch manufacturing records.

2. Facility Requirements. A Medical Marijuana Products Manufacturer must have a space that is specifically designated for the manufacture of Audited Products that is designed and operated to prevent cross contamination from other areas of the Licensed Premises. The surfaces, walls, floors, fixtures, shelving, work surfaces, and cabinets in this designated area must be non-porous and cleanable.

3. Cleaning and Sanitizing. A Medical Marijuana Products Manufacturer must clean and sanitize surfaces where Audited Product is manufactured and handled on a regular basis and at a minimum, work surfaces and floors must be cleaned and sanitized daily. All other surfaces must be cleaned and sanitized at least every three months. A Medical Marijuana Products Manufacturer must clean and sanitize all surfaces when a spill occurs and when surfaces, floors, and walls are visibly soiled.

4. Hand Hygiene. Hand hygiene is required when entering and re-entering any area where Audited Product is manufactured and handled. Hand hygiene includes washing hands and forearms up to the elbows with soap and water for at least 30 seconds followed by drying completely with disposable towels. Alcohol hand sanitizers alone are not sufficient.

a. Gloves are required to be worn for all mixing activities. Other garb such as shoe covers, head and facial hair covers, face masks, and gowns must be worn as appropriate to protect Employee Licensees and/or prevent contamination of the Audited Product.

5. Equipment. Mechanical, electronic, and other types of equipment used in mixing, measuring, or testing of Audited Product must be inspected prior to use and verified for accuracy at the frequency recommended by the manufacturer, and at least annually.

6. Ingredient Quality. All Ingredients used to manufacture Audited Product must be handled and stored in accordance with the manufacturer's instructions. Ingredients that lack a manufacturer's expiration date shall not be used if a reasonable manufacturer would not use the Ingredient or after 1 year from the date of receipt, whichever period is shorter.

7. Master Formulation Record. A master formulation record must be prepared and maintained for each unique Audited Product a Medical Marijuana Products Manufacturer manufactures. A master formulation record must include at least the following information:

    a. Name of the Audited Product;

    b. Ingredient identities and amounts;

    c. Specifications on the delivery device (if applicable);

    d. Complete instructions for preparing the Audited Product, including equipment, supplies, and description of the manufacturing steps;

    e. Quality control procedures; and

    f. Any other information needed to describe the Medical Marijuana Products Manufacturer's production and ensure its repeatability.

8. Batch Manufacturing Records. A batch manufacturing record shall be created for each Production Batch of Audited Product. This record shall include at the least the following information:

    a. Name of the Audited Product;

    b. Master formulation record reference for the Audited Product;

    c. Date and time of preparation of the Audited Product;

    d. Production Batch number;

    e. Signature or initials of individuals involved in each manufacturing step;

    f. Name, vendor, or manufacturer, Production Batch number, and expiration date of each Ingredient;

    g. Weight or measurement of each Ingredient;

    h. Documentation of quality control procedures;

    i. Any deviations from the master formulation record, and any problems or errors experienced during the manufacture; and

    j. Total quantity of the Audited Product manufactured.

F. Audited Product Testing. For each Production Batch, the Audited Product shall undergo all required testing in the 4-100 Series Rules for Medical Marijuana Product and/or Audited Product. *See also* Rule 4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program.

G. Packaging and Labeling of Audited Product. Audited Product must be packaged and labeled in accordance with all requirements of the 3-1000 Series Rules regarding packaging and labeling for Transfer to a patient prior to any Transfer.

H. Adverse Event Reporting. A Medical Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

I. Alternative Use Designation – Any Other Method of Consumption or Administration. A Medical Marijuana Products Manufacturer shall not Transfer to a Medical Marijuana Store, to another Medical Marijuana Products Manufacturer, or a Medical Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit any Medical Marijuana Concentrate or Medical Marijuana Product that is not within any intended use identified in Rule 3-1015(B) until it applies for and receives an Alternative Use Designation from the State Licensing Authority in consultation with the Colorado Department of Public Health and Environment. In the process of applying for an Alternative Use Designation, the Medical Marijuana Products Manufacturer shall work with the Division and the Colorado Department of Public Health and Environment to determine whether the proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when particular independent review factors, safeguards, and tests are in place. The following are minimum requirements for any application for an Alternative Use Designation:

1. The Medical Marijuana Products Manufacturer shall identify provisions of this Rule 5-325 that apply to its Alternative Use Product, any proposed additional or alternative requirements, and how any proposed alternatives protect public health and safety. The Medical Marijuana Products Manufacturer shall also provide any additional information as may be requested by the Division, in consultation with the Colorado Department of Public Health and Environment.

2. The Medical Marijuana Products Manufacturer bears the burden of proving its proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when the identified independent review factors, safeguards and tests are in place.

3. A Medical Marijuana Products Manufacturer seeking an Alternative Use Designation shall cooperate with the Division. Failure to cooperate with the Division is grounds for denial of an Alternative Use Designation.

4. The granting of an Alternative Use Designation shall rest in the discretion of the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment. The State Licensing Authority may in his or her discretion deny an Alternative Use Designation where the Medical Marijuana Products Manufacturer does not meet the burden established in this Rule 5-325.

J. Alternative Use Designation – Packaging and Labeling Requirements. If the Division recommends, and the State Licensing Authority grants, an Alternative Use Designation, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment shall provide the Medical Marijuana Products Manufacturer the appropriate statement of intended use label to be affixed to the Alternative Use Product, and any additional or distinct packaging and labeling requirements applicable to the Alternative Use Product. *See* Rules 3-1010 and 3-1015.

K. Required Records. A Medical Marijuana Products Manufacturer manufacturing or Transferring Audited Product and/or Alternative Use Product shall maintain accurate and comprehensive records on the Licensed Premises regarding the manufacturing process, a list of all active and inactive Ingredients used in the Audited Product and/or Alternative Use Product, and such other documentation as required by this Rule 5-325. *See* Rule 3-905 – Business Records Required.

5-330 – Recall of Medical Marijuana Concentrate or Medical Marijuana Product – Repealed effective January 1, 2021.

Basis and Purpose – 5-335

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(a)(III), and 44-10-503, 44-10-503(12)(a)-(b), and 38-28.8-302(2)(b) C.R.S. The purpose of this rule is to allow a Medical Marijuana Products Manufacturer to receive Transfers of Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from "Retail" to "Medical."

5-335 – Medical Marijuana Products Manufacturer: Ability to Change Designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate.

A. Changing Designation: Beginning July 1, 2022, a Medical Marijuana Products Manufacturer may accept Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate pursuant to the following requirements:

1. The Medical Marijuana Products Manufacturer may only accept Retail Marijuana Concentrate that has passed all required testing;

2. The Medical Marijuana Products Manufacturer and the Retail Marijuana Products Manufacturer are co-located;

3. The Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer have at least one identical Controlling Beneficial Owner;

4. The Medical Marijuana Products Manufacturer must receive the Transfer and designate the inventory as Medical Marijuana Concentrate in the Inventory Tracking System the same day. The Medical Marijuana Products Manufacturer must assign and attach an RFID tag reflecting its Medical Marijuana Products Manufacturer license number to the Medical Marijuana Concentrate following completion of the Transfer in the Inventory Tracking System;

5. After the designation change, the Medical Marijuana Concentrate cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules; and

6. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

5-400 Series – Medical Marijuana Testing Facilities

Basis and Purpose – 5-405

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1), and 44-10-504(2), C.R.S. The purpose of this rule is to establish the license privileges of a Medical Marijuana Testing Facility. This Rule 5-405 was previously Rule M 701.5, 1 CCR 212-1.

5-405 - Medical Marijuana Testing Facilities: License Privileges

A. Licensed Premises. A separate License is required for each specific Medical Marijuana Testing Facility and only those privileges granted by the Marijuana Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises.

B. Testing of Medical Marijuana Authorized. A Medical Marijuana Testing Facility may accept Samples of Medical Marijuana from Medical Marijuana Businesses for testing and research purposes only, which purposes may include the provision of testing services for Samples submitted by a Medical Marijuana Business for the purpose of product development. The Division may require a Medical Marijuana Business to submit a Sample of Medical Marijuana to a Medical Marijuana Testing Facility upon demand.

C. Testing of Industrial Hemp Product Authorized.

1. A Medical Marijuana Testing Facility may accept and test samples of Industrial Hemp Products.

2. Before a Medical Marijuana Testing Facility accepts a sample of Industrial Hemp Product, the Medical Marijuana Testing Facility shall verify that the Person submitting the sample is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

3. A Medical Marijuana Testing Facility is responsible for entering and tracking samples of Industrial Hemp Product in the inventory tracking system pursuant to the 3-800 Series Rules.

4. A Medical Marijuana Testing Facility shall be permitted to test Industrial Hemp Product only in the category(ies) that the Medical Marijuana Testing Facility is certified to perform testing in pursuant to Rule 5-415 – Medical Marijuana Testing Facilities: Certification Requirements.

5. A Medical Marijuana Testing Facility may provide the results of any testing performed on Industrial Hemp Product to the Person submitting the sample of Industrial Hemp Product.

6. Nothing in these rules shall be construed to require a Medical Marijuana Testing Facility to accept and/or test samples of Industrial Hemp Product.

D. Testing Medical Marijuana for Patients in Research Project. A Medical Marijuana Testing Facility is authorized to accept Samples of Medical Marijuana from an individual person for testing under only the following conditions:

1. The individual person is:

a. A currently registered patient pursuant to section 25-1.5-106, C.R.S.; and

b. A participant in an approved clinical or observational study conducted by a Marijuana Research and Development Facility.

2. The Medical Marijuana Testing Facility shall require the patient to produce a valid patient registry card and a current and valid photo identification. *See* Rule 3-405(A) – Acceptable Forms of Identification.

3. The Medical Marijuana Testing Facility shall require the patient to produce verification on a form approved by the Division from the Marijuana Research and Development Facility that the patient is a participant in an approved clinical or observational Research Project

conducted by the Marijuana Research and Development Facility and that the testing will be in furtherance of the approved Research Project.

4. A primary caregiver may transport Medical Marijuana on behalf of a patient to the Medical Marijuana Testing Facility. A Medical Marijuana Testing Facility shall require the following documentation before accepting Medical Marijuana from a primary caregiver:

   a. A copy of the patient registry card and valid photo identification for the patient;

   b. A copy of the caregiver's registration with the State Department of Health pursuant to section 25-1.5-106, C.R.S. and a current and valid photo identification, *see* Rule 3-405 – Acceptable Forms of Identification; and

   c. A copy of the Marijuana Research and Development Facility's verification on a form approved by the Division that the patient is participating in an approved clinical or observational Research Project being conducted by the Marijuana Research and Development Facility and that the testing will be in furtherance of the approved Research Project.

5. The Medical Marijuana Testing Facility shall report all results of testing performed pursuant to this Paragraph (C.5) to the Marijuana Research and Development Facility identified in the verification form submitted pursuant to Paragraph (D)(3) or (4)(c), or as otherwise directed by the approved Research Project being conducted by the Marijuana Research and Development Facility. Testing result reporting shall conform with the requirements under these Rules.

E. Product Development Authorized. A Medical Marijuana Testing Facility may develop Medical Marijuana Product, but is not authorized to engage in the manufacturing privileges described in section 44-10-503, C.R.S. and Rule 5-305 – Medical Marijuana Products Manufacturer: License Privileges.

F. Transferring Samples to Another Licensed and Certified Medical Marijuana Testing Facility. A Medical Marijuana Testing Facility may Transfer Samples to another Medical Marijuana Testing Facility for testing. All laboratory reports provided to or by a Medical Marijuana Business, or to a patient or primary caregiver must identify the Medical Marijuana Testing Facility that actually conducted the test.

G. Authorized Medical Marijuana Transport. A Medical Marijuana Testing Facility is authorized to utilize a licensed Medical Marijuana Transporter to transport Samples of Medical Marijuana for testing, in accordance with the Marijuana Code and the rules adopted pursuant thereto, between the originating Medical Marijuana Business requesting testing services and the destination Medical Marijuana Testing Facility performing testing services. Nothing in this Rule requires a Medical Marijuana Business to utilize a Medical Marijuana Transporter to transport Samples of Medical Marijuana for testing.

Basis and Purpose – 5-410

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1), and 44-10-504(2), 44-10-701, and 35-61-105.5, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Medical Marijuana Testing Facility. This Rule 5-410 was previously Rule M 702, 1 CCR 212-1.

5-410 – Medical Marijuana Testing Facilities: General Limitations or Prohibited Acts

A. Prohibited Financial Interest. A Person who is a Controlling Beneficial Owner or Passive Beneficial Owner of a Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturing Facility, Medical Marijuana Store, Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, or a Retail Marijuana Store shall not be a Controlling Beneficial Owner or Passive Beneficial Owner of a Medical Marijuana Testing Facility.

B. Conflicts of Interest. The Medical Marijuana Testing Facility shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Medical Marijuana Testing Facility's testing processes or results, or that may diminish public confidence in the competency, impartiality, and integrity of the Medical Marijuana Testing Facility's testing processes or results. At a minimum, employees, owners or agents of a Medical Marijuana Testing Facility who participate in any aspect of the analysis and results of a Sample are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Medical Marijuana Business that provided the Sample.

C. Transfer of Medical Marijuana Prohibited. A Medical Marijuana Testing Facility shall not Transfer Medical Marijuana to a Medical Marijuana Business, a consumer, a patient, or primary caregiver, except that a Medical Marijuana Testing Facility may Transfer a Sample to another Medical Marijuana Testing Facility.

D. Destruction of Received Samples. A Medical Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not Transferred to another Medical Marijuana Testing Facility, after all necessary tests have been conducted and any required period of storage. *See* Rule 3-230 – Waste Disposal.

E. Sample Rejection. A Medical Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that that the Sample may have been tampered with.

F. Medical Marijuana Business Requirements Applicable. A Medical Marijuana Testing Facility shall be considered a Licensed Premises. A Medical Marijuana Testing Facility shall be subject to all requirements applicable to Medical Marijuana Businesses.

G. Medical Marijuana Testing Facility – Inventory Tracking System Required. A Medical Marijuana Testing Facility must use the Inventory Tracking System to ensure all Test Batches or Samples containing Medical Marijuana are identified and tracked from the point they are Transferred from a Medical Marijuana Business, a patient, or a patient's primary caregiver through the point of Transfer, destruction, or disposal. The Inventory Tracking System reporting shall include the results of any tests that are conducted on Medical Marijuana. *See* Rule 3-805 – Regulated Marijuana Business: Inventory Tracking System, Rule 3-825 – Reporting and Inventory Tracking System, and Rule 5-405(D)(5). The Medical Marijuana Testing Facility must have the ability to reconcile its Sample records with the Inventory Tracking System and the associated transaction history. *See* Rule 3-905 – Business Records Required and Rule 3-825 Reporting and Inventory Tracking

H. Industrial Hemp Testing Prohibited. A Medical Marijuana Testing Facility shall not perform testing on Industrial Hemp.

I. Testing of Unregistered or Untracked Industrial Hemp Products Prohibited. A Medical Marijuana Testing Facility is authorized to accept or test Industrial Hemp Product only if (1) the entity providing the Samples of Industrial Hemp Product is registered and regulated pursuant to Article 4 or Title 25, C.R.S., and (2) the Industrial Hemp Product being submitted for testing is tracked in the Inventory Tracking System.

Basis and Purpose – 5-415

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish a frame work for certification for Medical Marijuana Testing Facilities. This Rule 5-415 was previously Rule M 703, 1 CCR 212-1.

5-415 – Medical Marijuana Testing Facilities: Certification Requirements

A. Certification Types. If certification in a testing category is required by the Division, then the Medical Marijuana Testing Facility must be certified in the category in order to perform that type of testing.

1. Microbials;

2. Mycotoxins;

3. Residual solvents;

4. Pesticides;

5. THC and other Cannabinoid potency;

6. Elemental Impurities; and

7. Water Activity.

B. In order to obtain certification for Pesticide testing, a Medical Marijuana Testing Facility must also obtain certification for mycotoxin testing.

C. Certification Procedures. The Medical Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in Proficiency Testing, and ongoing compliance with the applicable requirements in this Rule.

1. Certification Inspection. A Medical Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Medical Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, Proficiency Testing, quality control, quality assurance, security, chain of custody, Sample retention, space, records, and results reporting. In addition, a Medical Marijuana Testing Facility must be accredited under the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO/IEC 17025 standard. In order to obtain certification in a testing category from the Division, the Medical Marijuana Testing Facility's scope of accreditation must specify that particular testing category.

a. Subsequent to initial approval of a Medical Marijuana Testing Facility License, the Division may grant provisional certification if the Applicant has not yet obtained ISO/IEC 17025:2005 accreditation, but meets all other Division requirements. Such provisional certification shall be for a period not to exceed twelve months.

3. Personnel Qualifications.

   a. Laboratory Director. A Medical Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification. *See* Rule 5-420 – Medical Marijuana Testing Facilities: Personnel.

   b. Employee Competency. A Medical Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).

4. Standard Operating Procedure Manual. A Medical Marijuana Testing Facility must have a written standard operating procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.

   a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign and date the revised version prior to use.

   b. A Medical Marijuana Testing Facility must maintain a copy of all standard operating procedures to include any revised copies for a minimum of three years. *See* Rule 5-450 – Medical Marijuana Testing Facilities: Records Retention and Rule 3-905 – Business Records Required.

5. Analytical Processes. A Medical Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Medical Marijuana Testing Facility must provide this listing to the Division upon request.

6. Proficiency Testing. A Medical Marijuana Testing Facility must successfully participate in a Division approved Proficiency Testing program in order to obtain and maintain certification.

7. Quality Assurance and Quality Control. A Medical Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.

8. Security. A Medical Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.

9. Chain of Custody. A Medical Marijuana Testing Facility must establish a system to document the complete chain of custody for Samples from receipt through disposal.

10. Space. A Medical Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state and local requirements.

11. Records. A Medical Marijuana Testing Facility must establish a system to retain and maintain all required records. *See* Rule 5-450 – Medical Marijuana Testing Facilities: Records Retention and Rule 3-905 – Business Records Required.

12. Results Reporting. A Medical Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner. *See* Rule 3-825 – Reporting and Inventory Tracking System. A Medical Marijuana Testing Facility's process may require that the Regulated Marijuana Business remit payment for any test conducted by the Testing Facility prior to entry of the results of that test into the Inventory Tracking System. A Medical Marijuana Testing Facility's process established under this subparagraph (12) must be maintained on the Licensed Premises of the Medical Marijuana Testing Facility.

13. Conduct While Seeking Certification. A Medical Marijuana Testing Facility, and its agents and employees, shall provide all documents and information required or requested by the Colorado Department of Public Health and Environment and its employees, and the Division and its employees in a full, faithful, truthful, and fair manner.

D. Violation Affecting Public Safety. A violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose – 5-420

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Medical Marijuana Testing Facility. This Rule 5-420 was previously Rule M 704, 1 CCR 212-1.

5-420 – Medical Marijuana Testing Facilities: Personnel

A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Medical Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this Rule.

1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Medical Marijuana Testing Facility.

2. The laboratory director for a Medical Marijuana Testing Facility must meet one of the following qualification requirements:

a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;

b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;

c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

d. The laboratory director must hold a bachelor's degree in one of the natural sciences and have at least seven years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.

B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this Rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. *See* Rule 3-905 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.

C. Responsibilities of the Laboratory Director. The laboratory director must:

1. Ensure that the Medical Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;

2. Establish and adhere to a written standard operating procedure used to perform the tests reported;

3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;

6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;

7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;

8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;

9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;

12. Ensure that reports of test results include pertinent information required for interpretation;

13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;

14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;

15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;

16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interest, and whenever necessary, identify needs for remedial training or continuing education to improve skills;

17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and

18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

D. Change in Laboratory Director. In the event that the laboratory director leaves employment at the Medical Marijuana Testing Facility, the Medical Marijuana Testing Facility shall:

1. Provide written notice to the Colorado Department of Public Health and Environment and the Division within seven days of the laboratory director's departure; and

2. Designate an interim laboratory director within seven days of the laboratory director's departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.

3. The Medical Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.

4. Notwithstanding the requirement of subparagraph (D)(3), the Medical Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Medical Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.

E. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the three years of full-time laboratory experience.

F. Laboratory Testing Analyst.

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing.

2. Responsibilities. In order to independently perform any test for a Medical Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

Basis and Purpose – 5-425

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish standard operating procedures manual standards for the operation of a Medical Marijuana Testing Facility. This Rule 5-425 was previously Rule M 705, 1 CCR 212-1.

5-425 – Medical Marijuana Testing Facilities: Standard Operating Procedure Manual

A. A standard operating procedure manual must include, but need not be limited to, procedures for:

1. Sample receiving;

2. Sample accessioning;

3. Sample storage;

4. Identifying and rejecting unacceptable Samples;

5. Recording and reporting discrepancies;

6. Security of Samples, aliquots and extracts and records;

7. Validating a new or revised method prior to testing Samples to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;

8. Aliquoting Samples to avoid contamination and carry-over;

9. Sample retention to assure stability, as follows:

   a. For Samples that comprise Test Batches submitted for testing other than Pesticide contaminant testing, Sample retention for 14 days;

   b. For Samples that comprise Test Batches submitted for Pesticide contaminant testing, Sample retention for 90 days.

10. Disposal of Samples;

11. The theory and principles behind each assay;

12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology (“NIST”);

13. Special requirements and safety precautions involved in performing assays;

14. Frequency and number of control and calibration materials;

15. Recording and reporting assay results;

16. Protocol and criteria for accepting or rejecting analytical procedure to verify the accuracy of the final report;

17. Pertinent literature references for each method;

18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;

19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;

20. A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results. Are corrective actions implemented and documented, and does the laboratory contact the requesting entity; and

21. Policies and procedures to follow when Samples are requested for referral and testing by another certified Medical Marijuana Testing Facility or an approved local state agency's laboratory.

Basis and Purpose – 5-430

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Medical Marijuana Testing Facility. This Rule 5-430 was previously Rule M 706, 1 CCR 212-1.

5-430 – Medical Marijuana Testing Facilities: Analytical Processes

A. Gas Chromatography ("GC"). A Medical Marijuana Testing Facility using GC must:

1. Document the conditions of the gas chromatograph, including the detector response;

2. Perform and document preventive maintenance as required by the manufacturer;

3. Ensure that records are maintained and readily available to the staff operating the equipment;

4. Document the performance of new columns before use;

5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;

6. Establish criteria of acceptability for variances between different aliquots and different columns; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Medical Marijuana Testing Facility using GC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Document the changes of septa as specified in the standard operating procedure;

3. Document liners being cleaned or replaced as specified in the standard operating procedure;

4. Ensure that records are maintained and readily available to the staff operating the equipment;

5. Maintain records of mass spectrometric tuning;

6. Establish written criteria for an acceptable mass-spectrometric tune;

7. Document corrective actions if a mass-spectrometric tune is unacceptable;

8. Monitor analytic analyses to check for contamination and carry-over;

9. Use selected ion monitoring within each run to assure that the laboratory compares ion ratios and retention times between calibrators, controls and Samples for identification of an analyte;

10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;

12. Define the criteria for designating qualitative results as positive;

13. When a library is used to qualitatively identify an analyte, the identity of the analyte must be confirmed before reporting results by comparing the relative retention time and mass spectrum to that of a known standard or control run on the same system; and

14. Evaluate the performance of the instrument after routine and preventive maintenance (*e.g.* clipping or replacing the column or cleaning the source) prior to analyzing subject Samples.

C. Immunoassays. A Medical Marijuana Testing Facility using Immunoassays must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a Sample is not included within the types of Samples approved by the manufacturer; and

4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.

D. Thin Layer Chromatography ("TLC"). A Medical Marijuana Testing Facility using TLC must:

1. Apply unextracted standards to each thin layer chromatographic plate;

2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;

3. Include in their written procedure the storage of unused thin layer chromatographic plates;

4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;

5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;

6. Measure all appropriate RF values for qualitative identification purposes;

7. Use and record sequential color reactions, when applicable;

8. Maintain records of thin layer chromatographic plates; and

9. Analyze an appropriate matrix blank with each batch of Samples analyzed.

E. High Performance Liquid Chromatography ("HPLC"). A Medical Marijuana Testing Facility using HPLC must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Monitor and document the performance of the HPLC instrument each day of testing;

4. Evaluate the performance of new columns before use;

5. Create written standards for acceptability when eluting solvents are recycled;

6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Medical Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Maintain records of mass spectrometric tuning;

4. Document corrective actions if a mass-spectrometric tune is unacceptable;

5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;

7. Compare two transitions and retention times between calibrators, controls and Samples within each run;

8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and

9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.

G. Other Analytical Methodology. A Medical Marijuana Testing Facility using other methodology or new methodology must:

1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:

   a. Verification of Accuracy

   b. Verification of Precision

   c. Verification of Analytical Sensitivity

   d. Verification of Analytical Specificity

   e. Verification of the LOD

   f. Verification of the LOQ

   g. Verification of the Reportable Range

   h. Identification of Interfering Substances

2. Validation of the other or new methodology must be documented.

3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing Samples.

5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing Samples.

Basis and Purpose – 5-435

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish a proficiency testing program for Medical Marijuana Testing Facilities. This Rule 5-435 was previously Rule M 707, 1 CCR 212-1.

5-435 – Medical Marijuana Testing Facilities: Proficiency Testing

A. Proficiency Testing Required. A Medical Marijuana Testing Facility must participate in a Proficiency Testing Program for each approved category in which it seeks certification under Rule 5-415 – Medical Marijuana Testing Facilities: Certification Requirements.

B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Medical Marijuana Testing Facility must have successfully participated in a proficiency test in the category for which it seeks certification, within the preceding 12 months.

C. Continued Certification. To maintain continued certification, a Medical Marijuana Testing Facility must participate in the designated proficiency testing program with continued satisfactory performance as determined by the Division as part of certification. The Division may designate a local agency, state agency, or independent third-party to provide Proficiency Testing.

D. Analyzing Proficiency Testing Samples. A Medical Marijuana Testing Facility must analyze Proficiency Testing Samples using the same procedures with the same number of replicate analyses, standards, testing analysts, and equipment as used in its standard operating procedures.

E. Proficiency Testing Attestation. The laboratory director and all testing analysts that participated in a Proficiency Testing must sign corresponding attestation statements.

F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Testing results.

G. Remedial Action. A Medical Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved on any test during a Proficiency Test. Remedial action documentation must include a review of Samples tested and results reported since the last successful proficiency testing event. A requirement to take remedial action does not necessarily indicate unsatisfactory participation in a Proficiency Testing event.

H. Unsatisfactory Participation in Proficiency Testing Event. Unless the Medical Marijuana Testing Facility positively identifies at least 80% of the target analytes tested, participation in the Proficiency Testing will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false positive results reported will be considered an unsatisfactory score for the proficiency testing event.

I. Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsuccessful participation in a Proficiency Testing event may result in limitation, suspension or revocation of Rule 5-415 certification.

Basis and Purpose – 5-440

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Medical Marijuana Testing Facility. This Rule 5-440 was previously Rule M 708, 1 CCR 212-1.

5-440 – Medical Marijuana Testing Facilities: Quality Assurance and Quality Control

A. Quality Assurance Program Required. A Medical Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:

1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;

2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and

3. Review of the performance of validated methods used by the Medical Marijuana Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.

B. Quality Control Measures Required. A Medical Marijuana Testing Facility must establish, monitor, and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:

1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;

2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;

3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;

4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;

5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;

6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;

7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;

9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of samples analyzed;

10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;

11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;

12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;

13. Analyzing an appropriate matrix blank and control with each analytical run, when available;

14. Analyzing calibrators and controls in the same manner as unknowns;

15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the Standard Operating Procedure is met;

16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the Standard Operating Procedure;

17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and

18. Performing testing analysts that follow the current standard operating procedures manual for the test or tests to be performed.

Basis and Purpose – 5-445

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish chain of custody standards for a Medical Marijuana Testing Facility. In addition, it establishes the requirement that a Medical Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains. This Rule 5-445 was previously Rule M 709, 1 CCR 212-1.

5-445 – Medical Marijuana Testing Facilities: Chain of Custody

A. General Requirements. A Medical Marijuana Testing Facility must establish an adequate chain of custody and Sample requirement instructions that must include, but not be limited to;

1. Issue instructions for the minimum Sample requirements and storage requirements;

2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Sample;

3. Document the condition and amount of Sample provided at the time of receipt;

4. Document all persons handling the original Samples, aliquots, and extracts;

5. Document all Transfers of Samples, aliquots, and extracts referred to another certified Medical Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;

6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;

7. Secure the Laboratory during non-working hours;

8. Secure short and long-term storage areas when not in use;

9. Utilize a secured area to log-in and aliquot Samples;

10. Ensure Samples are stored appropriately; and

11. Document the disposal of Samples, aliquots, and extracts.

Basis and Purpose – 5-450

The statutory authority for this rule includes but is not limited to sections 44-10-203(2)(d), 44-10-401(2)(a)(IV), and 44-10-504, C.R.S. The purpose of this rule is to establish records retention standards for a Medical Marijuana Testing Facility. This Rule 5-450 was previously Rule M 710, 1 CCR 212-1.

5-450 – Medical Marijuana Testing Facilities: Records Retention

A. General Requirement. A Medical Marijuana Testing Facility must maintain all required business records. *See* Rule 3-905 - Business Records Required.

B. Specific Business Records Required: Records Retention. A Medical Marijuana Testing Facility must establish processes to preserve records in accordance with Rule 3-905 that includes, but is not limited to;

1. Test Results, including final and amended reports, and identification of analyst and date of analysis;

2. Quality Control and Quality Assurance Records, including accession numbers, Sample type, and acceptable reference range parameters;

3. Standard Operating Procedures;

4. Personnel Records;

5. Chain of Custody Records;

6. Proficiency Testing Records; and

7. Analytical Data to include data generated by the instrumentation, raw data calibration standards, and curves.

Basis and Purpose – 5-455

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(h), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f)(II), 44-10-203(2)(f)(IV), 44-10-203(3)(d), 44-10-203(3)(e), 44-10-313(8)(a), 44-10-401(2)(a)(IV), 44-10-501(6), 44-10-502(3), 44-10-503(8), 44-10-504(1), and 44-10-504(2), C.R.S. The purpose of this rule is to require Medical Marijuana Testing Facilities to provide failed test results to the Medical Marijuana Business or Person submitting the sample and to report any failed test result in the inventory tracking system. This Rule 5-455 was previously Rule M 712(D), 1 CCR 212-1.

5-455 – Notification of Medical Marijuana Business

If Medical Marijuana failed a contaminant test, then the Medical Marijuana Testing Facility must immediately (1) notify the Medical Marijuana Business that submitted the Test Batch or Sample for testing and any Person as directed by an approved Research Project being conducted by a Marijuana Research

and Development Facility; and (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule 3-825(C).

5-500 Series – Medical Marijuana Transporters

Basis and Purpose – 5-505

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2)(a)(V), 44-10-505, C.R.S. The purpose of this rule is to establish the license privileges of Medical Marijuana Transporter licensees. This Rule 5-505 was previously Rule M 1601, 1 CCR 212-1.

5-505 – Medical Marijuana Transporter: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Medical Marijuana Transporter may share a location with an identically owned Retail Marijuana Transporter. However, a separate license is required for each specific business or business entity, regardless of geographical location.

B. Transportation of Medical Marijuana and Medical Marijuana Product Authorized. A Medical Marijuana Transporter may take transportation orders, receive, transport, temporarily store, and deliver Medical Marijuana to a Medical Marijuana Business or to a Pesticide Manufacturer. A Medical Marijuana Transporter may not sell, give away, buy, or receive complimentary Medical Marijuana under any circumstances. A Medical Marijuana Transporter does not include a Licensee that transports its own Medical Marijuana.

C. Authorized Sources of Medical Marijuana. A Medical Marijuana Transporter may only transport and store Medical Marijuana that it received directly from the originating Medical Marijuana Business.

D. Authorized On-Premises Storage. A Medical Marijuana Transporter is authorized to store transported Medical Marijuana on its Licensed Premises or permitted off-premises storage facility. All transported Medical Marijuana must be secured in a Limited Access Area, and tracked consistently with the inventory tracking rules.

E. Delivery to Patients Pursuant to Delivery Permit.

1. Prior to January 2, 2021, all Medical Marijuana Transporters are prohibited from delivering Regulated Marijuana to patients.

2. After January 2, 2021, only Medical Marijuana Transporters that possess a valid delivery permit may deliver Medical Marijuana pursuant to contracts with Medical Marijuana Stores that also possess valid delivery permits. All deliveries of Medical Marijuana to patients must comply with all requirements of Rule 3-615.

3. License Violation Affecting Public Safety. Any violation of subparagraph E of this Rule is a license violation affecting public safety.

Basis and Purpose – 5-510

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2)(a)(V), 44-10-505, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Medical Marijuana Transporter. This Rule 5-510 was previously Rule M 1602, 1 CCR 212-1.

5-510 – Medical Marijuana Transporter: General Limitations or Prohibited Acts

A. Sales, Liens, and Secured Interests Prohibited. A Medical Marijuana Transporter is prohibited from buying, selling, or giving away Medical Marijuana or from receiving complimentary Medical Marijuana. A Medical Marijuana Transporter shall not place or hold a lien or secured interest on Medical Marijuana.

B. Licensed Premises Permitted. A Medical Marijuana Transporter shall maintain a Licensed Premises if it: (1) temporarily stores any Medical Marijuana, or (2) modifies any information in the Inventory Tracking System generated transport manifest. The Licensed Premises shall be in a local jurisdiction that authorizes the operation of Medical Marijuana Stores. If a Medical Marijuana Transporter Licensed Premises is shared with a Retail Marijuana Transporter Licensed Premises, then the combined Licensed Premises shall be in a local jurisdiction that authorizes the operation of both Medical Marijuana Stores and Retail Marijuana Stores.

C. Off-Premises Storage Permit. A Medical Marijuana Transporter may maintain one or more permitted off-premises storage facilities. *See* Rule 3-610 – Off-Premises Storage of Regulated Marijuana and Regulated Marijuana Product: All Regulated Marijuana Businesses.

D. Storage Duration. A Medical Marijuana Transporter shall not store Medical Marijuana for longer than seven days from receiving it at its Licensed Premises or off-premises storage facility. The total allowable seven day storage duration begins and applies regardless of which of the Medical Marijuana Transporter's premises receives the Medical Marijuana first, (i.e. the Medical Marijuana Transporter's Licensed Premises, or any of its off-premises storage facilities). A Medical Marijuana Transporter with a valid delivery permit may store Medical Marijuana for delivery to patients pursuant to the delivery permit for no longer than seven days from receipt at its Licensed Premises or off-premises storage facility.

E. Control of Medical Marijuana. A Medical Marijuana Transporter is responsible for the Medical Marijuana once it takes control of the Medical Marijuana and until the Medical Marijuana Transporter delivers it to the receiving Medical Marijuana Business, Pesticide Manufacturer, or deliveries to a patient, parent, or guardian pursuant to a valid delivery permit. For purposes of this Rule, taking control of the Medical Marijuana means removing it from the originating Medical Marijuana Business's Licensed Premises and placing the Medical Marijuana in the transport vehicle or the Delivery Motor Vehicle.

F. Location of Orders Taken and Delivered. A Medical Marijuana Transporter is permitted to take orders on the Licensed Premises of any Medical Marijuana Business to transport Medical Marijuana between Medical Marijuana Businesses. The Medical Marijuana Transporter shall deliver the Medical Marijuana to the Licensed Premises of a licensed Medical Marijuana Business, or Pesticide Manufacturer. A Medical Marijuana Transporter may also deliver Medical Marijuana to patients, parents, or guardians pursuant to a contract with a Medical Marijuana Store if it possesses a valid delivery permit.

G. A Medical Marijuana Transporter shall receive Medical Marijuana from the originating Licensee packaged in the way that it is intended to be delivered to the final destination Licensee, or Pesticide Manufacturer. The Medical Marijuana Transporter shall deliver the Medical Marijuana in the same, unaltered packaging to the final destination Licensee.

H. A Medical Marijuana Transporter with a valid delivery permit shall receive Medical Marijuana that has been weighed, packaged, prepared, and labeled for delivery on the Licensed Premises of a Medical Marijuana Store or at the Medical Marijuana Store's off-premises storage facility after receipt of a delivery order. Medical Marijuana cannot be placed into a Delivery Motor Vehicle until after an order has been received and the Medical Marijuana has been packaged and labeled for delivery to the patient, parent, or guardian as required by the 3-1000 Series Rules.

I. A Medical Marijuana Transporter must not deliver Medical Marijuana to patients, parents, or guardians while also transporting Regulated Marijuana between Licensed Premises in the Delivery Motor Vehicle.

J. Opening of Sealed Packages or Containers and Re-Packaging Prohibited. A Medical Marijuana Transporter shall not open Containers of Medical Marijuana. Medical Marijuana Transporters are prohibited from re-packaging Medical Marijuana.

K. Temperature-Controlled Transport Vehicles. A Medical Marijuana Transporter shall utilize temperature-controlled transport vehicles when necessary to prevent spoilage of the transported Medical Marijuana.

L. Damaged, Refused, or Undeliverable Medical Marijuana. Any damaged Medical Marijuana that is undeliverable to the final destination Medical Marijuana Business, or any Medical Marijuana that is refused by the final destination Medical Marijuana Business shall be transported back to the originating Medical Marijuana Business. Any Medical Marijuana that cannot be delivered to the patient, parent, or guardian pursuant to a valid delivery permit shall be returned to the originating Medical Marijuana Store or the Medical Marijuana Store's off-premises storage facility within the same business day or pursuant to paragraph D of this Rule.

M. Transport of Medical Marijuana Vegetative Plants Authorized. Medical Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule 2-255 or due to a one-time Transfer pursuant to Rule 3-805. Transportation of Vegetative plants to a permitted off-premises storage facility shall not be allowed. This restriction shall not apply to Immature plants.

5-600 Series – Medical Marijuana Business Operators

Basis and Purpose – 5-605

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to establish the license privileges of a Medical Marijuana Business Operator license. This Rule 5-605 was previously Rule M 1701, 1 CCR 212-1.

5-605 – Medical Marijuana Business Operator: License Privileges

A. Privileges Granted. A Medical Marijuana Business Operator shall only exercise those privileges granted to it by the Marijuana Code, the rules promulgated pursuant thereto and the State Licensing Authority. A Medical Marijuana Business Operator may exercise those privileges only on behalf of the Medical Marijuana Business(es) it operates. A Medical Marijuana Business shall not contract to have more than one Medical Marijuana Business Operator providing services to the Medical Marijuana Business at any given time. A Medical Marijuana Business Operator may not provide any operational services to a Marijuana Research and Development Facility.

B. Licensed Premises of the Medical Marijuana Business(es) Operated. A separate license is required for each specific Medical Marijuana Business Operator, and each licensed or registered Medical Marijuana Business Operator may operate one or more other Medical Marijuana Business(es). A Medical Marijuana Business Operator shall not have its own Licensed Premises, but shall maintain its own place of business, and may exercise the privileges of a Medical Marijuana Business Operator at the Licensed Premises of the Medical Marijuana Business(es) it operates.

C. Entities Eligible to Hold Medical Marijuana Business Operator License or Registration. A Medical Marijuana Business Operator license may be held only by a business entity, including, but not limited to, a corporation, limited liability company, partnership, or sole proprietorship.

D. Separate Place of Business. A Medical Marijuana Business Operator shall designate and maintain a place of business separate from the Licensed Premises of any Medical Marijuana Business(es) it operates. A Medical Marijuana Business Operator's separate place of business shall not be considered a Licensed Premises, and shall not be subject to the requirements applicable to the Licensed Premises of other Medical Marijuana Businesses, except as set forth in Rules 5-610 and 5-620. Possession, storage, use, cultivation, manufacture, sale, distribution, or testing of Medical Marijuana or Medical Marijuana Product is prohibited at a Medical Marijuana Business Operator's separate place of business.

E. Agency Relationship and Discipline for Violations. A Medical Marijuana Business Operator and each of its Controlling Beneficial Owners required to hold an Owner License, as well as the agents and employees of the Medical Marijuana Business Operator, shall be agents of the Medical Marijuana Business(es) the Medical Marijuana Business Operator is contracted to operate, when engaged in activities related, directly or indirectly, to the operation of such Medical Marijuana Business(es), including for purposes of taking administrative action against the Medical Marijuana Business being operated. *See* § 44-10-901(1), C.R.S. Similarly, a Medical Marijuana Business Operator and its Controlling Beneficial Owners required to hold an Owner License, as well as the officers, agents and employees of the Medical Marijuana Business Operator, may be disciplined for violations committed by the Controlling Beneficial Owners, agents or employees of the Medical Marijuana Business acting under their direction or control. A Medical Marijuana Business Operator may also be disciplined for violations not directly related to a Medical Marijuana Business it is operating.

F. Compliance with Applicable State and Local Law, Ordinances, Rules, and Regulations. A Medical Marijuana Business Operator, and each of its Controlling Beneficial Owners, agents and employees engaged, directly or indirectly, in the operation of the Medical Marijuana Business(es) it operates, shall comply with all state and local laws, ordinances, rules, and regulations applicable to the Medical Marijuana Business(es) being operated.

Basis and Purpose – 5-610

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Medical Marijuana Business Operator. This Rule 5-610 was previously Rule M 1702, 1 CCR 212-1.

5-610 – Medical Marijuana Business Operators: General Limitations or Prohibited Acts

A. Financial Interest. A Person who holds an Owner's Interest in a Medical Marijuana Business Operator may also hold an Owner's Interest in another Medical Marijuana Business. A Medical Marijuana Business may be operated by a Medical Marijuana Business Operator where each has one or more Controlling Beneficial Owners or Passive Beneficial Owners in common. A Person may receive compensation for services provided by a Medical Marijuana Business Operator in accordance with these rules.

B. Sale of Marijuana Prohibited. A Medical Marijuana Business Operator is prohibited from selling, distributing, or Transferring Medical Marijuana to another Medical Marijuana Business, a patient, or a consumer, except when acting as an agent of a Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator.

C. Consumption Prohibited. A Medical Marijuana Business Operator, and its Controlling Beneficial Owners, Passive Beneficial Owners, agents and employees, shall not permit the consumption of marijuana or marijuana products at its separate place of business.

D. Inventory Tracking System. A Medical Marijuana Business Operator, and any of its Controlling Beneficial Owners, agents, or employees engaged in the operation of the Medical Marijuana Business(es) it operates, must use the Inventory Tracking System account of the Medical Marijuana Business(es) it operates, in accordance with all requirements, limitations, and prohibitions applicable to the Medical Marijuana Business(es) it operates.

E. Compliance with Requirements and Limitations Applicable to the Medical Marijuana Business(es) Operated. In operating any other Medical Marijuana Business(es), a Medical Marijuana Business Operator, and its Controlling Beneficial Owners, agents and employees, shall comply with all requirements, limitations and prohibitions applicable to the type(s) of Medical Marijuana Business(es) being operated, under state and local laws, ordinances, rules, and regulations, and may be disciplined for violation of the same.

F. Inventory Tracking System Access. A Medical Marijuana Business may grant access to its Inventory Tracking System account to the Controlling Beneficial Owners who are required to hold Owner Licenses, as well as the licensed agents and employees of a Medical Marijuana Business Operator having duties related to Inventory Tracking System activities of the Medical Marijuana Business(s) being operated.

1. The Controlling Beneficial Owners, agents, and employees of a Medical Marijuana Business Operator granted access to a Medical Marijuana Business's Inventory Tracking System account, shall comply with all Inventory Tracking System rules.

2. At least one Controlling Beneficial Owner of a Medical Marijuana Business being operated by a Medical Marijuana Business Operator must be an Inventory Tracking System Trained Administrator for the Medical Marijuana Business's Inventory Tracking System account. That Inventory Tracking System Trained Administrator shall control access to its Inventory Tracking System account, and shall promptly terminate the access of the Medical Marijuana Business Operator's Controlling Beneficial Owners, agents, and employees:

    a. When its contract with the Medical Marijuana Business Operator expires by its terms;

    b. When its contract with the Medical Marijuana Business Operator is terminated by any party; or

    c. When it is notified that the license of the Medical Marijuana Business Operator, or a specific Controlling Beneficial Owner, agent or employee of the Medical Marijuana Business Operator, has expired, or has been suspended or revoked.

G. Limitations on Use of Documents and Information Obtained from Medical Marijuana Businesses. A Medical Marijuana Business Operator, and its agents and employees, shall maintain the confidentiality of documents and information obtained from the other Medical Marijuana Business(es) it operates, and shall not use or disseminate documents or information obtained from a Medical Marijuana Business it operates for any purpose not authorized by the Marijuana Code and the rules promulgated pursuant thereto, and shall not engage in data mining or other use of the information obtained from a Medical Marijuana Business to promote the interests of the Medical Marijuana Business Operator or its Controlling Beneficial Owners, Passive Beneficial Owners, Indirect Financial Interest Holders, agents or employees, or any Person other than the Medical Marijuana Business it operates.

H. Form and Structure of Allowable Agreement(s) Between Operators and Owners. Any agreement between a Medical Marijuana Business and a Medical Marijuana Business Operator:

1. Must acknowledge that the Medical Marijuana Business Operator, and its Controlling Beneficial Owners, agents and employees who are engaged, directly or indirectly, in operating the Medical Marijuana Business, are agents of the Medical Marijuana Business being operated, and must not disclaim an agency relationship;

2. May provide for the Medical Marijuana Business Operator to receive direct remuneration from the Medical Marijuana Business, including a portion of the profits of the Medical Marijuana Business being operated, subject to the following limitations:

a. The portion of the profits to be paid to the Medical Marijuana Business Operator shall be commercially reasonable, and in any event shall not exceed the portion of the net profits to be retained by the Medical Marijuana Business being operated;

b. The Medical Marijuana Business Operator shall not be granted, and may not accept:

i. A security interest in the Medical Marijuana Business being operated, or in any assets of the Medical Marijuana Business;

ii. An ownership or membership interest, shares, or shares of stock, or any right to obtain any direct or indirect beneficial ownership interest in the Medical Marijuana Business being operated, or a future or contingent right to the same, including but not limited to options or warrants;

c. The Medical Marijuana Business Operator shall not guarantee the Medical Marijuana Business's debts or production levels.

3. Shall permit the Medical Marijuana Business being operated to terminate the contract with the Medical Marijuana Business Operator at any time, with or without cause.

I. A Medical Marijuana Business Operator may engage in dual operation of a Medical Marijuana Business and a Retail Marijuana Business at a single location, to the extent the Medical Marijuana Business being operated is permitted to do so pursuant to subsection 44-10-501(2)(a), C.R.S., and the Medical Marijuana Business Operator shall comply with the rules promulgated pursuant to the Marijuana Code, including the requirement of obtaining a valid license as a Retail Marijuana Business Operator.

J. Any Medical Marijuana Business Operators and the Medical Marijuana Business Operator's Owner Licensee(s) that are appointed by a court to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Medical Marijuana Business must comply with Rule 2-275(F).

Basis and Purpose – 5-615

The statutory authority for this rule includes but is not limited to sections, 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to establish license requirements for the Medical Marijuana Business Operator's Controlling Beneficial Owners, agents and employees, including those directly or indirectly engaged in the operation of other Medical Marijuana Business(es). This Rule 5-615 was previously Rule M 1703, 1 CCR 212-1.

5-615 – Medical Marijuana Business Operators: Employee Licenses for Personnel

A. Required Licenses.

1. Owner Licenses. All natural persons who are Controlling Beneficial Owners in a Medical Marijuana Business Operator must have a valid Owner License, associated with the Medical Marijuana Business Operator license. Such an Owner License shall satisfy all licensing requirements for work related to the business of the Medical Marijuana Business Operator and for work performed on behalf of, or at the Licensed Premises of, the Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator.

2. Employee Licenses. All natural persons who are agents or employees of a Medical Marijuana Business Operator that are actively engaged, directly or indirectly, in the management, supervision, or operation of one or more other Medical Marijuana Businesses, including but not limited to all agents or employees who will come into contact with Medical Marijuana, who will have access to Limited Access Areas, or who will have access to the Inventory Tracking System account of the Medical Marijuana Business(es) being operated, must hold a valid Employee License. The Employee License shall satisfy all licensing requirements for work related to the business of the Medical Marijuana Business Operator and for work at the Licensed Premises of, or on behalf of, the Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator.

B. Employee Licenses Not Required. Employee Licenses are not required for Passive Beneficial Owners of a Medical Marijuana Business Operator or for natural persons who will not come into contact with Medical Marijuana, will not have access to Limited Access Area(s) of the Medical Marijuana Business(es) being operated, and will not have access to the Inventory Tracking System account of the Medical Marijuana Business(es) being operated.

C. Designation of Management Personnel of a Medical Marijuana Business Operated by a Medical Marijuana Business Operator. If a Medical Marijuana Business Operator is contracted to manage the overall operations of a Medical Marijuana Business's Licensed Premises, the Medical Marijuana Business shall designate separate and distinct management personnel on the Licensed Premises who is an officer, agent, or employee of the Medical Marijuana Business Operator, which shall be a natural person with a valid Owner License or Employee License, as set forth in paragraph A of this Rule, and the Medical Marijuana Business shall comply with the reporting provisions of subsection 44-10-313, C.R.S.

Basis and Purpose – 5-620

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(a)(VI), and 44-10-506, C.R.S. The purpose of this rule is to establish records retention standards for a Medical Marijuana Business Operators. This Rule 5-620 was previously Rule M 1704, 1 CCR 212-1.

5-620 – Medical Marijuana Business Operators: Business Records Required

A. General Requirement. A Medical Marijuana Business Operator must maintain all required business records as set forth in Rule 3-905 - Business Records Required, except that:

1. A Medical Marijuana Business Operator is not required to maintain secure facility information, diagrams of its designated place of business, or a visitor log for its separate place of business, because a Medical Marijuana Business Operator will not come into contact with Medical Marijuana at its separate place of business; and

2. A Medical Marijuana Business Operator is not required to maintain records related to inventory tracking, or transport, because a Medical Marijuana Business Operator is prohibited from engaging in activities on its own behalf that would require inventory tracking or transport. All records relating to inventory tracking activities and records related to transport pertaining to the Medical Marijuana Business(es) operated by the Medical Marijuana Business Operator shall be maintained at the Licensed Premises of such Medical Marijuana Business(es).

B. All records required to be maintained shall be maintained at the Medical Marijuana Business Operator's separate place of business, and not at the Licensed Premises of the Medical Marijuana Business(es) it operates.

5-700 Series – Marijuana Research and Development Facilities

Basis and Purpose – 5-705

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(j), 44-10-203(1)(k), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to establish and clarify the distinct license privilege granted to Marijuana Research and Development Facilities by the State Licensing Authority. This Rule 5-705 was previously Rule M 1901, 1 CCR 212-1.

5-705 – Marijuana Research and Development Facilities: License Privileges

A. License Privileges.

1. Licensed Premises. A Marijuana Research and Development Facility may share a Licensed Premises with a commonly owned Medical Marijuana Testing Facility. Additionally, a Marijuana Research and Development Facility with an R&D Co-Location Permit may share a Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility.

a. If a Marijuana Research and Development Facility shares its Licensed Premises with a commonly owned Medical Marijuana Testing Facility, the Licensees shall physically segregate all Medical Marijuana used for research purposes in order to prevent contamination or any other effect on Medical Marijuana submitted to the Medical Marijuana Testing Facility for testing.

b. If a Marijuana Research and Development Facility shares its Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility, the Marijuana Research and Development Facility must first obtain an R&D Co Location Permit for that Licensed Premises and must comply with all terms and conditions of the R&D Co-Location Permit.

2. Authorized Sources of Medical Marijuana. A Medical Marijuana Cultivation Facility and Medical Marijuana Products Manufacturer may Transfer Medical Marijuana to a Marijuana Research and Development Facility.

a. A Marijuana Research and Development Facility may also accept and possess Regulated Marijuana obtained in accordance with an approved Research Project.

b. Upon receipt of Regulated Marijuana pursuant to Rule 5-705(A)(2)(a), a Marijuana Research and Development Facility shall immediately enter the

Regulated Marijuana as Medical Marijuana in its Inventory Tracking System and shall follow all requirements of the Marijuana Code and these Rules including but not limited to inventory tracking and packaging and labeling. As part of and in compliance with the conditions of an approved Research Project, a Marijuana Research and Development Facility may Transfer the Medical Marijuana to another Marijuana Research and Development Facility or to a Medical or Retail Marijuana Testing Facility. In no event shall any marijuana obtained or Transferred pursuant to this Rule be consumed by humans or utilized in human subject research.

3. Cultivation of Marijuana Authorized. A Marijuana Research and Development Facility may grow, cultivate, possess, and Transfer Medical Marijuana for use in research only.

4. Production of Marijuana Concentrate. A Marijuana Research and Development Facility and a Medical Marijuana Cultivation Facility are subject to the same restrictions concerning Medical Marijuana Concentrate production. Therefore, a Marijuana Research and Development Facility may produce Medical Marijuana Concentrate only as allowed by, and in conformance with, Rule 5-220(A)-(B).

5. Production of Marijuana Products. A Marijuana Research and Development Facility and a Medical Marijuana Products Manufacturer are subject to the same restrictions concerning Medical Marijuana Product manufacturing. Therefore, a Marijuana Research and Development Facility may manufacture Medical Marijuana Product only as allowed by, and in conformance with, Rule 5-305.

6. Authorized Marijuana Transport. A Marijuana Research and Development Facility is authorized to utilize a licensed Medical Marijuana Transporter for transportation of Medical Marijuana to other Marijuana Research and Development Facility Licensees so long as the place where transportation orders are taken and delivered is a Marijuana Research and Development Facility. Nothing in this Rule prevents a Marijuana Research and Development Facility from transporting its own Medical Marijuana to other Marijuana Research and Development Facilities.

B. R&D Co-Location Permit. A Marijuana Research and Development Facility may obtain an R&D Co-Location Permit to operate at the same Licensed Premises as a commonly owned Medical Marijuana Products Manufacturer, Retail Marijuana Products Manufacturer, Medical Marijuana Cultivation Facility, or Retail Marijuana Cultivation Facility under the following circumstances:

1. The Marijuana Research and Development Facility must apply on current Division forms and pay any applicable fees.

2. A Marijuana Research and Development Facility may only apply for and hold an R&D Co-Location Permit if the Local Licensing Authority or Local Jurisdiction allow for Marijuana Research and Development Facility to operate at the same location as the specified Regulated Marijuana Business. Any R&D Co-Location Permit issued by the Division is conditioned upon the Marijuana Research and Development Facility's receipt of all required Local Licensing Authority or Local Jurisdiction approvals or acknowledgements.

3. The Marijuana Research and Development Facility and the specified Regulated Marijuana Business shall be commonly owned.

4. Prior to operating in the same Licensed Premises pursuant to an R&D Co-Location Permit, the Marijuana Research and Development Facility shall submit a co-location plan and standard operating procedures to the Division. The co-location plan and standard

operating procedures shall demonstrate protocols to prevent cross-contamination and protect public health and safety, including but not limited to:

a. Standards and controls for maintaining physical separation between the Marijuana Research and Development Facility's research activities and the cultivating or manufacturing activities of the co-located Regulated Marijuana Business; and

b. Standards and controls for maintaining physical separation between the Marijuana Research and Development Facility's Medical Marijuana and the co-located Regulated Marijuana Business's Regulated Marijuana.

5. The Division may request the assistance of the Colorado Department of Public Health and Environment or any other state or local agency in reviewing the co-location plan and standard operating procedures, and in determining whether the co-location plan and standard operating procedures demonstrate protocols to prevent cross-contamination and protect public health and safety.

6. Modifying the co-location plan and standard operating procedures shall be considered a significant change to the Licensed Premises. *See* Rule 2-260 – Changing, Altering, or Modifying the Licensed Premises.

7. Record keeping, inventory tracking, packaging and labeling for the Marijuana Research and Development Facility and co-located Regulated Marijuana Business must enable the Division, Local Licensing Authority, or Local Jurisdiction to clearly distinguish the inventory, transactions, and activities of the Marijuana Research and Development Facility from the inventory, transactions, and activities of the co-located Regulated Marijuana Business.

Basis and Purpose - 5-710

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-313(7), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to clarify those acts that are prohibited, or limited in some fashion, by a Marijuana Research and Development Facility. This Rule 5-710 was previously Rule M 1902, 1 CCR 212-1.

5-710 – Marijuana Research and Development Facility: General Limitations or Prohibited Acts

A. Restrictions Applicable to Any Marijuana Research and Development Facility.

1. Packaging and Labeling Standards Required. A Marijuana Research and Development Facility is prohibited from Transferring to a Licensee or any other Person Medical Marijuana that is not packaged and labeled in accordance with these rules. *See* 3-1000 Rule Series – Labeling, Packaging, and Product Safety.

a. Unless the Medical Marijuana was subject to contaminant testing required by the Marijuana Code and these rules, a Marijuana Research and Development Facility shall disclose to any individual receiving Medical Marijuana as part of an approved Research Project that the Medical Marijuana has not been subject to mandatory contaminant testing.

2. Transfers to Individuals. A Marijuana Research and Development Facility is prohibited from Transferring Medical Marijuana to any individual, unless as part of an approved Research Project.

3. Consumption Prohibited. A Marijuana Research and Development Facility shall not permit the consumption of Medical Marijuana on its Licensed Premises, unless the consumption is part of an approved Research Project and the Marijuana Research and Development Facility does not share a Licensed Premises with a Regulated Marijuana Business.

4. Worker Health and Safety. A Marijuana Research and Development Facility shall comply with all applicable federal, state, and local laws regarding worker health and safety.

5. Performance Incentives. A Marijuana Research and Development Facility may not use performance-based incentives to compensate its employees, agents, or contractors who will conduct research, development, or testing.

6. Licensure and Research Projects. A Marijuana Research and Development Facility shall not engage in any research activities until the State Licensing Authority or its delegate approves both (1) its business license application, pursuant to Rule 2-215, and (2) one or more Research Project(s), pursuant to Rule 5-715.

    a. A Marijuana Research and Development Facility may submit its business license application prior to or in conjunction with its Research Project proposal. Except that the Marijuana Research and Development Facility may not engage in any research activities except in conjunction with an approved Research Project.

    b. If a Marijuana Research and Development Facility's license expires or is suspended or revoked, the Licensee shall immediately cease all activities associated with the privileges of licensure, including but not limited to research.

B. Restrictions Applicable to Marijuana Research and Development Facilities.

1. Transfer Restriction. A Marijuana Research and Development Facility may only Transfer Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product to:

    a. A Medical Marijuana Testing Facility for testing;

    b. A natural person as part of and in compliance with the conditions of an approved Research Project;

    c. In the case of Medical Marijuana cultivated at the Licensed Premises of the Marijuana Research and Development Facility, to another Marijuana Research and Development Facility; or

    d. In the case of an Immature Plant that has not been exposed to a chemical prohibited by Rule 3-325, to another Medical Marijuana Business.

Basis and Purpose – 5-715

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to ensure that any research or development conducted by a Marijuana Research and Development Facility shall be in furtherance of a Research Project approved by the Division. The purpose of this rule is also to establish the applicable requirements necessary for Marijuana Research and Development Facilities to seek and receive Division approval for all proposed Research Projects. This Rule 5-715 was previously Rule M 1904, 1 CCR 212-1.

5-715 – Marijuana Research and Development Facility: Project Approval

A. Project Approval. Prior to engaging in any research activities, a Marijuana Research and Development Facility shall obtain approval from the Division for a Research Project by submitting a Research Project proposal. Any research or development conducted by a Marijuana Research and Development Facility shall be in furtherance of an approved Research Project.

1. General. A Marijuana Research and Development Facility Applicant or Licensee shall seek approval of the Division by submitting its Research Project proposal.

a. A Research Project proposal shall include a description of the Research Project's defined protocol, clearly articulated goal(s), defined methods and outputs, and a defined start and end date.

i. The description of the proposed Research Project proposal shall include the quantity of Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana Product reasonably required to conduct the proposed Research Project, the total quantity of which is subject to approval by the Division as part an approved Research Project.

b. A Marijuana Research and Development Facility may enter into contracts or agreements with a public higher education research institution or another Marijuana Research and Development Facility to conduct the proposed Research Project. A Marijuana Research and Development Facility Applicant or Licensee shall disclose all contracts or agreements with a public higher education research institution or a Marijuana Research and Development Facility.

i. If a Marijuana Research and Development Facility enters into a contract or agreement to conduct a Research Project with a public higher education research institution, all research activities involving possession of Medical Marijuana shall occur at the Marijuana Research and Development Facility's Licensed Premises. Employees, agents, or contractors of the public higher education research institution may not work at or conduct research activities at the Marijuana Research and Development Facility's Licensed Premises unless they hold an Employee License issued by the State Licensing Authority.

c. A Marijuana Research and Development Facility may submit additional Research Project proposals at any time during which its license is current and valid.

2. Private Research. Unless the proposed Research Project is being conducted in whole or in part by a Public Institution or with Public Money, the Marijuana Research and Development Facility Applicant or Licensee shall obtain a review of its proposed Research Project by one or more independent reviewers. The Division, in its discretion, may require a Marijuana Research and Development Facility Applicant or Licensee to nominate multiple independent reviewers. The Division must approve each nominated independent reviewer.

a. Fees and Costs. The Applicant or Licensee shall be solely responsible for any fees or costs associated with all aspects and all stages of the independent reviewer's services.

b. Qualifications of an Independent Reviewer. Each independent reviewer nominated by a Marijuana Research and Development Facility Applicant or Licensee must be a qualified researcher within the field of study that relates to proposed Research Project.

i. The Division may consult with the Colorado Department of Public Health and Environment and/or the Colorado Department of Agriculture in reviewing whether a nominated independent reviewer is qualified to review the Marijuana Research and Development Facility's Research Project.

ii. The Division, in its discretion, may require a nominated independent reviewer or the Marijuana Research and Development Facility to provide additional information or analysis that the Division deems pertinent to its review of whether to approve the Licensee's nomination of the independent reviewer.

c. Conflicts of Interest. A Marijuana Research and Development Facility Applicant or Licensee must disclose all pre-existing financial, employment, business, or personal relationships between the Marijuana Research and Development Facility or any of its Owner Licensees and each independent reviewer. In determining whether to approve an independent reviewer, the Division may consider whether a pre-existing relationship exists that could affect the independent reviewer's independence or appearance of independence.

d. Independent Reviewer Approval Required. If a Marijuana Research and Development Facility Applicant or Licensee nominates an independent reviewer who is not approved by the Division, the State Licensing Authority may deny a Research Project on that ground unless the Marijuana Research and Development Facility Applicant or Licensee nominates another independent reviewer who is approved by the Division.

e. Independent Reviewer Report. After an independent reviewer has been approved by the Division, the Marijuana Research and Development Facility Applicant or Licensee shall submit a report by the independent reviewer to the Division as part of its Research Project proposal. The independent reviewer's report shall address the following criteria as described in the Research Project's description:

i. The identity of the independent reviewer and his/her employer;

ii. Any compensation paid by the Marijuana Research and Development Facility Applicant or Licensee for the review and report;

iii. A description of the review conducted by the independent reviewer, including but not limited to an identification of all documents that were reviewed;

iv. An analysis by the independent reviewer as to whether the proposed Research Project constitutes a type of approved research pursuant to Rule 5-720(A) and the reason(s) supporting the reviewer's analysis;

v. An assessment of the total quantity of Medical Marijuana reasonably required to conduct the proposed Research Project;

vi. An assessment of whether the proposed Research Project presents any type of danger to the public health and/or safety, and/or whether the proposed Research Project presents any health or safety risks;

vii. An assessment of whether the proposed Research Project has a strong scientific basis, appropriate study design, and technically sound scientific methodology;

viii. An assessment of whether the Marijuana Research and Development Facility Applicant or Licensee is qualified to perform the proposed Research Project, including whether Marijuana Research and Development Facility Applicant or Licensee's employees are qualified to perform the proposed Research Project;

ix. An assessment of whether the Marijuana Research and Development Facility Applicant or Licensee has the appropriate resources and protocols to conduct the proposed Research Project;

x. An assessment of whether the Marijuana Research and Development Facility Applicant or Licensee has the appropriate personnel, expertise, facilities, infrastructure, funding, and other human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule 5-720(C) and (D);

xi. The following certification by the independent reviewer: "I hereby certify and affirm that I do not have any financial, employment, business, or personal relationship with [INSERT MARIJUANA RESEARCH AND DEVELOPMENT FACILITY NAME] ("Licensee") that would influence or affect my review of the Licensee's proposed Research Project activity. Other than the fees disclosed herein, neither the Licensee nor any other person has given me anything of value or made any promises to me that would influence or affect my review of the Licensee's proposed research activity. I further certify and affirm that this report was drafted by me, and that the information, analysis, and conclusions herein represent solely my work and conclusions."; and

xii. The signature of the independent reviewer.

f. The Marijuana Research and Development Facility shall maintain copies of all documents and correspondence sent to or from the independent reviewer. *See* Rule 3-905 – Business Records Required.

g. The Division, in its discretion, may require the independent reviewer and/or the Marijuana Research and Development Facility Applicant or Licensee to provide additional information or analysis that the Division deems pertinent to its review of the Applicant or Licensee's Research Project proposal.

h. The State Licensing Authority may decline to approve a Research Project proposal if an independent reviewer or the Division through further investigation concludes that:

i. The description of the Research Project does not meet the requirements of section 44-10-507, C.R.S., and these rules;

ii. The proposed Research Project presents a danger to the public health and/or safety, and/or the research to be conducted pursuant to the Research Project presents any health or safety risks;

iii. The proposed Research Project lacks scientific value or validity;

iv. The Marijuana Research and Development Facility Applicant or Licensee is not qualified to perform the proposed research;

v. The Marijuana Research and Development Facility Applicant or Licensee does not have the appropriate resources and/or protocols to conduct the proposed research;

vi. The Marijuana Research and Development Facility Applicant or Licensee lacks the appropriate personnel, expertise, facilities, infrastructure, funding, or human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule 5-720(C) and (D);

vii. The independent reviewer(s) cannot meet the certification requirements in this Rule; or

viii The Marijuana Research and Development Facility Applicant or Licensee or the proposed Research Project is otherwise not in compliance with the Marijuana Code or these rules.

3. Projects with Public Institutions or Money. If a Marijuana Research and Development Facility Applicant or Licensee's proposed Research Project will be conducted in whole or in part with a Public Institution or Public Money, the Division shall refer the Licensee's Research Project proposal to the Scientific Advisory Council established by section 25-1.5-106.5(3), C.R.S., for review.

a. The Marijuana Research and Development Facility Applicant or Licensee shall supply the Scientific Advisory Council with any information and/or documents requested by the Scientific Advisory Council within the deadline imposed by the Scientific Advisory Council. A Marijuana Research and Development Facility Applicant or Licensee's failure to supply information and/or documents requested by the Scientific Advisory Council within the deadline set by the Scientific Advisory Council shall be grounds for denial of the Research Project proposal.

b. The Scientific Advisory Council shall review the proposed Research Project to ensure that the proposed Research Project meets the requirements of Rule 5-720(A).

c. The Scientific Advisory Council shall also assess the adequacy of the following:

i. The proposed Research Project's quality, study design, value, or impact;

ii. Whether the Marijuana Research and Development Facility Applicant or Licensee has the appropriate personnel, expertise, facilities, infrastructure, funding, and human, animal, or other approvals in place to successfully conduct the Research Project, including but not limited to the requirements in Rule 5-720(C) and (D); and

iii. Whether the amount of Medical Marijuana the Marijuana Research and Development Facility Applicant or Licensee proposes to grow or possess is consistent with the proposed Research Project's scope and goals.

d. The Scientific Advisory Council shall communicate the results of its review of the proposed Research Project to the Division. If the Scientific Advisory Council

determines that the requirements of either Paragraph (b) or (c) of this Rule are not satisfied, then the proposed Research Project shall be denied.

e. The Marijuana Research and Development Facility shall maintain copies of all documents and correspondence sent to or from the Scientific Advisory Council. *See* Rule 3-905 – Business Records Required.

Basis and Purpose – 5-720

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule to establish the limited research purposes authorized for Marijuana Research and Development Facilities. The purpose of this rule is also to establish additional requirements for Research Projects involving human subjects and animal subjects, as well as restrictions on the use of Pesticides. The rule also establishes reporting requirements and explains when the State Licensing Authority may require a Marijuana Research and Development Facility to undergo an audit of its research activities. This Rule 5-720 was previously Rule M 1905, 1 CCR 212-1.

5-720 – Marijuana Research and Development Facility: Authorized Research Activities

A. Authorized Research. A Marijuana Research and Development Facility is authorized to engage in the following research at its Licensed Premises:

1. Chemical Potency and Composition Levels.

2. Clinical Investigations of Marijuana-Derived Products.

3. Efficacy and Safety of Administering Marijuana as Part of Medical Treatment.

4. Genomic Research.

5. Horticultural Research.

6. Agricultural Research.

7. Marijuana-Affiliated Products or Systems. A marijuana-affiliated product or system includes products or systems such as marijuana delivery systems and cultivation or processing equipment.

B. Pesticide Research. A Marijuana Research and Development Facility shall not engage in any research activities involving Pesticides unless the Marijuana Research and Development Facility has applied for and received any necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 *et seq.,* C.R.S., and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.

1. A Marijuana Research and Development Facility engaged in research activities involving Pesticide shall at all times comply with the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S., Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S., and all rules promulgated pursuant thereto.

C. Research Involving Human Subjects. A Marijuana Research and Development Facility shall not conduct any research involving human subjects unless all aspects of its proposed Research Project have been reviewed and approved by an Institutional Review Board that is registered and in good standing with Office for Human Research Protections, U.S. Department of Health and Human Services.

1. A Marijuana Research and Development Facility shall include proof of approval and ongoing oversight and review by an Institutional Review Board as part of its Research Project proposal. A Research Project may be approved conditioned upon subsequent Institutional Review Board approval. A Licensee shall not engage in any Research Project involving human subjects until it receives approval by the Institutional Review Board and its Research Project is approved. A Marijuana Research and Development Facility conducting research involving human subjects shall also comply with any ongoing monitoring required by the Institutional Review Board.

2. A Marijuana Research and Development Facility conducting research involving human subjects shall at all times comply with the U.S. Department of Health and Human Services' requirements for protection of human research subjects, including additional safeguards necessary for vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, 45 C.F.R. part 46, and all other relevant federal and/or state laws and regulations regarding research on human subjects, as well as all prevailing ethical standards and requirements for research involving human subjects.

3. A Marijuana Research and Development Facility conducting research involving human subjects shall obtain informed consent from any individual participating in such research prior to the individual's participation in the research. A Marijuana Research and Development Facility shall comply with U.S. Food and Drug Administration requirements for informed consent and additional safeguards for children in clinical investigations, 21 C.F.R. part 50, as part of approval and ongoing oversight and review by an Institutional Review Board.

D. Research Involving Animal Subjects. A Marijuana Research and Development Facility shall not conduct any research involving animal subjects as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g) unless the Marijuana Research and Development Facility is registered with the U.S. Department of Agricultural pursuant to the Animal Welfare Act, 7 U.S.C. §§ 2131 *et seq.*

1. A Marijuana Research and Development Facility shall include proof of its current registration with the U.S. Department of Agriculture as part of its Research Project proposal. Failure to be registered with the U.S. Department of Agriculture shall be grounds for denial of Research Project proposal involving animal subjects.

2. A Marijuana Research and Development Facility shall at all times treat animal subjects as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g) involved in research humanely and consistent with all relevant federal and/or state laws and regulations, as well as all prevailing ethical standards and requirements for research on such animals.

E. Research Involving Testing of Marijuana. A Marijuana Research and Development Facility may only engage in research regarding the testing of Medical Marijuana if the following criteria are met:

1. Testing Qualifications. A Marijuana Research and Development Facility must meet at least one of the following standards:

a. The Marijuana Research and Development Facility also holds a Medical Marijuana Testing Facility license and has been certified pursuant to Rule 5-415;

b. The Marijuana Research and Development Facility is accredited to the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO 17025 standard; or

c. The Marijuana Research and Development Facility is part of an institution of higher education whose protocols have been approved by the Colorado Department of Public Health and Environment.

2. A Marijuana Research and Development Facility proposing to engage in research regarding the testing of Medical Marijuana shall include in its Research Project proposal documentation establishing its testing qualification pursuant to Paragraph (E)(1) of this Rule. *See* Rule 5-715 – Marijuana Research and Development Facilities: Project Approval.

F. Transfers of Marijuana Used in Research. A Marijuana Research and Development Facility shall not Transfer to any Person any Medical Marijuana unless such Transfer is authorized under Rule 5-710. Otherwise, a Marijuana Research and Development Facility shall at the conclusion of its research destroy all remaining Medical Marijuana subject to the Marijuana Research and Development Facility's approved Research Project. Unless otherwise provided, a Research Project will be deemed concluded on its defined end date as provided in the Marijuana Research and Development Facility's Research Project proposal that was submitted to and approved by the Division. The Marijuana Research and Development Facility shall ensure destruction of such remaining Medical Marijuana is destroyed in conformance with Rule 3-230.

G. Periodic Reporting. A Marijuana Research and Development Facility shall submit to the Division a report regarding the status of approved Research Projects every six months following the Division's approval of its Research Project.

1. The periodic reports shall address the Marijuana Research and Development Facility's compliance and progress with its approved Research Project.

2. The periodic reports shall include any protocol changes or reported protocol deviations, as well as enrollment numbers and adverse events for studies involving human subjects.

3. If the Marijuana Research and Development Facility is conducting its Research Project in whole or in part with a Public Institution or Public Money, the Division shall submit the Marijuana Research and Development Facility's periodic reports to the Scientific Advisory Council for review.

4. If an adverse event occurs, the Marijuana Research and Development Facility shall immediately notify the Division of the adverse event on the form prepared by the Division.

H. Suspension or Revocation of Project Approval. Research Project approval is subject to revocation or suspension if the Marijuana Research and Development Facility's research has materially diverged from the Marijuana Research and Development Facility's approved Research Project, violates the Marijuana Code or the rules promulgated thereto, or presents a risk to public health and safety. *See* 8-200 Series Rules – Discipline.

I. Reporting of Research Results. A Marijuana Research and Development Facility shall supply the Division with copies of all final reports, findings, or documentation regarding the outcomes of approved Research Projects.

J. Independent Research Audit. The State Licensing Authority in its discretion may at any time require that a Marijuana Research and Development Facility undergo an audit of its research activities.

1. Circumstances Justifying Independent Research Audit. The following is a non-exhaustive list of examples that may justify an independent research audit:

a. The Division has reasonable grounds to believe that the Marijuana Research and Development Facility is in violation of one or more of the requirements set forth in these rules or other applicable statutes or regulations;

b. The Division has reasonable grounds to believe that the Marijuana Research and Development Facility's research activities present a danger to the public health and/or safety; or

c. The Division has reasonable grounds to believe that the Marijuana Research and Development Facility has been or is engaged in research activities that have not received prior Division approval.

2. Selection of An Independent Consultant. The Division and the Marijuana Research and Development Facility may attempt to mutually agree upon the selection of an independent consultant to perform a research audit. However, the Division always retains the authority to select the independent consultant regardless of whether mutual agreement can be reached.

3. Costs. The Marijuana Research and Development Facility subject to an independent research audit will be responsible for all costs associated with the independent research audit, including but not limited to the auditor's fees.

4. Compliance Required. A Marijuana Research and Development Facility must pay for and timely cooperate with the State Licensing Authority's requirement that it undergo an independent research audit in conformance with this Rule.

K. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 5-725

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The purpose of this rule is to permit laboratory testing of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana Products used by Marijuana Research and Development Facilities. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Marijuana Research and Development Facilities. This Rule 5-725 was previously Rule M 1907, 1 CCR 212-1.

5-725 – Marijuana Research and Development Facility: Testing

A. Samples on Demand. Upon request of the Division, a Marijuana Research and Development Facility shall submit a sufficient quantity of Medical Marijuana to a Medical Marijuana Testing Facility for testing. The Division will notify the Marijuana Research and Development Facility of the results of the analysis. *See* Rule 3-805 – Medical Marijuana Business: Inventory Tracking System; Rule 3-905 – Business Records Required.

B. Samples Provided for Testing. A Marijuana Research and Development Facility may provide Samples of its Medical Marijuana to a Medical Marijuana Testing Facility for testing purposes. The Marijuana Research and Development Facility shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

Basis and Purpose – 5-730

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(1)(i), 44-10-203(2)(s), 44-10-401(1)(a)(VII), and 44-10-507, C.R.S. The

purpose of this rule is to establish a Marijuana Research and Development Facility may only possess an amount of Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana Product Medical Marijuana approved in conjunction with the Licensee's approved Research Projects. The purpose of this rule is also to establish additional Inventory Tracking and separation requirements for Medical Marijuana cultivated for Transfer by a Marijuana Research and Development Cultivation. This Rule 5-730 was previously Rule M 1908, 1 CCR 212-1.

5-730 – Marijuana Research and Development Facility: Production Management and Possession Limits

A. Marijuana Authorized for Transfer. A Marijuana Research and Development Facility that is authorized to cultivate Medical Marijuana for Transfer to other Marijuana Research and Development Facilities may not have more than 500 Medical Marijuana plants and 20 pounds of Medical Marijuana in its Limited Access Area at any given time, unless expressly approved by the Division as part of an approved Research Project.

1. A Marijuana Research and Development Facility shall indicate in the Inventory Tracking System whether Medical Marijuana is going to be used by the Licensee in an approved Research Project or Transferred to another Marijuana Research and Development Facility. A Marijuana Research and Development Facility may cultivate Medical Marijuana prior to approval of a Research Project, except the Marijuana Research and Development Facility may only designate such Medical Marijuana as Medical Marijuana to be Transferred to other Marijuana Research and Development Facilities unless the Marijuana Research and Development Facility has an approved Research Project. Upon approval of a Research Project, a Marijuana Research and Development Facility shall indicate in the Inventory Tracking System whether any such Medical Marijuana authorized for Transfer will be subject to the Marijuana Research and Development Facility's research pursuant to the approved Research Project.

B. Marijuana for Research. A Marijuana Research and Development Facility shall only possess for research the amount of Medical Marijuana approved by the Division pursuant to each of the Licensee's approved Research Projects.

C. Separation of Marijuana Used in Research. A Marijuana Research and Development Facility shall physically separate all Medical Marijuana used in the Licensee's own approved Research Project(s) from Medical Marijuana to be Transferred to other Marijuana Research and Development Facilities for approved Research Projects.

Part 6 – Retail Marijuana Business License Types

6-100 Series – Retail Marijuana Stores

Basis and Purpose – 6-105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(dd), 44-10-401(2)(b)(I), 44-10-601, and 44-10-605, C.R.S. The purpose of this rule is to the license privileges of a Retail Marijuana Store licensee. This Rule 6-105 was previously Rule R 401.

6-105 – Retail Marijuana Store: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Business–Shared Licensed Premises and Operational Separation, a Retail Marijuana Store may share, and operate at, the same Licensed Premises with a commonly-owned Medical Marijuana Store. However, a separate license is required for each specific business or business entity, regardless of geographical location.

B. Authorized Sources of Retail Marijuana. A Retail Marijuana Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.

C. Samples Provided for Testing. A Retail Marijuana Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Store shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

D. Authorized On-Premises Storage. A Retail Marijuana Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

E. Authorized Marijuana Transport. A Retail Marijuana Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Store from transporting its own Retail Marijuana.

F. Performance-Based Incentives. A Retail Marijuana Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

G. Authorized Transfers of Industrial Hemp Products. This rule is effective July 1, 2020. A Retail Marijuana Store may Transfer Industrial Hemp Product to a consumer only after it has confirmed:

1. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

2. That the Person Transferring the Industrial Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

H. Retail Marijuana Store Delivery Permit.

1. Prior to January 2, 2021, all Retail Marijuana Stores are prohibited from delivering Regulated Marijuana to consumers.

2. After January 2, 2021, a Retail Marijuana Store with a valid delivery permit may accept delivery orders deliver Retail Marijuana to consumers pursuant to Rule 3-615.

3. A Retail Marijuana Store that does not possess a valid delivery permit cannot deliver Retail Marijuana.

I. Automated Dispensing Machines: A Retail Marijuana Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to consumers.

J. Walk-up Window or Drive-up Window. A Retail Marijuana Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this rule.

1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, a Retail Marijuana Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the consumer's identification and ensure that the consumer is 21 years of age or older.

b. The Retail Marijuana Store may accept telephone or internet orders or may accept orders from the customer at the walk-up window or drive-up window. Retail Marijuana Stores may not accept payment for Retail Marijuana over the internet.

c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Retail Marijuana Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods are permitted for payments for Retail Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Retail Marijuana Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. A Retail Marijuana Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

Basis and Purpose – 6-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-401(2)(b)(I), 44-10-701(1)(a), 44-10-701(3)(d)

and (f), and 44-10-601, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.

Regarding quantity limitations on sales, equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower have been included in this rule pursuant to the mandate of House Bill 14-1361. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Retail Marijuana Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

This Rule 6-110 was previously Rule R 402, 1 CCR 212-2.

6-110 – Retail Marijuana Sales: General Limitations or Prohibited Acts

A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.

B. Age Verification. Licensees must verify on two separate occasions that a Person is 21 years of age or older. First, prior to permitting a Person to enter the Restricted Access Area, a Licensee must verify that the Person has a valid government-issued photo identification showing that the Person is 21 years of age or older. Second, prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

C. Quantity Limitations On Sales.

1. A Retail Marijuana Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A Retail Marijuana Store may also Transfer up to six (6) seeds in addition to the one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product to a consumer in a single transaction. A single transaction includes multiple Transfers to the same consumer during the same business day where the Retail Marijuana Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:

a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.

C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, a Retail Marijuana Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.

E. Sales over the Internet. A Licensee is prohibited from selling Retail Marijuana over the internet. Any Transfer of Retail Marijuana must occur within the Retail Marijuana Store's Restricted Access Area. Only a Licensee holding a valid delivery permit may make sales over the internet or deliver to a private residence.

F. Delivery Outside Colorado Prohibited. A Retail Marijuana Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.

G. Prohibited Items. A Retail Marijuana Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or an Industrial Hemp Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

H. Free Product Prohibited. A Retail Marijuana Store may not give away Retail Marijuana to a consumer for any reason.

I. Nicotine or Alcohol Prohibited. A Retail Marijuana Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 46 or 47 of Title 12, C.R.S.

J. Storage and Display Limitations.

1. A Retail Marijuana Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

2. Any Retail Marijuana Concentrate displayed in a Retail Marijuana Store must include the potency of the concentrate on a sign next to the name of the product.

    a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.

    b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

K. Transfer of Expired Product Prohibited. A Retail Marijuana Store shall not Transfer any expired Retail Marijuana Product to a consumer.

L. Transfer Restriction.

1. Sampling Units. A Retail Marijuana Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. A Retail Marijuana Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer, or a Marijuana Research and Development Facility.

L.5. Standard Operating Procedures. A Retail Marijuana Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

1. Provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:

   a. The distinct shape of a human, animal, or fruit; or

   b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

N. Adverse Health Event Reporting. A Retail Marijuana Store must report Adverse Health Events pursuant to Rule 3-920.

O. Corrective and Preventive Action. This paragraph O shall be effective January 1, 2021. A Retail Marijuana Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(z), and 44-10-202(3)(h), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to establish that a Retail Marijuana Store must control and safeguard access to certain areas where Retail Marijuana and Retail Marijuana Product will be sold to the general public and prevent the diversion of Retail Marijuana and Retail Marijuana Product to people under 21 years of age. This Rule 6-115 was previously Rule R 403, 1 CCR 212-2.

6-115 – Point of Sale: Restricted Access Area

A. Identification of Restricted Access Area. All areas where Retail Marijuana are sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, “Restricted Access Area – No One Under 21 Years of Age Allowed.”

B. Consumers in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times when consumers are present to ensure that only persons who are 21 years of age or older are permitted to enter. When allowing a customer access to a Restricted Access Area, Owner Licensees and Employee Licensees shall make reasonable efforts to limit the number of consumers in relation to the number of Owners Licensees and Employee Licensees in the Restricted Access Area at any time.

C. Display of Retail Marijuana. The display of Retail Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the consumer must be supervised by the Owner Licensee or Employee Licensees at all times when consumers are present.

D. Pregnancy Warning. Retail Marijuana Stores must post, at all times and in a prominent place inside the Restricted Access Area, a warning that is at minimum three inches high and six inches wide that reads:

> **WARNING:** Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.

6-200 Series – Retail Marijuana Cultivation Facilities

Basis and Purpose – 6-205

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-203(2)(r), 44-10-203(3)(c), 44-10-401(2)(b)(II), and 44-10-602, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to a Retail Marijuana Cultivation Facility. This Rule 6-205 was previously Rule R 501, 1 CCR 212-2.

6-205 – Retail Marijuana Cultivation Facility: License Privileges

A. Licensed Premises. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Cultivation Facility. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises as a Marijuana Research and Development Facility so long as:

1. Each business or business entity holds a separate license;

2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

3. Both the Marijuana Research and Development Facility and the Retail Marijuana Cultivation Facility comply with all terms and conditions of the R&D Co-Location Permit; and

4. Both the Marijuana Research and Development Facility and the Retail Marijuana Cultivation Facility comply with all applicable rules. *See* 5-700 Series Rules.

B. Cultivation of Retail Marijuana and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate Authorized. A Retail Marijuana Cultivation Facility may propagate, cultivate, harvest, prepare, cure, package, store, and label Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate.

C. Authorized Transfers. A Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate to another Retail Marijuana Business. A Retail Marijuana Cultivation Facility and an Accelerator Cultivator may also Transfer to a Medical Marijuana Cultivation Facility in compliance with Rules 6-230 and 6-730.

1. A Retail Marijuana Cultivation Facility shall not Transfer Flowering plants. A Retail Marijuana Cultivation Facility may only Transfer Vegetative plants as authorized pursuant to Rule 3-605.

2. A Retail Marijuana Cultivation Facility may Transfer Sampling Units of Retail Marijuana or Retail Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-602(6), C.R.S., and Rule 6-225.

3. A Retail Marijuana Cultivation Facility may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Retail Marijuana Cultivation Facility prior to testing required by these rules only if such Transfer is in accordance with one of the two options below.

a. The Retail Marijuana Cultivation Facility may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Retail Marijuana Cultivation Facility prior to testing if such Transfer is for the purpose of Decontamination and only after all other steps outlined in the Retail Marijuana Cultivation Facility's standard operating procedures have been completed, including but not limited to drying, curing, and trimming; or

b. The Retail Marijuana Cultivation Facility may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Retail Marijuana Cultivation Facility prior to testing, drying, curing, trimming, or completion of any other steps in the Retail Marijuana Cultivation Facility's standard operating procedures, subject to the following additional requirements:

i. The Retail Marijuana Cultivation Facility receiving the Transfer is identified as a centralized processing hub in the Inventory Tracking System and must have identical Controlling Beneficial Owner(s) with the originating Retail Marijuana Cultivation Facility;

ii. An originating Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana to one receiving Retail Marijuana Cultivation Facility that will be serving as a centralized processing hub;

iii. The Retail Marijuana or Retail Marijuana Concentrate is weighed prior to leaving the originating Retail Marijuana Cultivation Facility and immediately upon receipt at the receiving Retail Marijuana Cultivation Facility and in accordance with Rule 3-605;

iv. The Transfer, weighing and entry into the Inventory Tracking System are all completed within 24 hours from initiating the Transfer;

v. The receiving Retail Marijuana Cultivation Facility is responsible for compliance with all testing requirements regardless of any testing performed prior to Transfer. If the receiving Retail Marijuana Cultivation Facility is pursuing a Reduced Testing Allowance, a Reduced Testing Allowance must be achieved separately for marijuana received from each originating Retail Marijuana Cultivation Facility. A Retail Marijuana Cultivation Facility that has achieved a Reduced Testing Allowance must maintain and produce complete testing records that can verify that facility's compliance with testing and Reduced Testing Allowance requirements; and

vi. The standard operating procedures for the originating Retail Marijuana Cultivation Facility and receiving Retail Marijuana Cultivation Facility clearly reflect the steps taken by each facility to Transfer, transport, receive, process, and test Harvest Batches.

4. A Retail Marijuana Cultivation Facility may transfer Retail Marijuana to a Pesticide Manufacturer.

D. Authorized On-Premises Storage. A Retail Marijuana Cultivation Facility is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area and tracked consistently with the inventory tracking rules.

E. Samples Provided for Testing. A Retail Marijuana Cultivation Facility may provide Samples of its Retail Marijuana to a Retail Marijuana Testing Facility for testing and research purposes. The

Retail Marijuana Cultivation Facility shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. A Retail Marijuana Cultivation Facility is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Cultivation Facility from transporting its own Retail Marijuana.

G. Performance-Based Incentives. A Retail Marijuana Cultivation Facility may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Retail Marijuana Cultivation Facility may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-225 – Sampling Unit Protocols.

H. Authorized Sources of Retail Marijuana Seeds and Immature Plants. A Retail Marijuana Cultivation Facility shall only obtain Retail Marijuana seeds or Immature Plants from its own Retail Marijuana, properly Transferred Medical Marijuana cultivated at a Medical Marijuana Cultivation Facility with at least one identical Controlling Beneficial Owner, or properly Transferred from another Retail Marijuana Business pursuant to the inventory tracking requirements in the 3-800 Series Rules. A Retail Marijuana Cultivation facility may not bring seeds, Immature Plants, or other marijuana that is not Regulated Marijuana onto the Licensed Premises at any time.

I. Centralized Distribution Permit. A Retail Marijuana Cultivation Facility may apply to the State Licensing Authority for a Centralized Distribution Permit for authorization to temporarily store Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Retail Marijuana Stores.

1. For purposes of a Centralized Distribution Permit only, the term “commonly owned” means at least one natural person has a minimum of five percent ownership in both the Retail Marijuana Cultivation Facility possessing a Centralized Distribution Permit and the Retail Marijuana Store to which the Retail Marijuana Concentrate and Retail Marijuana Product will be Transferred.

2. To apply for a Centralized Distribution Permit, a Retail Marijuana Cultivation Facility may submit an addendum to its new or renewal application or a separate addendum prior to a renewal application on forms prepared by the Division to request a Centralized Distribution Permit. The Retail Marijuana Cultivation Facility shall send a copy of its Centralized Distribution Permit addendum to the Local Licensing Authority in the jurisdiction in which the Centralized Distribution Permit is proposed at the same time it submits the addendum to the State Licensing Authority.

3. A Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit and has obtained all required approvals from the local licensing jurisdiction where it is located, if any, may accept Transfers of Retail Marijuana Concentrate and Retail Marijuana Product from a Retail Marijuana Products Manufacturer for the sole purpose of temporary storage and Transfer to commonly owned Retail Marijuana Stores.

    a. A Retail Marijuana Cultivation Facility may only accept Retail Marijuana Concentrate and Retail Marijuana Product that is packaged and labeled for sale to a consumer pursuant to the 3-1000 Series Rules.

    b. A Retail Marijuana Cultivation Facility storing Retail Marijuana Concentrate and Retail Marijuana Product pursuant to a Centralized Distribution Permit shall not store such Retail Marijuana Concentrate or Retail Marijuana Product on the

Retail Marijuana Cultivation Facility's Licensed Premises for more than 90 days from the date of receipt.

c. All Transfers of Retail Marijuana Concentrate and Retail Marijuana Product by a Retail Marijuana Cultivation Facility shall be without consideration.

4. All security and surveillance requirements that apply to a Retail Marijuana Cultivation Facility apply to activities conducted pursuant to the privileges of a Centralized Distribution Permit.

J. Transition Permit. A Retail Marijuana Cultivation Facility may only operate at two geographical locations pursuant to Rule 2-255(D).

Basis and Purpose – 6-210

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-701(2)(a), 44-10-602, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Cultivation Facility. This Rule 6-210 was previously Rule R 502, 1 CCR 212-2.

6-210 – Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana that is not packaged and labeled in accordance with these rules. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. Transfer to Consumer Prohibited. A Retail Marijuana Cultivation Facility is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-602(6), C.R.S., and Rule 6-225.

C. Excise Tax Paid. A Retail Marijuana Cultivation Facility shall remit any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S.

D. Corrective and Preventive Action. This paragraph D shall be effective January 1, 2021. A Retail Marijuana Cultivation Facility shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

E. Adverse Health Event Reporting. A Retail Marijuana Cultivation Facility must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(r), 44-10-401(2)(b)(II), and 44-10-602, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Cultivation Facility and standards for the production of Retail Marijuana Concentrate. This Rule 6-215 was previously Rule R 505, 1 CCR 212-2.

6-215 – Retail Marijuana Cultivation Facilities: Retail Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Retail Marijuana Concentrate. A Retail Marijuana Cultivation Facility may only produce Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises and only in an area clearly designated as a Limited Access Area. *See* Rule 3-905- Business Records Required. No other method of production or extraction for Retail Marijuana Concentrate may be conducted within the Licensed Premises of a Retail Marijuana Cultivation Facility unless the Controlling Beneficial Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturer license and the room in which Retail Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If a Retail Marijuana Cultivation Facility produces Retail Marijuana Concentrate, then all areas in which the Retail Marijuana Concentrate are produced and all Controlling Beneficial Owners and Employee Licensees engaged in the production of the Retail Marijuana Concentrate shall be subject to all of the requirements imposed upon a Retail Marijuana Products Manufacturer that produces Retail Marijuana Concentrate, including all general requirements. *See* 3-300 Series Rules – Health and Safety Regulations and Rule 6-315 – Retail Marijuana Products Manufacturer: Retail Marijuana Concentrate Production.

C. Possession of Other Categories of Retail Marijuana Concentrate.

1. It shall be considered a violation of this Rule if a Retail Marijuana Cultivation Facility possesses a Retail Marijuana Concentrate other than a Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises unless: the Controlling Beneficial Owner(s) of the Retail Marijuana Cultivation Facility also has a valid Retail Marijuana Products Manufacturer license; or the Retail Marijuana Cultivation Facility has been issued a Centralized Distribution Permit and is in possession of the Retail Marijuana Concentrate in compliance with Rule 6-205(I).

2. Notwithstanding subparagraph (C)(1) of this Rule 6-215, a Retail Marijuana Cultivation Facility shall be permitted to possess Solvent-Based Retail Marijuana Concentrate only

when the possession is due to the Transfer of Retail Marijuana flower or trim that failed microbial testing to a Retail Marijuana Products Manufacturing Facility for processing into a Solvent-Based Retail Marijuana Concentrate, and the Retail Marijuana Products Manufacturer Transfers the resultant Solvent-Based Retail Marijuana Concentrate back to the originating Retail Marijuana Cultivation Facility.

a. The Retail Marijuana Cultivation Facility shall comply with all requirements in Rule 4-135(C) when having Solvent-Based Retail Marijuana Concentrate manufactured out of Retail Marijuana flower or trim that failed microbial testing.

b. The Retail Marijuana Cultivation Facility is responsible for submitting the Solvent-Based Retail Marijuana Concentrate for all required testing for contaminants pursuant to Rule 4-120 – Regulated Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Rules or the Marijuana Code.

c. Nothing in this Rule removes or alters the responsibility of the Retail Marijuana Cultivation Facility that Transfers the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to Rule 6-210(C).

D. Production of Alternative Use Product or Audited Product Prohibited. A Retail Marijuana Cultivation Facility shall not produce an Alternative Use Product or Audited Product.

E. Possession of Alternative Use Product or Audited Product. A Retail Marijuana Cultivation Facility is authorized to possess or Transfer Alternative Use Product and/or Audited Product only if the Retail Marijuana Cultivation Facility received the Alternative Use Product and/or Audited Product pursuant to a Centralized Distribution Permit from a Retail Marijuana Products Manufacturer that is manufacturing and Transferring the Alternative Use Product or Audited Product in accordance with Rule 6-325.

Basis and Purpose – 6-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(6), 44-10-401(2)(b)(II), and 44-10-602, C.R.S. The rule establishes a means by which to manage the overall production of Retail Marijuana in the state of Colorado. The intent of this rule is to encourage responsible production to meet demand for retail marijuana consumers, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana.

Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule. Additionally, throughout the rulemaking process stakeholders expressed concern over ensuring an adequate amount of licensed Retail Marijuana Stores exist to sell the amount of Retail Marijuana being produced at licensed Retail Marijuana Cultivation Facilities. Scaling the number of interests a Person may hold in Retail Marijuana Cultivation Facility licenses relative to the number of controlling interests the Person has in Retail Marijuana Store(s) has been incorporated in the production management rules as a means to address this production management concern.

The Rule 6-220 was previously Rule R 506, 1 CCR 212-2.

6-220 – Retail Marijuana Cultivation Facility: Production Management

A. One Retail Cultivation License per Licensed Premises.

1. One Retail Marijuana Cultivation License per Licensed Premises. Except as permitted by subparagraph (A)(2) only one Retail Marijuana Cultivation Facility License shall be permitted at each Licensed Premises and each Licensed Premises must be located at a distinct address recognized by the Local Jurisdiction.

2. Collapse after January 1, 2019. After January 1, 2019, collapse of more than one Retail Marijuana Cultivation Facility license at a single Licensed Premises through an approved change of location application shall be permitted if all Retail Marijuana Cultivation Facility licenses for which the collapse is sought meet the following requirements:

    a. All Retail Marijuana Cultivation Facility licenses sought to be collapsed have been continuously operating for at least 180 days prior to the proposed collapse;

    b. All Retail Marijuana Cultivation Facility licenses sought to be collapsed have identical Controlling Beneficial Owners holding identical ownership percentages;

    c. There is no pending administrative action regarding any of the Retail Marijuana Cultivation Facility licenses sought to be collapsed;

    d. The tier for the surviving Retail Marijuana Cultivation Facility license has not been decreased in the 180 days prior to the change of location application.

    e. All Retail Marijuana Cultivation Facility Licensees identify the desired surviving license and agree that all other Retail Marijuana Cultivation Facility licenses will be surrendered at the time of collapse; and

    f. Determining Tier for Surviving License.

        i. Surviving License Tier Will Not Decrease. The tier for the surviving license will not be decreased as a result of any approved change of location application.

        ii. Surrendered License is Tier 1 or Tier 2. For the surviving license to increase one tier or one increment of 3,600 plants if already tier 5 or higher, during the 180 days prior to the change of location application, the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time.

        iii. Surrendered License is Tier 3 or Higher. For the surviving license to increase by the maximum authorized plant count of the surrendered license, during the 180 days prior to the change of location application the surrendered license must have cultivated at least 50% of the maximum authorized plant count and Transferred at least 85% of the inventory it produced during that time. If during the 180 days prior to the change of location application, the surrendering license did not cultivate at least 50% of the maximum authorized plant count and Transfer at least 85% of the inventory it produced, the surviving license will only increase one tier or one increment of 3,600 plants if already a tier 5 or higher.

        iv. Division Determination of Tier. If a collapse results in a maximum authorized plant count in the middle of a tier, the surviving license's maximum authorized plant count will be rounded up to the top of that tier.

B. Production Management.

1. Production Management Tiers.

    a. Tier 1: 1 - 1,800 plants

    b. Tier 2: 1,801 – 3,600 plants

    c. Tier 3: 3,601 – 6,000 plants

    d. Tier 4: 6,001 – 10,200 plants

    e. Tier 5: 10,201 – 13,800+ plants

        i. Tier 5 shall not have a cap on the maximum authorized plant count.

        ii. The maximum authorized plant count above 10,200 plants shall increase in one or two increments of 3,600 plants. A Retail Marijuana Cultivation Facility Licensee shall be allowed to increase its maximum authorized plant count one or two increments of 3,600 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule 6-220.

2. All Retail Marijuana Cultivation Facility licenses granted on or after November 30, 2015 will be issued as a Tier 1 License.

3. Immature Plants. For purposes of calculating the maximum number of authorized plants, Immature Plants are excluded, but must be fully accounted for in the Inventory Tracking System.

4. Ground for Denial. The Division may deny an application for additional plants pursuant to paragraph E of this Rule if the Licensee exceeded the authorized plant count during the relevant time period for production.

5. Violation Affecting Public Safety. It may be considered a license violation affecting public safety for a Licensee to exceed the authorized plant count pursuant to these Rules.

C. Inventory Management.

1. Inventory Management for Retail Cultivation Facilities that Have One or Two Harvest Seasons a Year. Beginning the 721st day from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has one or two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 720 days.

2. Inventory Management for Retail Cultivation Facilities That Have More Than Two Harvest Seasons a Year. Beginning the 181st day from the commencement of its first cultivation activities, a Retail Marijuana Cultivation Facility that has more than two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 180 days.

D. Tier Decrease. For Retail Marijuana Cultivation Facilities that are authorized to cultivate more than 1,800 plants, the Division may review the purchases, Transfers, and cultivated plant count of

the Retail Marijuana Cultivation Facility Licensee in connection with the license renewal process or after an investigation. Based on the Division's review, the Division may reduce the Licensee's maximum allowed plant count to a lower production management tier pursuant to subparagraph (C)(1) of this Rule. When determining whether to reduce the maximum authorized plant count, the Division may consider the following non-exhaustive factors including but not limited to:

1. The Licensee sold less than 70% of what the inventory it reported as packaged in the Inventory Tracking System during any 180 day review period;

2. On average during the previous 180 days the Licensee actually cultivated less than 90% of the maximum number of plants authorized by the next lower production management tier;

3. Whether the plants/inventory suffered a catastrophic event during the review period;

4. Excise tax payment history;

5. Existing inventory and inventory history;

6. Sales contracts; and

7. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

E. Application for Additional Plants.

1. Retail Marijuana Cultivation Facilities That Have One or Two Harvest Seasons Per Year.

a. After accruing at least one harvest season of Transfers, a Retail Marijuana Cultivation Facility Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That during the previous harvest season prior to the tier increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count;

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System in the previous 360 days to another Retail Marijuana Business;

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the previous 360 days, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count; and

iv. Any other information requested to aid the Division in its evaluation of the production management tier increase application.

b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. *See* Rule 2-205 –Fees.

c. For a Licensee with an authorized plant count in tiers 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. *See* Rule 2-205 – Fees.

d. After accruing one harvest season during which the Retail Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a production management tier 5, two increments of 3,600 plants (7,200 plants total), every 360 days. It is within the Division's discretion to determine whether or not to grant the requested two tiers or increments of 3,600 plants (7,200 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

C. If the Retail Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking System during that time period and/or Transfers into the Retail Marijuana Cultivation Facility or related Retail Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Retail Marijuana Cultivation currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two 3,600 plant increments;

B. The Retail Marijuana Cultivation Facility cultivated at least 90% of its maximum authorized plant count and during the preceding 360 days the Retail Marijuana Cultivation Facility and/or any commonly owned Retail Marijuana Store Transferred in Retail Marijuana from one or more unrelated Retail Marijuana Cultivation Facility(ies);

C. The Retail Marijuana Cultivation has contracts for the sale of Retail Marijuana in the next 360 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Retail Marijuana Cultivation;

E. Any history of noncompliance with the Retail Code, Marijuana Code, and/or Rules by the Retail Marijuana Cultivation Facility,

or any commonly owned Retail Marijuana Business, and/or any investigation of, or administrative action(s) against, the Retail Marijuana Cultivation Facility, or any commonly owned Retail Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

2. Retail Marijuana Cultivation Facilities that have more than two harvest seasons per year.

a. After a 180-day period during which the Retail Marijuana Cultivation Facility Transferred and consistently cultivated, the Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That for 180 days prior to the tier increase application, the Licensee consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count, and

ii. That the Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the 180-day time period if the Licensee cultivated between 75% and 85% of its maximum authorized plant count.

iv. Any other information requested to aid the Division in its evaluation of the tier increase application.

b. If the Division approves the production management tier increase application, the Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants. *See* Rule 2-205 – Fees.

c. For a Licensee with an authorized plant count in tier 2-5 to continue producing at its expanded authorized plant count, the Licensee shall pay the requisite Retail Marijuana Cultivation Facility license fee and the applicable expanded production management tier fee at license renewal. *See* Rule 2-205 – Fees.

d. After accruing 180 days during which the Retail Marijuana Cultivation Facility Transferred and consistently cultivated the Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a tier 5, two increments of 3,600 plants (7,200 plants total) every 180 days. It is within the Division's discretion to determine whether or not to grant the requested two tier or two increments of 3,600 plants (7,200 plants total).

i. The Licensee must demonstrate:

A. That the Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business;

C. If the Retail Marijuana Cultivation Facility cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking system during that time period and/or Transfers into the Retail Marijuana Cultivation Facility or related Retail Marijuana Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Retail Marijuana Cultivation currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two increments of 3,600 plants;

B. The Retail Marijuana Cultivation Facility cultivated at least 90% of its maximum authorized plant count and during the preceding 180 days the Retail Marijuana Cultivation Facility and/or any commonly owned Retail Marijuana Store Transferred in Retail Marijuana from one or more unrelated Retail Marijuana Cultivation Facility(ies);

C. The Retail Marijuana Cultivation has entered into a written agreement(s) or contract(s) for the sale of Retail Marijuana in the next 180 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Retail Marijuana Cultivation;

E. Any history of noncompliance with the Retail Code, Marijuana Code, and/or Rules by the Retail Marijuana Cultivation Facility or any commonly owned Retail Marijuana Business(es), and/or any investigation of, or administrative action(s) against, the Retail Marijuana Cultivation Facility or any commonly owned Retail Marijuana Business;

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

e. A Retail Marijuana Cultivation Facility that does not have 180 days of cultivating history may apply to increase its plant count to tier 2 or tier 3 pursuant only to this subparagraph (E)(2)(e). A Retail Marijuana Cultivation Facility applying for a tier increase request under this subparagraph (E)(2)(e) must demonstrate all of the following at the time of application:

i. The Retail Marijuana Cultivation Facility making the tier increase request also owns at least three Retail Marijuana Stores with identical Controlling Beneficial Owners;

ii. The Controlling Beneficial Owners of the Retail Marijuana Cultivation Facility and three Retail Marijuana Stores used to support the tier increase request have owned the aforementioned Retail Marijuana Store licenses for at least the preceding 180 days;

iii. The three Retail Marijuana Stores used to support the tier increase request have consistently Transferred Regulated Marijuana to consumers in the preceding 180 days and have a history of wholesale purchases that justify the need for a tier increase above a tier 1;

iv. In the 180 days preceding the Licensee's tier increase request pursuant to this subparagraph (e), the Retail Marijuana Cultivation Facility, three Retail Marijuana Stores, and identical Controlling Beneficial Owners have not been subject to an administrative action issued by the State Licensing Authority;

v. The Retail Marijuana Cultivation Facility making the tier increase request has an established history of responsible cultivation and Transfers of its Regulated Marijuana inventory; and

vi. The Retail Marijuana Cultivation Facility subject to the tier increase request has not previously requested a tier increase pursuant to this subparagraph (e).

3. Application for Tier Increase. Applications for a tier increase that include any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation will be denied. In addition to denial, any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation is a public safety violation that may result in administrative action.

F. Maximum Allowed Retail Marijuana Cultivation Facility Licenses.

1. A Person that is a Controlling Beneficial Owner in Three or More Retail Marijuana Cultivation Facility Licenses. For every multiple of three Retail Marijuana Cultivation Facility licenses in which a Person is a Controlling Beneficial Owner, the Person must also be a Controlling Beneficial Owner in at least one Retail Marijuana Store. For example: (1) a Person that is a Controlling Beneficial Owner in three, four, or five Retail Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least one Retail Marijuana Store; (2) a Person that is a Controlling Beneficial Owner in six, seven, or eight Retail Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least two Retail Marijuana Stores; (3) a Person that is a Controlling Beneficial Owner in nine, ten, or eleven Retail Marijuana Cultivation Facility licenses also must be a Controlling Beneficial Owner in at least three Retail Marijuana Stores; etc.

2. A Person that is a Controlling Beneficial Owner in Less than Three Retail Marijuana Cultivation Facility Licenses. A Person that is a Controlling Beneficial Owner in less than three Retail Marijuana Cultivation Facility licenses shall not be required to be a Controlling Beneficial Owner in a Retail Marijuana Store.

G. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in this Rule on an industry-wide aggregate basis for all Retail Marijuana Cultivation Facility Licensees subject to that limitation.

Basis and Purpose – 6-225

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(II), and 44-10-602(6), C.R.S. The purpose of this rule is to establish the circumstances under which a Retail Marijuana Cultivation Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's Regulated Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Cultivation Facility that Transfer Sampling Units. This Rule 6-225 was previously Rule R 507, 1 CCR 212-2.

6-225 – Retail Marijuana Cultivation Facility: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Retail Marijuana Cultivation Facility may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Retail Marijuana Cultivation Facility who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. A person may be designated as a Sampling Manager by more than one Medical Marijuana Business or Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. A Retail Marijuana Cultivation Facility that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-602(6), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-225. *See also* Rule 3-905 – Business Records Required. A Retail Marijuana Cultivation Facility shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Harvest Batch or Production Batch. A Sampling Unit shall not be designated until the Harvest Batch or Production Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana flower or trim shall not exceed one gram.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Excise Tax Requirements. A Retail Marijuana Cultivation Facility must pay excise tax on Sampling Units of Retail Marijuana flower or trim, based on the average market rate of the unprocessed Retail Marijuana.

D. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Retail Marijuana Cultivation Facility as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than one ounce of Retail Marijuana or eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (D)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (D)(3). Before Transferring any Sampling Units, a Retail Marijuana Cultivation Facility shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limits established in subparagraph (D)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

E. Compensation Prohibited. A Retail Marijuana Cultivation Facility may not use Sampling Units to compensate a Sampling Manager.

F. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

G. Acceptable Purposes. Sampling Units shall only be designated and Transferred for the purposes of quality control and product development in accordance with section 44-10-602(6), C.R.S.

H. Record keeping requirements. A Retail Marijuana Cultivation Facility shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, a Retail Marijuana Cultivation Facility shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of quality control or product development. A Retail Marijuana Cultivation Facility shall also maintain copies of the Retail Marijuana Cultivation Facility's standard operating procedures provided to Sampling Managers

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(II), 44-10-602(13)(a)-(c) and 38-28.8-302(2)(b), C.R.S. The purpose of this rule is to allow a Medical Marijuana Cultivation Facility to receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from "Retail" to "Medical."

6-230 – Retail Marijuana Cultivation Facility: Ability to Change Designation from Retail Marijuana to Medical Marijuana

A. Changing Designation: Beginning July 1, 2022, a Retail Marijuana Cultivation Facility may Transfer Retail Marijuana to a Medical Marijuana Cultivation Facility in order to change its designation from Retail Marijuana to Medical Marijuana pursuant to the following requirements:

1. The Retail Marijuana Cultivation Facility may only Transfer Retail Marijuana that has passed all required testing;

2. The Medical Marijuana Cultivation Facility and the Retail Marijuana Cultivation Facility are co-located;

3. The Medical Marijuana Cultivation Facility and Retail Marijuana Cultivation Facility have at least one identical Controlling Beneficial Owner;

4. The Retail Marijuana Cultivation Facility must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana to Medical Marijuana occurs;

5. After the designation change, the Medical Marijuana cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The Inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules;

6. Both the Retail Marijuana Cultivation Facility and the Medical Marijuana Cultivation Facility must remain at, or under, its respective inventory limit before and after the Retail Marijuana changes its designation to Medical Marijuana; and

7. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

Basis and Purpose – 6-235

The Statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(j.5), 44-10-203(1)(k), 44-10-401(2)(b)(II), and 44-10-502(10)(a)-(c) The purpose of this rule is to allow a Retail Marijuana Cultivation Facility licensees that plan to cultivate Retail Marijuana outdoors to submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event.

6-235 Retail Marijuana Cultivation Facility: Contingency Plan for Outdoor Cultivation

A. Submission of Contingency Plan.

1. Beginning January 1, 2022, Retail Marijuana Cultivation Facility licensees that plan to cultivate Retail Marijuana outdoors may submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event. The Retail Marijuana Cultivation Facility shall also submit a copy of the plan to the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

2. A Retail Marijuana Cultivation Facility may submit a contingency plan at any time, but it must be filed at least 7 days prior to taking action pursuant to the contingency plan and must be approved by the State Licensing Authority prior to taking action pursuant to the contingency plan.

3. After initial submission and approval of a contingency plan, a contingency plan must be submitted with the Retail Marijuana Cultivation Facility's license renewal application. Any significant change to a contingency plan prior to a renewal application must be submitted for review and approval pursuant to subsection (A)(2) above prior to taking action pursuant to the revised contingency plan.

4. The Division shall notify the appropriate Local Licensing Authorities of the approval of the contingency plan.

B. Requirements for Outdoor Contingency Plans.

1. Identification of the type of Adverse Weather Event that the plan applies to, including any deviations based on the type of Adverse Weather Event.

2. Primary contact. A primary contact for the Retail Marijuana Cultivation Facility must be identified on the contingency plan, including the: name, title, phone number, and email address of the primary contact. The Retail Marijuana Cultivation Facility shall notify the Division of any change to the primary contact or required contact information within 48 hours of the change.

3. Transport Manifest. If the contingency plan provides for the Transfer of Retail Marijuana, a Retail Marijuana Cultivation Facility shall submit a standing transport manifest that could be used by a Licensee upon approval during an Adverse Weather Event if creating a transport manifest through the Inventory Tracking System is impracticable. The standing transport manifest shall include: identification and address of the receiving Licensee.

4. Disclosure of Receiving Licensed Premises.

a. Retail Marijuana may only be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or an off-premises storage facility.

b. If Retail Marijuana will be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility pursuant to a contingency plan, that plan must include the name, ownership, and address of the receiving Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility, along with a diagram of the proposed receiving Licensed Premises.

c. The receiving Licensed Premises shall be an existing location that currently holds an approved state and local license or an off-premises storage facility permit. The receiving Licensee is not required to share any Controlling Beneficial Owners with the Transferring Retail Marijuana Cultivation Facility.

d. A Retail Marijuana Cultivation Facility that cultivates outdoors may identify and Transfer Retail Marijuana to no more than five receiving Licensed Premises' as part of a contingency plan.

5. Disclosure of Modifications to the Premises and Security and Surveillance. Proposed modifications to the Licenses Premises and any anticipated impacts to compliance with security and surveillance requirements pursuant to Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6).

C. License Requirements when Acting Pursuant to a Contingency Plan. To the extent that this subsection (C) conflicts with other rule sections, this subsection shall control during the time that a Licensee is acting pursuant to a contingency plan.

1. Notification.

a. Notification of action pursuant to an approved contingency plan shall be made to the Division within 24 hours after initiating action pursuant to a contingency plan. A Retail Marijuana Cultivation Facility that cultivates outdoors must also notify the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

b. Notification of ceasing action pursuant to the approved contingency plan shall be made to the Division within 24 hours of returning to normal business operations. If action will continue more than 7 days after initiating action pursuant to a contingency plan, the Licensee shall contact the Division and explain why it cannot return to normal business operations.

c. Any notification shall be made in writing and can be made by email to the Division.

2. Production Management. Retail Marijuana Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility pursuant to a contingency plan is not included in the receiving Licensed Premises' inventory limit until the Retail Marijuana Cultivation Facility acting pursuant to the contingency plan returns to normal business operations.

3. Modification of Premises. An application for a modification of a Licensed Premises is not required as part of a contingency plan unless the modification or change in premises becomes a permanent modification. If that change becomes a permanent change, a modification of premises application must be submitted within 14 days.

4. Security Requirements. All security and surveillance requirements that apply to a Retail Marijuana Cultivation Facility apply to activities conducted pursuant to the contingency plan. If the contingency plan does not require the Transfer of Regulated Marijuana to another Licensed Premises, but requires plants to be covered or video surveillance to be otherwise temporarily obstructed, exemptions to the video surveillance requirements in Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6) may be approved as part of the contingency plan.

5. Inventory Tracking Requirements. Licensees must use the Inventory Tracking System to ensure Retail Marijuana is identified and tracked during all times that action is being taken pursuant to a contingency plan. If a Retail Marijuana Cultivation Facility harvests, Transfers, or packages Retail Marijuana it must be fully reconciled in the Inventory Tracking System within 48 hours of initiating action pursuant to the contingency plan.

a. Harvest Requirements. If Retail Marijuana is harvested, the weight of Retail Marijuana can be captured on a per harvest level and equally applied to individual plants rather than requiring the initial wet weight of each plant. This initial harvest weight may be captured at a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility upon arrival at the Licensed Premises approved as part of the contingency plan. Harvest Batches and Inventory Tracking System packages must be reported by the Retail Marijuana Cultivation Facility acting pursuant to the contingency plan in the Inventory Tracking System.

b. Transport Manifest. The Retail Marijuana Cultivation Facility acting pursuant to the contingency plan must report all Retail Marijuana that is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility,

Retail Marijuana Cultivation Facility and/or off-premises storage facility on a transport manifest.

i. A Licensee may use the approved standing transport manifest during an Adverse Weather Event only when using the Inventory Tracking System is not possible.

ii. The Licensee shall manually fill out the dates, times, and individual transporting Retail Marijuana on a copy of the standing transport manifest.

iii. The Licensee shall ensure the standing transport manifest and copy of the approved Contingency plan remain in the Licensee's possession during any transport of Retail Marijuana when it is not possible to use an Inventory Tracking System generated transportation manifest at the time of the Adverse Weather Event.

6. Transfers. If Retail Marijuana is Transferred to another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility it is exempted from the packaging and labeling requirements in Rule 3-1005(B).

7. Virtual and Physical Separation. If Retail Marijuana is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility that inventory must be virtually separated by Harvest Batch and must also be virtually and physically separated from the receiving Licensee's inventory. Harvest Batches must also be clearly identified at the receiving Licensed Premises with the Harvest Batch name and date of harvest.

8. Finishing Product. After Transferring Retail Marijuana to another Licensed Premises, a Retail Marijuana Cultivation Facility may finish that harvest at the receiving Licensed Premises if all Retail Marijuana is accounted for in the Inventory Tracking System and the Licensed Premises is in compliance with all surveillance requirements.

9. Testing. The originating Licensee acting pursuant to a contingency plan is responsible for the submission of Test Batch(es).

a. Each Harvest Batch or Production Batch Transferred pursuant to a contingency plan must be submitted for all required tests and is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

b. Any passing or failing tests of a Harvest Batch or Production Batch Transferred pursuant to a contingency plan will not count for or against a Licensee's Reduced Testing Allowance.

6-300 Series – Retail Marijuana Products Manufacturing Facilities

Basis and Purpose – 6-305

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-307(1)(j), 44-10-401(2)(b)(III), 44-10-603, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to a Retail Marijuana Products Manufacturer. This Rule 6-305 was previously Rule R 601, 1 CCR 212-2.

6-305 – Retail Marijuana Products Manufacturer: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer. However, a separate license is required for each specific business or business entity, regardless of geographical location. In addition, a Retail Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises as a Marijuana Research and Development Facility so long as:

1. Each business or business entity holds a separate license;

2. The Marijuana Research and Development Facility obtains an R&D Co-Location Permit;

3. Both the Marijuana Research and Development Facility and the Retail Marijuana Products Manufacturer comply with all terms and conditions of the R&D Co-Location Permit; and

4. Both the Marijuana Research and Development Facility and the Retail Marijuana Products Manufacturer comply with all applicable rules. *See* 5-700 Series Rules.

B. Authorized Transfers. A Retail Marijuana Products Manufacturer is authorized to Transfer Retail Marijuana as follows:

1. Retail Marijuana Concentrate and Retail Marijuana Product.

a. A Retail Marijuana Products Manufacturer may Transfer Retail Marijuana Concentrate or Retail Marijuana Product to Retail Marijuana Stores, other Retail Marijuana Products Manufacturers, Retail Marijuana Testing Facilities, Retail Marijuana Hospitality and Sales Businesses, and Pesticide Manufacturers.

b. A Retail Marijuana Products Manufacturer may Transfer Retail Marijuana Product and Retail Marijuana Concentrate to a Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit.

i. Prior to any Transfer pursuant to this Rule 6-305(B)(1)(b), a Retail Marijuana Products Manufacturer shall verify the Retail Marijuana Cultivation Facility possesses a valid Centralized Distribution Permit. *See* Rule 6-205 – Retail Marijuana Cultivation Facility: License Privileges.

ii. For any Transfer pursuant to this Rule 6-305(B)(1)(b), a Retail Marijuana Products Manufacturer shall only Transfer Retail Marijuana Product and Retail Marijuana Concentrate that is packaged and labeled for Transfer to a consumer. *See* 3-1000 Series Rules.

c. A Retail Marijuana Products Manufacturer and Accelerator Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in compliance with Rules 6-335 and 6-830.

2. Retail Marijuana. A Retail Marijuana Products Manufacturer may Transfer Retail Marijuana to other Retail Marijuana Products Manufacturer, Retail Marijuana Testing Facilities, and Retail Marijuana Stores.

3. Sampling Units. A Retail Marijuana Products Manufacturer may also Transfer Sampling Units of its own Retail Marijuana Concentrate or Retail Marijuana Product to a designated

Sampling Manager in accordance with the restrictions set forth in section 44-10-603(10), C.R.S., and Rule 6-320.

C. Manufacture of Retail Marijuana Concentrate, Retail Marijuana Product, Pre-Rolled Marijuana, and Infused Pre-Rolled Marijuana Authorized. A Retail Marijuana Products Manufacturer may manufacture, prepare, package, store, and label Retail Marijuana Concentrate and Retail Marijuana Product comprised of Retail Marijuana and other Ingredients intended for use or consumption, such as Edible Retail Marijuana Products, ointments, or tinctures. A Retail Marijuana Products Manufacturer may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

1. Industrial Hemp Product Authorized. This subparagraph (C)(1) is effective July 1, 2020. A Retail Marijuana Products Manufacturer that uses Industrial Hemp Product as an Ingredient in the manufacture and preparation of Retail Marijuana Product must comply with this subparagraph (C)(1) of this Rule.

a. Prior to accepting and taking possession of any Industrial Hemp Product for use as an Ingredient in a Retail Marijuana Product the Retail Marijuana Products Manufacturer shall verify the following:

i. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

ii. That the Person Transferring the Industrial Hemp Product to the Retail Marijuana Products Manufacturer is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

D. Location Prohibited. A Retail Marijuana Products Manufacturer may not manufacture, prepare, package, store, or label Retail Marijuana Concentrate or Retail Marijuana Product in a location that is operating as a retail food establishment.

E. Samples Provided for Testing. A Retail Marijuana Products Manufacturer may provide samples of its Retail Marijuana Concentrate or Retail Marijuana Product to a Retail Marijuana Testing Facility for testing and research purposes. The Retail Marijuana Products Manufacturer shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. A Retail Marijuana Products Manufacturer is authorized to utilize a Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken is a Retail Marijuana Business and the transportation order is delivered to a Retail Marijuana Business, or Pesticide Manufacturer. Nothing in this Rule prevents a Retail Marijuana Products Manufacturer from transporting its own Retail Marijuana.

G. Performance-Based Incentives. A Retail Marijuana Products Manufacturer may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, a Retail Marijuana Products Manufacturer may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-320 – Sampling Unit Protocols.

Basis and Purpose – 6-310

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(3)(d), 44-10-401(2)(b)(III), 44-10-603, and 44-10-701(2)(a), C.R.S. Authority also

exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V). The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Products Manufacturer. This Rule 6-310 was previously Rule R 602, 1 CCR 212-2.

6-310 – Retail Marijuana Products Manufacturer: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. A Retail Marijuana Products Manufacturer is prohibited from Transferring Retail Marijuana Concentrate or Retail Marijuana Product that are not properly packaged and labeled. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. THC Content Container Restriction. Each individually packaged Edible Retail Marijuana Product, even if comprised of multiple servings, may include no more than a total of 100 milligrams of active THC. *See* Rule 3-1010 – Packaging and Labeling – General Requirements Prior to Transfer to a Consumer.

1. Exception for Bulk Transfers to Retail Marijuana Hospitality and Sales Businesses. An individually packaged Edible Retail Marijuana Product compromised of multiple servings that is Transferred in bulk to a Retail Marijuana Hospitality and Sales Establishment may include more than a total of 100 milligrams of active THC.

i. A Retail Marijuana Products Manufacturer shall develop and maintain standard operating procedures, and any additional equipment necessary, to ensure that a Retail Marijuana Hospitality and Sales Business receiving bulk Transfers of Edible Retail Marijuana Product can measure accurately the Edible Retail Marijuana Product in single serving sizes equal to or less than 10 milligrams of active THC per serving.

C. Transfer to Consumer Prohibited. A Retail Marijuana Products Manufacturer is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-603(10), C.R.S., and Rule 6-320.

D. Adequate Care of Perishable Product. A Retail Marijuana Products Manufacturer must provide adequate refrigeration for perishable Retail Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

E. Homogeneity of Edible Retail Marijuana Product. A Retail Marijuana Products Manufacturer must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Retail Marijuana Product is homogenous.

F. Use of Ingredients. A Retail Marijuana Products Manufacturer must obtain and maintain certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers.

G. Corrective and Preventive Action. This paragraph G shall be effective January 1, 2021. A Retail Marijuana Products Manufacturer shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation.

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

H. Adverse Health Event Reporting. A Retail Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-315

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-401(2)(b)(III), and 44-10-603, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Products Manufacturer and establish standards for the production of Retail Marijuana Concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S. This Rule 6-315 was previously Rule R 605, 1 CR 212-2.

6-315 – Retail Marijuana Products Manufacturer: Retail Marijuana Concentrate Production.

A. Permitted Categories of Retail Marijuana Concentrate Production.

1. A Retail Marijuana Products Manufacturer may produce Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate.

2. A Retail Marijuana Products Manufacturer may also produce Solvent-Based Retail Marijuana Concentrate using only the following solvents: butane, propane, CO_2, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless it is approved by the Division.

3. A Retail Marijuana Products Manufacturer may submit a request to the Division to consider the approval of solvents not permitted for use under this Rule during the next formal rulemaking.

B. General Applicability. A Retail Marijuana Products Manufacturer that engages in the production of Retail Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Retail Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. *See* Rule 3-905- Business Records Required.

2. Ensure that all applicable sanitary rules are followed. *See* 3-300 Series Rules.

3. Ensure that the standard operating procedure for each method used to produce a Retail Marijuana Concentrate includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:

    a. Conduct all necessary safety checks prior to commencing production;

    b. Prepare Retail Marijuana for processing;

    c. Extract Cannabinoids and other essential components of Retail Marijuana;

    d. Purge any solvent or other unwanted components from a Retail Marijuana Concentrate,

    e. Clean all equipment, counters and surfaces thoroughly; and

    f. Dispose of any waste produced during the processing of Retail Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. *See* Rule 3-230 – Waste Disposal.

4. Establish written and documentable quality control procedures designed to maximize safety for Owner Licensees and Employee Licensees and minimize potential product contamination.

5. Establish written emergency procedures to be followed by Owner Licensees or Employee Licensees in case of a fire, chemical spill or other emergency.

6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Retail Marijuana Concentrate. The training manual must include, but need not be limited to, the following topics:

    a. All standard operating procedures for each method of concentrate production used;

    b. The Retail Marijuana Products Manufacturer’s quality control procedures;

    c. The emergency procedures;

    d. The appropriate use of any necessary safety or sanitary equipment;

    e. The hazards presented by all solvents used as described in the safety data sheet for each solvent;

    f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer’s instructions, where applicable; and

g. Any additional periodic cleaning required to comply with all applicable sanitary rules.

7. Provide adequate training to every Owner Licensee or Employee Licensee prior to that individual undertaking any step in the process of producing a Retail Marijuana Concentrate.

   a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.

   b. The individual training an Owner Licensee or Employee Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner Licensee or Employee Licensee can safely produce a Retail Marijuana Concentrate. *See* Rule 3-905 – Business Records Required.

   c. The Owner Licensee or Employee Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional periodic cleaning required to maintain compliance with all applicable sanitary rules. *See* Rule 3-905 – Business Records Required.

8. Maintain clear and comprehensive records of the name, signature and Owner Licensee or Employee License number of every individual who engaged in any step related to the creation of a Production Batch of Retail Marijuana Concentrate and the step that individual performed. *See* Rule 3-905 – Business Records Required.

C. Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturer that engages in the production of a Retail Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of Retail Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.

2. Ensure that all equipment, counters, and surfaces used in the production of a Retail Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.

3. Ensure that any room in which dry ice is stored or used in processing Retail Marijuana into a Retail Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO_2.

4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Retail Marijuana Concentrate.

5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Physical Separation-Based Retail Marijuana Concentrate.

6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Retail Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.

7. Follow all of the rules related to the production of a Solvent-Based Retail Marijuana Concentrate if a pressurized system is used in the production of a Retail Marijuana Concentrate.

D. Solvent-Based Retail Marijuana Concentrate. A Retail Marijuana Products Manufacturer that engages in the production of Solvent-Based Retail Marijuana Concentrate must:

1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a Local Jurisdiction has not adopted a local building code or fire code or if local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (http://www.iccsafe.org), the International Fire Code of 2012 (http://www.iccsafe.org) or the National Electric Code of 2014 (http://www.nfpa.org), as appropriate. Note that this Rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, each of which is available to the public;

   a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Retail Marijuana into a Retail Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:

      i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules and regulations;

      ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights and junction boxes, must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations;

      iii. Determine whether a gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations; and

      iv. Determine whether fire suppression system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

   b. CO_2 Solvent Determination. If CO_2 is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO_2 gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO_2 is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Retail Marijuana Concentrate is to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

d. Material Change. If a Retail Marijuana Products Manufacturer makes a Material Change to its equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its equipment as well.

e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Retail Marijuana Products Manufacturer by the designer or manufacturer of any equipment used in the processing of Retail Marijuana into a Retail Marijuana Concentrate.

f. Records Retention. A Retail Marijuana Products Manufacturer must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule, or regulation, compliance with this Rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Retail Marijuana Concentrate on the Licensed Premises.

2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Retail Marijuana Concentrate are food-grade and do not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;

3. Ensure that the room in which Solvent-Based Retail Marijuana Concentrate shall be produced must contain an emergency eye-wash station;

4. Ensure that only a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Retail Marijuana Concentrate;

a. UL or ETL Listing.

i. If the system is UL or ETL listed, then a Retail Marijuana Products Manufacturer may use the system in accordance with the manufacturer's instructions.

ii. If the system is UL or ETL listed but the Retail Marijuana Products Manufacturer intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Retail Marijuana Products Manufacturer must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

b. Ethanol or Isopropanol. A Retail Marijuana Products Manufacturer need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Retail Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.

5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;

a. A Retail Marijuana Products Manufacturer must obtain a safety data sheet for each solvent used or stored on the Licensed Premises. A Retail Marijuana Products Manufacturer must maintain a current copy of the safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. *See* Rule 3-905 – Business Records Required.

b. A Retail Marijuana Products Manufacturer is prohibited from using denatured alcohol to produce a Retail Marijuana Concentrate, unless the denaturant is an approved solvent listed in Rule 6-315(A)(2) and the alcohol and the denaturant meet all other requirements set forth in this Rule.

6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may a Retail Marijuana Products Manufacturer store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;

7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Solvent-Based Retail Marijuana Concentrate; and

8. Ensure that a trained Owner Licensee or Employee Licensee is present at all times during the production of a Solvent-Based Retail Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.

9. Retail Marijuana Products Manufacturers Engaged in the Remediation of Retail Marijuana for elemental impurities. Retail Marijuana Products Manufacturers engaged in the Remediation of Retail Marijuana for elemental impurities shall:

a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

i. If potentially contaminated equipment, ingredients, or solvents used in the Remediation process are used for processing other 'non remediated' material, the subsequent Production Batch made using the equipment, ingredients, or solvent must then be tested for elemental impurities, and the Production Batch made using that equipment, ingredients, or solvents is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

ii. Manufacturers must document the equipment and lots of ingredients/solvents used in Remediation to ensure this requirement is met.

b. Register as a hazardous waste generator, obtain a U.S. Environmental Protection Agency ID number for manifesting hazardous waste, and must have a disposal contract in place with a hazardous waste management company prior to attempting Remediation.

c. Have a staff member who has received basic training in hazardous waste identification, storage, and disposal procedures, or hire a consultant who satisfies this criteria.

d. Regardless of which type of analyte, if the Retail Marijuana flower, wet whole plant, or trim has failed elemental impurities, the Licensee must implement Standard Operating Procedures to ensure:

i. That contaminated material is stored in a labelled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

ii. That when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards Institute (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

A. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

e. Additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the Licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

f. These steps must be documented in the Licensee's respiratory protection program that all employees exposed to plant material or waste products contaminated with the elemental impurities must be trained on.

g. The Licensee must establish and train employees on SOPs designed to safely handle this contaminated material and prevent cross contamination.

h. Mercury poses additional workplaces hazards since it is easily volatilized and since mercury vapor is highly toxic. Before attempting to remediate any

Regulated Marijuana flower, wet whole plant, or trim that has failed elemental impurities testing and contains mercury, Licensees must additionally:

i. Work with a certified industrial hygienist to develop and implement some form of monitoring program that is capable of detecting mercury vapor concentrations in the areas where material contaminated with mercury will be processed and can be used to generate time weighted average exposures to mercury vapor. The monitoring system must be sufficient to ensure airborne concentrations of mercury do not exceed Occupational Safety and Health Administration Permissible Exposure Limits for Airborne Contaminants.

ii. Have a certified industrial hygienist approve the Licensee's air handling system for managing mercury vapors in a fashion that is compliant with the Occupational Safety and Health Administration, and other applicable federal, state, and local regulations.

iii. Utilize a National Institute for Occupational Safety and Health rated half mask respirator with cartridges rated specifically for mercury vapor.

i. A Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

E. Ethanol and Isopropanol. If a Retail Marijuana Products Manufacturer only produces Solvent-Based Retail Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from paragraph D of this Rule and instead must follow the requirements in paragraph C of this Rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used. The Retail Marijuana Products Manufacturer shall comply with contaminant testing required in Rule 4-120(C)(4).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-320

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(2)(d), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-401(2)(b)(III), and 44-10-603(10), C.R.S. The purpose of this rule is to establish the circumstances under which a Retail Marijuana Products Manufacturer may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Retail Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Products Manufacturer that Transfer Sampling Units. This Rule 6-320 was previously Rule R 606, 1 CCR 212-2.

6-320 – Retail Marijuana Products Manufacturer: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, a Retail Marijuana Products Manufacturer may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Retail Marijuana Products Manufacturer who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual may be designated as a Sampling Manager by more than one Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. A Retail Marijuana Products Manufacturer who wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-603(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-320. *See also* Rule 3-905 – Business Records Required. A Retail Marijuana Products Manufacturer shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Production Batch. A Sampling Unit shall not be designated until the Production Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana Product shall not exceed one Standardized Serving of Marijuana.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Retail Marijuana Products Manufacturer as a Sampling Manger for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than:

   a. With respect to Retail Marijuana Product, fourteen Standardized Servings of Marijuana; and

   b. Eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, a Retail Marijuana Products Manufacturer shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limit established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

D. Compensation Prohibited. A Retail Marijuana Products Manufacturer may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-603(10), C.R.S.

G. Record keeping requirements. A Retail Marijuana Products Manufacturer shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, a Retail Marijuana Products Manufacturer shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. A Retail Marijuana Products Manufacturer shall also maintain copies of the Retail Marijuana Products Manufacturer's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-325

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(3)(b), 44-10-203(3)(e), 44-10-401(2)(b)(III), 44-10-603, and 44-10-701(3)(c), C.R.S. The purpose of this rule is to define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Retail Marijuana Products Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule 3-1015 may raise public health concerns that outweigh its manufacture or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for Retail Marijuana Products Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Retail Marijuana Product that is not within an intended use identified in Rule 3-1015. This Rule 6-325 was previously Rule R 607, 1 CCR 212-2.

6-325 – Retail Marijuana Products Manufacturing Facility: Audited Product and Alternative Use Product

A. General Rule. A Retail Marijuana Products Manufacturer shall not Transfer Audited Product to a Retail Marijuana Store, another Retail Marijuana Products Manufacturer, or a Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit except in accordance with all requirements of this Rule 6-325. The requirements of this Rule 6-325 are in addition to all other Rules that apply to Retail Marijuana Products Manufacturers; except where the context otherwise clearly requires this Rule 6-325 controls.

B. Audited Products – Mandatory Audit Prior to Transfer. Following submission of an independent third-party audit to the Division and, if applicable, to the Local Jurisdiction as required by this Rule, a Retail Marijuana Products Manufacturer may Transfer Audited Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration.

1. A written audit report from an independent third-party auditor that was completed within the last 24 months shall be submitted to the Division and, if applicable to the Local Licensing Authority: (i) before the first Transfer of Audited Product to any Retail Marijuana Store, (ii) prior to Transfer of any Audited Product following a Material Change to any standard operating procedure or master formulation record regarding the Audited Product, and (iii) with the Retail Marijuana Products Manufacturer's renewal application if the Retail Marijuana Products Manufacturer will Transfer Audited Product after renewal.

2. The independent third-party audit shall be performed by either a certified quality auditor or a certified GMP auditor. The Retail Marijuana Products Manufacturer shall be responsible for all costs associated with obtaining the independent third-party audit.

3. The independent third-party written audit report shall include the following minimum requirements:

    a. The independent third-party auditor's qualifications and an attestation that the certified quality auditor or certified GMP auditor has no conflict of interest;

    b. Establish that the Retail Marijuana Products Manufacturer and the Audited Product meet all requirements of this Rule 6-325, including but not limited to the specific requirements of this Rule 6-325(C), 6-325(D), 6-325(E), 6-325(G), and 6-325(H);

    c. Verify the written standard operating procedure(s) for Audited Product include sufficient and detailed step-by-step instructions on how to produce the Audited Product in a manner that prevents contamination and protects the public health and safety;

    d. Verify, based upon a physical inspection, the manufacture of Audited Product by the Retail Marijuana Products Manufacturer adheres to all applicable standard operating procedures;

    e. Verify, based upon a physical inspection, of any Licensed Premises that such Licensed Premises complies with the requirements of this Rule 6-325(E), including any Limited Access Area where the Audited Product is to be manufactured;

    f. Include the independent third-party auditor's findings;

    g. Include the plan of correction identifying any corrective actions and/or preventative actions implemented as a result of the findings of the independent third-party audit; and

    h. Include the independent third-party auditor's assessment that the Retail Marijuana Products Manufacturer demonstrated compliance with all requirements of Rule 6-325 and with the requirements of all standard operating procedures, master formulation records, and Batch manufacturing records that apply to the Audited Product.

C. Products Liability Insurance. Any Retail Marijuana Products Manufacturer that intends to Transfer Audited Product shall first obtain products liability insurance providing coverage for liability arising from manufacture or Transfer of Audited Product and shall provide an unredacted certificate of product liability insurance to the Division and the independent third-party auditor.

D. Audited Product Requirements. Audited Product shall meet the following minimum product requirements:

1. Inactive Ingredients. Audited Product must meet the requirements in Rule 3-335 – Production of Regulated Marijuana Products.

a. If the Audited Product contains a fungicidal or bactericidal Ingredient listed in, and with a concentration that is at or below the maximum concentration permitted in, the Federal Food and Drug Administration Inactive Ingredients Database, https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, the Audited Product is not required to undergo microbial contaminant testing required by Rules 4-115 and 4-120.

2. Required Product Development Testing. The Retail Marijuana Products Manufacturer must establish the Audited Product meets the following through independent third-party testing:

a. The Audited Product must deliver the amount of each cannabinoid identified on the label throughout the entire volume of the Audited Product using the intended delivery device and in accordance with the instructions provided by the Retail Marijuana Products Manufacturer, as demonstrated by testing at a Retail Marijuana Testing Facility.

i. For Audited Product with an intended use of metered dose nasal spray, compliance with this requirement shall be established by test results verifying the delivered dose of each cannabinoid identified on the label using the methods described in The United States Pharmacopeia Physical Test and Determination Chapter 601, *Aerosols, Nasal Sprays, Metered-Dose Inhalers, and Dry Powder Inhalers*.

ii. For Audited Product with an intended use of either vaginal administration or rectal administration, compliance with this testing requirement shall be established by test results demonstrating that each cannabinoid identified on the label is within +/- 15% of the amount identified on the label.

b. The expiration date identified on the label of the Audited Product is appropriate when the Audited Product is stored at room temperature, as demonstrated by testing from a Retail Marijuana Testing Facility.

c. Identification of all non-cannabis derived Ingredients and constituents in the Audited Product at concentrations of 1%, which verification is obtained from one or more of the following:

i. Testing by a Retail Marijuana Testing Facility;

ii. Testing by a laboratory that is ISO 17025 accredited but is not a Retail Marijuana Testing Facility, except that no Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be Transferred to such a laboratory; and/or

iii. One or more certificate(s) of analysis from the manufacturer of any Ingredient or constituent included in the Audited Product.

E. Additional Production Requirements for Audited Product. In addition to all other requirements applicable to Retail Marijuana Products Manufacturer, a Retail Marijuana Products Manufacturer that manufactures and Transfers Audited Product shall meet the following additional requirements:

1. Personnel Training. All personnel directly involved in the manufacture and handling of Audited Product must be trained, must demonstrate competency, and must undergo annual refresher training, which shall be documented and maintained at the Retail Marijuana Products Manufacturer's Licensed Premises. Personnel directly involved in the manufacture and handling of Audited Product must be trained and demonstrate proficiency in hand hygiene, cleaning and sanitizing, performing necessary calculations, measuring and mixing, and documenting the manufacturing process including master formulation records and batch manufacturing records.

2. Facility Requirements. A Retail Marijuana Products Manufacturer must have a space that is specifically designated for the manufacture of Audited Products that is designed and operated to prevent cross contamination from other areas of the Licensed Premises. The surfaces, walls, floors, fixtures, shelving, work surfaces, and cabinets in this designated area must be non-porous and cleanable.

3. Cleaning and Sanitizing. A Retail Marijuana Products Manufacturer must clean and sanitize surfaces where Audited Product is manufactured and handled on a regular basis and at a minimum, work surfaces and floors must be cleaned and sanitized daily. All other surfaces must be cleaned and sanitized at least every three months. A Retail Marijuana Products Manufacturer must clean and sanitize all surfaces when a spill occurs and when surfaces, floors, and walls are visibly soiled.

4. Hand Hygiene. Hand hygiene is required when entering and re-entering any area where Audited Product is manufactured and handled. Hand hygiene includes washing hands and forearms up to the elbows with soap and water for at least 30 seconds followed by drying completely with disposable towels. Alcohol hand sanitizers alone are not sufficient.

    a. Gloves are required to be worn for all mixing activities. Other garb such as shoe covers, head and facial hair covers, face masks, and gowns must be worn as appropriate to protect Licensees and/or prevent contamination of the Audited Product.

5. Equipment. Mechanical, electronic, and other types of equipment used in mixing, measuring, or testing of Audited Product must be inspected prior to use and verified for accuracy at the frequency recommended by the manufacturer, and at least annually.

6. Ingredient Quality. All Ingredients used to manufacture Audited Product must be handled and stored in accordance with the manufacturer's instructions. Ingredients that lack a manufacturer's expiration date shall not be used if a reasonable manufacturer would not use the Ingredient or after 1 year from the date of receipt, whichever period is shorter.

7. Master Formulation Record. A master formulation record must be prepared and maintained for each unique Audited Product a Retail Marijuana Products Manufacturer manufactures. A master formulation record must include at least the following information:

    a. Name of the Audited Product;

    b. Ingredient identities and amounts;

    c. Specifications on the delivery device (if applicable);

d. Complete instructions for preparing the Audited Product, including equipment, supplies, and description of the manufacturing steps;

e. Quality control procedures; and

f. Any other information needed to describe the Retail Marijuana Products Manufacturer's production and ensure its repeatability.

8. Batch Manufacturing Records. A batch manufacturing record shall be created for each Production Batch of Audited Product. This record shall include at the least the following information:

a. Name of the Audited Product;

b. Master formulation record reference for the Audited Product;

c. Date and time of preparation of the Audited Product;

d. Production Batch number;

e. Signature or initials of individuals involved in each manufacturing step;

f. Name, vendor, or manufacturer, Production Batch number, and expiration date of each Ingredient;

g. Weight or measurement of each Ingredient;

h. Documentation of quality control procedures;

i. Any deviations from the master formulation record, and any problems or errors experienced during the manufacture; and

j. Total quantity of the Audited Product manufactured.

F. Audited Product Testing. For each Production Batch, the Audited Product shall undergo all required testing in the 4-100 Series Rules for Retail Marijuana Product and/or Audited Product. *See also* Rule 4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program.

G. Packaging and Labeling of Audited Product. Audited Product must be packaged and labeled in accordance with all requirements of the 3-1000 Series Rules regarding packaging and labeling for Transfer to a consumer prior to any Transfer.

H. Adverse Health Event Reporting. A Retail Marijuana Products Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

I. Alternative Use Designation – Any Other Method of Consumption or Administration. A Retail Marijuana Products Manufacturer shall not Transfer to a Retail Marijuana Store, another Retail Marijuana Products Manufacturer, or Retail Marijuana Cultivation Facility that has obtained a Centralized Distribution Permit any Retail Marijuana Concentrate or Retail Marijuana Product that is not within any intended use identified in Rule 3-1015(B) until it applies for and receives an Alternative Use Designation from the State Licensing Authority in consultation with the Colorado Department of Public Health and Environment. In the process of applying for an Alternative Use Designation, the Retail Marijuana Products Manufacturer shall work with the Division and the Colorado Department of Public Health and Environment to determine whether the proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public

health and safety when particular independent review factors, safeguards, and tests are in place. The following are minimum requirements for any application for an Alternative Use Designation:

1. The Retail Marijuana Products Manufacturer shall identify provisions of this Rule 6-325 that apply to its Alternative Use Product, any proposed additional or alternative requirements, and how any proposed alternatives protect public health and safety. The Retail Marijuana Products Manufacturer shall also provide any additional information as may be requested by the Division, in consultation with the Colorado Department of Public Health and Environment.

2. The Retail Marijuana Products Manufacturer bears the burden of proving its proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when the identified independent review factors, safeguards, and tests are in place.

3. A Retail Marijuana Products Manufacturer seeking an Alternative Use Designation shall cooperate with the Division. Failure to cooperate with the Division is grounds for denial of an Alternative Use Designation.

4. The granting of an Alternative Use Designation shall rest in the discretion of the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment. The State Licensing Authority may in his or her discretion deny an Alternative Use Designation where the Retail Marijuana Products Manufacturer does not meet the burden established in this Rule 6-325.

J. Alternative Use Designation – Packaging and Labeling Requirements. If the Division recommends, and the State Licensing Authority grants, an Alternative Use Designation, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment shall provide the Retail Marijuana Products Manufacturer the appropriate statement of intended use label to be affixed to the Alternative Use Product, and any additional or distinct packaging and labeling requirements applicable to the Alternative Use Product. *See* Rules 3-1010 and 3-1015.

K. Required Records. A Retail Marijuana Products Manufacturer manufacturing or Transferring Audited Product and/or Alternative Use Product shall maintain accurate and comprehensive records on the Licensed Premises regarding the manufacturing process, a list of all active and inactive Ingredients used in the Audited Product and/or Alternative Use Product, and such other documentation as required by this Rule 6-325. *See* Rule 3-905 – Business Records Required.

6-330 – Recall of Retail Marijuana Concentrate and Retail Marijuana Product – Repealed effective January 1, 2021.

Basis and Purpose – 6-335

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(III), and 44-10-603, 44-10-603(15)(a)-(b), and 38-28.8-302(2)(b) C.R.S. The purpose of this rule is to allow a Medical Marijuana Products Manufacturer to receive Transfers of Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from “Retail” to “Medical.”

6-335 – Retail Marijuana Products Manufacturer: Ability to Change Designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate.

A. Changing Designation: Beginning July 1, 2022, a Retail Marijuana Products Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in order to

change its designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate pursuant to the following requirements:

1. The Retail Marijuana Products Manufacturer may only Transfer Retail Marijuana Concentrate that has passed all required testing;

2. The Medical Marijuana Products Manufacturer and the Retail Marijuana Products Manufacturer are co-located;

3. The Medical Marijuana Products Manufacturer and Retail Marijuana Products Manufacturer have at least one identical Controlling Beneficial Owner;

4. The Retail Marijuana Products Manufacturer must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate occurs;

5. After the designation change, the Medical Marijuana Concentrate cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules; and

6. The Transfer and change in designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change in designation.

6-400 Series – Retail Marijuana Testing Facilities

Basis and Purpose – 6-405

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-203(2)(h), 44-10-203(2)(y), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-313(8)(a), 44-10-401(2)(b)(IV), 44-10-604, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to Retail Marijuana Testing Facilities. This Rule 6-405 was previously Rule R 701.

6-405 – Retail Marijuana Testing Facilities: License Privileges

A. Licensed Premises. A separate License is required for each specific Retail Marijuana Testing Facility and only those privileges granted by the Marijuana Code and any rules promulgated pursuant to it may be exercised on the Licensed Premises.

B. Testing of Retail Marijuana Authorized. A Retail Marijuana Testing Facility may accept Samples of Retail Marijuana from Retail Marijuana Businesses for testing and research purposes only. The Division may require a Retail Marijuana Business to submit a Sample of Retail Marijuana to a Retail Marijuana Testing Facility upon demand.

C. Product Development Authorized. A Retail Marijuana Testing Facility may develop Retail Marijuana Product, but is not authorized to engage in the manufacturing privileges described in section 44-10-603, C.R.S., and Rule 6-305 – Retail Marijuana Manufacturing Facilities: License Privileges.

D. Transferring Samples to Another Licensed and Certified Retail Marijuana Testing Facility. A Retail Marijuana Testing Facility may Transfer Samples to another Retail Marijuana Testing Facility for testing. All laboratory reports provided to or by a Retail Marijuana Business must identify the Retail Marijuana Testing Facility that actually conducted the test.

E. Testing of Registered and Tracked Industrial Hemp Authorized.

1. A Retail Marijuana Testing Facility may accept and test Industrial Hemp as regulated by Article 61 of Title 35, C.R.S.

2. Before a Retail Marijuana Testing Facility accepts a sample of Industrial Hemp, the Retail Marijuana Testing Facility shall verify that the Person submitting the sample is registered with the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-104, C.R.S.

3. A Retail Marijuana Testing Facility may only accept samples that are tracked through the radio frequency identification-based inventory tracking system approved by the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-105.5, C.R.S.

4. A Retail Marijuana Testing Facility shall be permitted to test Industrial Hemp only in the category(ies) that the Retail Marijuana Testing Facility is certified to perform testing in pursuant to Rule 6-415 – Retail Marijuana Testing Facilities: Certification Requirements.

5. In accordance with section 35-61-105.5, C.R.S., a Retail Marijuana Testing Facility shall provide the results of any testing performed on Industrial Hemp to the Person submitting the sample of Industrial Hemp and to the Colorado Department of Agriculture.

6. Nothing in these rules shall be construed to require a Retail Marijuana Testing Facility to accept and/or test Samples of Industrial Hemp.

F. Testing of Industrial Hemp Product Authorized.

1. A Retail Marijuana Testing Facility may accept and test samples of Industrial Hemp Products.

2. Before a Retail Marijuana Testing Facility accepts a sample of Industrial Hemp Product, the Retail Marijuana Testing Facility shall verify that the Person submitting the sample is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

3. A Retail Marijuana Testing Facility is responsible for entering and tracking samples of Industrial Hemp Product in the inventory tracking system pursuant to the 3-800 Series Rules.

4. A Retail Marijuana Testing Facility shall be permitted to test Industrial Hemp Product only in the category(ies) that the Retail Marijuana Testing Facility is certified to perform testing in pursuant to Rule 6-415 – Retail Marijuana Testing Facilities: Certification Requirements.

5. A Retail Marijuana Testing Facility may provide the results of any testing performed on Industrial Hemp Product to the Person submitting the sample of Industrial Hemp Product.

6. Nothing in these rules shall be construed to require a Retail Marijuana Testing Facility to accept and/or test samples of Industrial Hemp Product.

G. Authorized Retail Marijuana Transport. A Retail Marijuana Testing Facility is authorized to utilize a licensed Retail Marijuana Transporter to transport Samples of Retail Marijuana for testing, in accordance with the Marijuana Code and Marijuana Rules, between the originating Retail Marijuana Business requesting testing services and the destination Retail Marijuana Testing

Facility performing testing services. Nothing in this Rule requires a Retail Marijuana Business to utilize a Retail Marijuana Transporter to transport Samples of Retail Marijuana for testing.

Basis and Purpose – 6-410

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-202(4), 44-10-203(2)(h), 44-10-203(2)(y), 44-10-203(3)(c), 44-10-203(2)(d), 44-10-401(2)(b)(IV), 44-10-604, 44-10-701, 35-61-104, and 35-61-105.5, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Testing Facility. This Rule 6-410 was previously Rule R 702, 1 CCR 212-2.

6-410 – Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts

A. Prohibited Financial Interest. A Person who is Controlling Beneficial Owner or Passive Beneficial of a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturer, Retail Marijuana Store, Medical Marijuana Store, Medical Marijuana Cultivation Facility, or a Medical Marijuana Products Manufacturer shall not be a Controlling Beneficial Owner or Passive Beneficial Owner of a Retail Marijuana Testing Facility.

B. Conflicts of Interest. The Retail Marijuana Testing Facility shall establish policies to prevent the existence of or appearance of undue commercial, financial, or other influences that may diminish the competency, impartiality, and integrity of the Retail Marijuana Testing Facility's testing processes or results, or that may diminish public confidence in the competency, impartiality and integrity of the Retail Marijuana Testing Facility's testing processes or results. At a minimum, employees, owners or agents of a Retail Marijuana Testing Facility who participate in any aspect of the analysis and results of a Sample or Test Batch are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any on-going financial, employment, personal or business relationship with the Retail Marijuana Business that provided the Sample.

C. Transfer of Retail Marijuana Prohibited. A Retail Marijuana Testing Facility shall not Transfer Retail Marijuana to another Retail Marijuana Business or a consumer, except that a Retail Marijuana Testing Facility may Transfer a Sample to another Retail Marijuana Testing Facility.

D. Destruction of Received Samples. A Retail Marijuana Testing Facility shall properly dispose of all Samples it receives, that are not Transferred to another Retail Marijuana Testing Facility, after all necessary tests have been conducted and any required period of storage. *See* Rule 3-230 – Waste Disposal.

E. Sample Rejection. A Retail Marijuana Testing Facility shall reject any Sample where the condition of the Sample at receipt indicates that the Sample may have been tampered with.

F. Retail Marijuana Business Requirements Applicable. A Retail Marijuana Testing Facility shall be considered a Licensed Premises. A Retail Marijuana Testing Facility shall be subject to all requirements applicable to Retail Marijuana Businesses.

G. Retail Marijuana Testing Facility – Inventory Tracking System Required. A Retail Marijuana Testing Facility must use the Inventory Tracking System to ensure all Test Batches or Samples containing Retail Marijuana are identified and tracked from the point they are Transferred from a Retail Marijuana Business through the point of Transfer or destruction or disposal. A Retail Marijuana Testing Facility that performs testing on Industrial Hemp must use the Inventory Tracking System to ensure all samples of Industrial Hemp are identified and tracked from the point they are Transferred from a cultivator registered with the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-104, C.R.S., to the point of Transfer or

destruction or disposal. The Inventory Tracking System reporting shall include the results of any tests that are conducted on Retail Marijuana or Industrial Hemp. *See also* Rule 3-805 – Regulated Marijuana Businesses: Inventory Tracking System and Rule 3-825 – Reporting and Inventory Tracking System. The Retail Marijuana Testing Facility must have the ability to reconcile its Sample records with the Inventory Tracking System and the associated transaction history. *See also* Rule 3-905 – Business Records Required and Rule 3-825.

H. Testing of Unregistered or Untracked Industrial Hemp or Industrial Hemp Products Prohibited.

1. A Retail Marijuana Testing Facility is authorized to accept or test Industrial Hemp only if (1) the entity providing the Samples of Industrial Hemp is regulated by Article 61 of Title 35, C.R.S., (2) the Industrial Hemp is submitted by a registered cultivator, and (3) the Industrial Hemp is tracked through the radio frequency identification-based inventory tracking system approved by the Commissioner of the Colorado Department of Agriculture, pursuant to section 35-61-105.5, C.R.S.

2. A Retail Marijuana Testing Facility is authorized to accept or test Industrial Hemp Product only if (1) the entity providing the Samples of Industrial Hemp Product is registered and regulated pursuant to Article 4 or Title 25, C.R.S., and (2) the Industrial Hemp Product being submitted for testing is tracked in the Inventory Tracking System.

Basis and Purpose – 6-415

The statutory authority for this rule includes but is not limited to section 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-203(2)(h), 44-10-203(2)(y), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish a frame work for certification for Retail Marijuana Testing Facilities. This Rule 6-415 was previously Rule R 703, 1 CCR 212-2.

6-415 – Retail Marijuana Testing Facilities: Certification Requirements

A. Certification Types. If certification in a testing category is required by the Division, then the Retail Marijuana Testing Facility must be certified in the category in order to perform that type of testing.

1. Residual solvents;

2. Microbials;

3. Mycotoxins;

4. Pesticides;

5. THC and other Cannabinoid potency;

6. Elemental Impurities; and

7. Water Activity.

B. In order to obtain a certification for Pesticide testing, a Retail Marijuana Testing Facility must also obtain certification for mycotoxin testing.

C. Certification Procedures. The Retail Marijuana Testing Facility certification program is contingent upon successful on-site inspection, successful participation in proficiency testing, and ongoing compliance with the applicable requirements in this Rule.

1. Certification Inspection. A Retail Marijuana Testing Facility must be inspected prior to initial certification and annually thereafter by an inspector approved by the Division.

2. Standards for Certification. A Retail Marijuana Testing Facility must meet standards of performance, as established by these rules, in order to obtain and maintain certification. Standards of performance include but are not limited to: personnel qualifications, standard operating procedure manual, analytical processes, Proficiency Testing, quality control, quality assurance, security, chain of custody, Sample retention, space, records, and results reporting. In addition, a Retail Marijuana Testing Facility must be accredited under the International Organization for Standardization/International Electrotechnical Commission 17025:2005 Standard, or any subsequent superseding ISO/IEC 17025 standard. In order to obtain certification in a testing category from the Division, the Retail Marijuana Testing Facility's scope of accreditation must specify that particular testing category.

    a. Subsequent to initial approval of a Retail Marijuana Testing Facility License, the Division may grant provisional certification if the Applicant has not yet obtained ISO/IEC 17025:2005 accreditation, but meets all other requirements. Such provisional certification shall be for a period not to exceed twelve months.

3. Personnel Qualifications.

    a. Laboratory Director. A Retail Marijuana Testing Facility must employ, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification. *See* Rule 6-420 – Retail Marijuana Testing Facilities: Personnel.

    b. Employee Competency. A Retail Marijuana Testing Facility must have a written and documented system to evaluate and document the competency in performing authorized tests for employees. Prior to independently analyzing Samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls).

4. Standard Operating Procedure Manual. A Retail Marijuana Testing Facility must have a written standard operating procedure manual meeting the minimum standards set forth in these rules detailing the performance of all methods employed by the facility used to test the analytes it reports and made available for testing analysts to follow at all times.

    a. The current laboratory director must approve, sign and date each procedure. If any modifications are made to those procedures, the laboratory director must approve, sign, and date the revised version prior to use.

    b. A Retail Marijuana Testing Facility must maintain a copy of all standard operating procedures to include any revised copies for a minimum of three years. *See* Rule 6-450 – Retail Marijuana Testing Facilities: Records Retention, and Rule 3-905 – Business Records Required.

5. Analytical Processes. A Retail Marijuana Testing Facility must maintain a listing of all analytical methods used and all analytes tested and reported. The Retail Marijuana Testing Facility must provide this listing to the Division upon request.

6. Proficiency Testing. A Retail Marijuana Testing Facility must successfully participate in a Division approved Proficiency Testing program in order to obtain and maintain certification.

7. Quality Assurance and Quality Control. A Retail Marijuana Testing Facility must establish and follow a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and quality of results reported.

8. Security. A Retail Marijuana Testing Facility must be located in a secure setting as to prevent unauthorized persons from gaining access to the testing and storage areas of the laboratory.

9. Chain of Custody. A Retail Marijuana Testing Facility must establish a system to document the complete chain of custody for samples from receipt through disposal.

10. Space. A Retail Marijuana Testing Facility must be located in a fixed structure that provides adequate infrastructure to perform analysis in a safe and compliant manner consistent with federal, state, and local requirements.

11. Records. A Retail Marijuana Testing Facility must establish a system to retain and maintain records for a period not less than three years. *See* Rules 6-450 – Retail Marijuana Testing Facilities - Records Retention and Rule 3-905 – Business Records Required.

12. Results Reporting. A Retail Marijuana Testing Facility must establish processes to ensure results are reported in a timely and accurate manner. *See* Rule 3-825 – Reporting and Inventory Tracking System. A Retail Marijuana Testing Facility's process may require that the Regulated Marijuana Business remit payment for any test conducted by the Testing Facility prior to entry of the results of that test into the Inventory Tracking System. A Retail Marijuana Testing Facility's process established under this subparagraph (12) must be maintained on the Licensed Premises of the Retail Marijuana Testing Facility.

13. Conduct While Seeking Certification. A Retail Marijuana Testing Facility, and its agents and employees, shall provide all documents and information required or requested by the Colorado Department of Public Health and Environment and its employees, and the Division and its employees in a full, faithful, truthful, and fair manner.

D. Violation Affecting Public Safety. A violation of this Rule may be considered a license violation affecting public safety.

Basis and Purpose - 6-420

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a), 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(c), 44-10-203(2)(d), 44-10-203(3)(c), 44-10-203(3)(d), 44-10-401(2)(b)(IV), 44-10-604, C.R.S. The purpose of this rule is to establish personnel standards for the operation of a Retail Marijuana Testing Facility. This Rule 6-420 was previously Rule R 704, 1 CCR 212-2.

6-420 – Retail Marijuana Testing Facilities: Personnel

A. Laboratory Director. The laboratory director is responsible for the overall analytical operation and quality of the results reported by the Retail Marijuana Testing Facility, including the employment of personnel who are competent to perform test procedures, and record and report test results promptly, accurately, and proficiently and for assuring compliance with the standards set forth in this Rule.

1. The laboratory director may also serve as a supervisory analyst or testing analyst, or both, for a Retail Marijuana Testing Facility.

2. The laboratory director for a Retail Marijuana Testing Facility must meet one of the following qualification requirements:

    a. The laboratory director must be a Medical Doctor (M.D.) licensed to practice medicine in Colorado and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

    b. The laboratory director must hold a doctoral degree in one of the natural sciences and have at least three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body;

    c. The laboratory director must hold a master's degree in one of the natural sciences and have at least five years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body; or

    d. The laboratory director must hold a bachelor's degree in one of the natural sciences and have at least seven years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body.

B. What the Laboratory Director May Delegate. The laboratory director may delegate the responsibilities assigned under this Rule to a qualified supervisory analyst, provided that such delegation is made in writing and a record of the delegation is maintained. *See* Rule 3-905 – Business Records Required. Despite the designation of a responsibility, the laboratory director remains responsible for ensuring that all duties are properly performed.

C. Responsibilities of the Laboratory Director. The laboratory director must:

1. Ensure that the Retail Marijuana Testing Facility has adequate space, equipment, materials, and controls available to perform the tests reported;

2. Establish and adhere to a written standard operating procedure used to perform the tests reported;

3. Ensure that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing;

4. Ensure that the physical location and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards;

5. Ensure that the test methodologies selected have the capability of providing the quality of results required for the level of testing the laboratory is certified to perform;

6. Ensure that validation and verification test methods used are adequate to determine the accuracy, precision, and other pertinent performance characteristics of the method;

7. Ensure that testing analysts perform the test methods as required for accurate and reliable results;

8. Ensure that the laboratory is enrolled in and successfully participates in a Division approved Proficiency Testing program;

9. Ensure that the quality control and quality assessment programs are established and maintained to assure the quality of laboratory services provided and to identify failures in quality as they occur;

10. Ensure the establishment and maintenance of acceptable levels of analytical performance for each test system;

11. Ensure that all necessary remedial actions are taken and documented whenever significant deviations from the laboratory's established performance specifications are identified, and that test results are reported only when the system is functioning properly;

12. Ensure that reports of test results include pertinent information required for interpretation;

13. Ensure that consultation is available to the laboratory's clients on matters relating to the quality of the test results reported and their interpretation of said results;

14. Employ a sufficient number of laboratory personnel who meet the qualification requirements and provide appropriate consultation, properly supervise, and ensure accurate performance of tests and reporting of test results;

15. Ensure that prior to testing any samples, all testing analysts receive the appropriate training for the type and complexity of tests performed, and have demonstrated and documented that they can perform all testing operations reliably to provide and report accurate results;

16. Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process Samples, perform test procedures and report test results promptly and proficiently, avoid actual and apparent conflicts of interests, and whenever necessary, identify needs for remedial training or continuing education to improve skills;

17. Ensure that an approved standard operating procedure manual is available to all personnel responsible for any aspect of the testing process; and

18. Specify, in writing, the responsibilities and duties of each person engaged in the performance of the preanalytic, analytic, and postanalytic phases of testing, that identifies which examinations and procedures each individual is authorized to perform, whether supervision is required for Sample processing, test performance or results reporting, and whether consultant or laboratory director review is required prior to reporting test results.

D. Change in Laboratory Director. In the event that the laboratory director leaves employment at the Retail Marijuana Testing Facility, the Retail Marijuana Testing Facility shall:

1. Provide written notice to the Colorado Department of Public Health and Environment and the Division within seven days of the laboratory director’s departure; and

2. Designate an interim laboratory director within seven days of the laboratory director’s departure. At a minimum, the interim laboratory director must meet the qualifications of a supervisory analyst.

3. The Retail Marijuana Testing Facility must hire a permanent laboratory director within 60 days from the date of the previous laboratory director's departure.

4. Notwithstanding the requirement of subparagraph (D)(3), the Retail Marijuana Testing Facility may submit a waiver request to the Division Director to receive an additional 60 days to hire a permanent laboratory director provided that the Retail Marijuana Testing Facility submits a detailed oversight plan along with the waiver request.

E. Supervisory Analyst. Supervisory analysts must meet one of the qualifications for a laboratory director or have at least a bachelor's degree in one of the natural sciences and three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing in which the testing methods were recognized by an accrediting body. A combination of education and experience may substitute for the three years of full-time laboratory experience.

F. Laboratory Testing Analyst.

1. Educational Requirements. An individual designated as a testing analyst must meet one of the qualifications for a laboratory director or supervisory analyst or have at least a bachelor's degree in one of the natural sciences and one year of full-time experience in laboratory testing.

2. Responsibilities. In order to independently perform any test for a Retail Marijuana Testing Facility, an individual must at least meet the educational requirements for a testing analyst.

Basis and Purpose – 6-425

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-202(4), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish standard operating procedure manual standards for the operation of a Retail Marijuana Testing Facility. This Rule 6-425 was previously Rule R 705, 1 CCR 212-2.

6-425 –Retail Marijuana Testing Facilities: Standard Operating Procedure Manual

A. A standard operating procedure manual must include, but need not be limited to, procedures for:

1. Sample receiving;

2. Sample accessioning;

3. Sample storage;

4. Identifying and rejecting unacceptable Samples;

5. Recording and reporting discrepancies;

6. Security of Samples, aliquots and extracts and records;

7. Validating a new or revised method prior to testing Samples to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), LOD, LOQ, and verification of the reportable range;

8. Aliquoting Samples to avoid contamination and carry-over;

9. Sample retention to assure stability, as follows:

a. For Samples that comprise Test Batches submitted for testing other than Pesticide contaminant testing, Sample retention for 14 days;

b. For Samples that comprise Test Batches submitted for Pesticide contaminant testing, Sample retention for 90 days.

10. Disposal of Samples;

11. The theory and principles behind each assay;

12. Preparation and identification of reagents, standards, calibrators and controls and ensure all standards are traceable to National Institute of Standards of Technology ("NIST");

13. Special requirements and safety precautions involved in performing assays;

14. Frequency and number of control and calibration materials;

15. Recording and reporting assay results;

16. Protocol and criteria for accepting or rejecting analytical Procedure to verify the accuracy of the final report;

17. Pertinent literature references for each method;

18. Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by a testing analyst;

19. Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns;

20. A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results and are corrective actions implemented and documented, and does the laboratory contact the requesting entity; and

21. Policies and procedures to follow when Samples are requested for referral and testing by another certified Retail Marijuana Testing Facility or an approved local or state agency's laboratory.

22. Testing Industrial Hemp, if the Retail Marijuana Testing Facility tests Industrial Hemp.

Basis and Purpose – 6-430

The statutory authority for this rule includes but is not limited to sections 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-202(4), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish analytical processes standards for the operation of a Retail Marijuana Testing Facility. This Rule 6-430 was previously Rule R 706, 1 CCR 212-2.

6-430 –Retail Marijuana Testing Facilities: Analytical Processes

A. Gas Chromatography ("GC"). A Retail Marijuana Testing Facility using GC must:

1. Document the conditions of the gas chromatograph, including the detector response;

2. Perform and document preventive maintenance as required by the manufacturer;

3. Ensure that records are maintained and readily available to the staff operating the equipment;

4. Document the performance of new columns before use;

5. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;

6. Establish criteria of acceptability for variances between different aliquots and different columns; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

B. Gas Chromatography Mass Spectrometry ("GC/MS"). A Retail Marijuana Testing Facility using GC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Document the changes of septa as specified in the standard operating procedure;

3. Document liners being cleaned or replaced as specified in the standard operating procedure;

4. Ensure that records are maintained and readily available to the staff operating the equipment;

5. Maintain records of mass spectrometric tuning;

6. Establish written criteria for an acceptable mass-spectrometric tune;

7. Document corrective actions if a mass-spectrometric tune is unacceptable;

8. Monitor analytic analyses to check for contamination and carry-over;

9. Use selected ion monitoring within each run to assure that the laboratory compares ion ratios and retention times between calibrators, controls and Samples for identification of an analyte;

10. Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

11. Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;

12. Define the criteria for designating qualitative results as positive;

13. When a library is used to qualitatively identify an analyte, the identity of the analyte must be confirmed before reporting results by comparing the relative retention time and mass spectrum to that of a known standard or control run on the same system; and

14. Evaluate the performance of the instrument after routine and preventive maintenance (*e.g.* clipping or replacing the column or cleaning the source) prior to analyzing subject Samples.

C. Immunoassays. A Retail Marijuana Testing Facility using Immunoassays must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Validate any changes or modifications to a manufacturer's approved assays or testing methods when a Sample is not included within the types of Samples approved by the manufacturer; and

4. Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which must be consistent with manufacturer's instructions.

D. Thin Layer Chromatography ("TLC"). A Retail Marijuana Testing Facility using TLC must:

1. Apply unextracted standards to each thin layer chromatographic plate;

2. Include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime;

3. Include in their written procedure the storage of unused thin layer chromatographic plates;

4. Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;

5. Verify that the spotting technique used precludes the possibility of contamination and carry-over;

6. Measure all appropriate RF values for qualitative identification purposes;

7. Use and record sequential color reactions, when applicable;

8. Maintain records of thin layer chromatographic plates; and

9. Analyze an appropriate matrix blank with each batch of Samples analyzed.

E. High Performance Liquid Chromatography ("HPLC"). A Retail Marijuana Testing Facility using HPLC must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Monitor and document the performance of the HPLC instrument each day of testing;

4. Evaluate the performance of new columns before use;

5. Create written standards for acceptability when eluting solvents are recycled;

6. Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and

7. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

F. Liquid Chromatography Mass Spectroscopy ("LC/MS"). A Retail Marijuana Testing Facility using LC/MS must:

1. Perform and document preventive maintenance as required by the manufacturer;

2. Ensure that records are maintained and readily available to the staff operating the equipment;

3. Maintain records of mass spectrometric tuning;

4. Document corrective actions if a mass-spectrometric tune is unacceptable;

5. Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;

6. Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;

7. Compare two transitions and retention times between calibrators, controls and Samples within each run;

8. Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and

9. Evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results.

G. Other Analytical Methodology. A Retail Marijuana Testing Facility using other methodology or new methodology must:

1. Implement a performance based measurement system for the selected methodology and validate the method following good laboratory practices prior to reporting results. Validation of other or new methodology must include when applicable, but is not limited to:

a. Verification of Accuracy

b. Verification of Precision

c. Verification of Analytical Sensitivity

d. Verification of Analytical Specificity

e. Verification of the LOD

f. Verification of the LOQ

g. Verification of the Reportable Range

h. Identification of Interfering Substances

2. Validation of the other or new methodology must be documented.

3. Prior to use, other or new methodology must have a standard operating procedure approved and signed by the laboratory director.

4. Testing analysts must have documentation of competency assessment prior to testing Samples.

5. Any changes to the approved other or new methodology must be revalidated and documented prior to testing Samples.

Basis and Purpose - 6-435

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish a proficiency testing program for Retail Marijuana Testing Facilities. This Rule 6-435 was previously Rule R 707, 1 CCR 212-2.

6-435 – Retail Marijuana Testing Facilities: Proficiency Testing

A. Proficiency Testing Required. A Retail Marijuana Testing Facility must participate in a Proficiency Testing program for each approved category in which it seeks certification under Rule 6-415 – Retail Marijuana Testing Facilities: Certification Requirements.

B. Participation in Designated Proficiency Testing Event. If required by the Division as part of certification, the Retail Marijuana Testing Facility must have successfully participated in Proficiency Testing in the category for which it seeks certification, within the preceding 12 months.

C. Continued Certification. To maintain continued certification, a Retail Marijuana Testing Facility must participate in the designated Proficiency Testing program with continued satisfactory performance as determined by the Division as part of certification. The Division may designate a local agency, state agency, or independent third-party to provide Proficiency Testing.

D. Analyzing Proficiency Testing Samples. A Retail Marijuana Testing Facility must analyze Proficiency Test Samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used in its standard operating procedures.

E. Proficiency Testing Attestation. The laboratory director and all testing analysts who participated in Proficiency Testing must sign corresponding attestation statements.

F. Laboratory Director Must Review Results. The laboratory director must review and evaluate all Proficiency Testing results.

G. Remedial Action. A Retail Marijuana Testing Facility must take and document remedial action when a score of less than 100% is achieved on any test during Proficiency Testing. Remedial action documentation must include a review of Samples tested and results reported since the last successful Proficiency Testing event. A requirement to take remedial action does not necessarily indicate unsatisfactory participation in a Proficiency Testing event.

H. Unsatisfactory Participation in a Proficiency Testing Event. Unless the Retail Marijuana Testing Facility positively identifies at least 80% of the target analytes tested, participation in the Proficiency Testing event will be considered unsatisfactory. A positive identification must include accurate quantitative and qualitative results as applicable. Any false positive result reported will be considered unsatisfactory participation in the Proficiency Testing event.

I. Consequence of Unsatisfactory Participation in Proficiency Testing Event. Unsatisfactory participation in a Proficiency Testing event may result in limitation, suspension or revocation of Rule 6-415 certification.

Basis and Purpose – 6-440

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish quality assurance and quality assurance standards for a Retail Marijuana Testing Facility. This Rule 6-440 was previously Rule R 708, 1 CCR 212-2.

6-440 – Retail Marijuana Testing Facilities: Quality Assurance and Quality Control

A. Quality Assurance Program Required. A Retail Marijuana Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:

1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;

2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and

3. Review of the performance of validated methods used by the Retail Marijuana Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.

B. Quality Control Measures Required. A Retail Marijuana Testing Facility must establish, monitor and document on an ongoing basis the quality control measures taken by the laboratory to ensure the proper functioning of equipment, validity of standard operating procedures and accuracy of results reported. Such quality control measures must include, but shall not be limited to:

1. Documentation of instrument preventive maintenance, repair, troubleshooting and corrective actions taken when performance does not meet established levels of quality;

2. Review and documentation of the accuracy of automatic and adjustable pipettes and other measuring devices when placed into service and annually thereafter;

3. Cleaning, maintaining and calibrating as needed the analytical balances and in addition, verifying the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory;

4. Annually verifying and documenting the accuracy of thermometers using a NIST traceable reference thermometer;

5. Recording temperatures on all equipment when in use where temperature control is specified in the standard operating procedures manual, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers;

6. Properly labeling reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer;

7. Avoiding mixing different lots of reagents in the same analytical run;

8. Performing and documenting a calibration curve with each analysis using at minimum three calibrators throughout the reporting range;

9. For qualitative analyses, analyzing, at minimum, a negative and a positive control with each batch of Samples analyzed;

10. For quantitative analyses, analyzing, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve;

11. Using a control material or materials that differ in either source or, lot number, or concentration from the calibration material used with each analytical run;

12. For multi-analyte assays, performing and documenting calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the analytical run;

13. Analyzing an appropriate matrix blank and control with each analytical run, when available;

14. Analyzing calibrators and controls in the same manner as unknowns;

15. Documenting the performance of calibration standards and controls for each analytical run to ensure the acceptability criteria as defined in the standard operating procedure is met;

16. Documenting all corrective actions taken when unacceptable calibration, control, and standard or instrument performance does not meet acceptability criteria as defined in the standard operating procedure;

17. Maintaining records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), LOD, LOQ, and verification of the linear range; and

18. Performing testing analysts that follow the current Standard Operating Procedures Manual for the test or tests to be performed.

Basis and Purpose – 6-445

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish chain of custody standards for a Retail Marijuana Testing Facility. In addition, it establishes the requirement that a Retail Marijuana Testing Facility follow an adequate chain of custody for Samples it maintains. This Rule 6-445 was previously Rule R 709, 1 CCR 212-2.

6-445 –Retail Marijuana Testing Facilities: Chain of Custody

A. General Requirements. A Retail Marijuana Testing Facility must establish an adequate chain of custody and Sample requirement instructions that must include, but not limited to:

1. Issue instructions for the minimum Sample requirements and storage requirements;

2. Document the condition of the external package and integrity seals utilized to prevent contamination of, or tampering with, the Sample;

3. Document the condition and amount of Sample provided at the time of receipt;

4. Document all persons handling the original Samples, aliquots, and extracts;

5. Document all Transfers of Samples, aliquots, and extracts referred to another certified Retail Marijuana Testing Facility Licensee for additional testing or whenever requested by a client;

6. Maintain a current list of authorized personnel and restrict entry to the laboratory to only those authorized;

7. Secure the Laboratory during non-working hours;

8. Secure short and long-term storage areas when not in use;

9. Utilize a secured area to log-in and aliquot Samples;

10. Ensure Samples are stored appropriately; and

11. Document the disposal of Samples, aliquots, and extracts.

Basis and Purpose – 6-450

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Testing Facility. This Rule 6-450 was previously Rule R 710, 1 CCR 212-2.

6-450 –Retail Marijuana Testing Facilities: Records Retention

A. General Requirement. A Retail Marijuana Testing Facility must maintain all required business records. *See* Rule 3-905 - Business Records Required.

B. Specific Business Records Required: Record Retention. A Retail Marijuana Testing Facility must establish processes to preserve records in accordance with Rule 3-905 that includes, but is not limited to;

1. Test Results, including final and amended reports, and identification of analyst and date of analysis;

2. Quality Control and Quality Assurance Records, including accession numbers, Sample type, and acceptable reference range parameters;

3. Standard Operating Procedures;

4. Personnel Records;

5. Chain of Custody Records;

6. Proficiency Testing Records; and

7. Analytical Data to include data generated by the instrumentation, raw data of calibration standards and curves.

Basis and Purpose – 6-455

The statutory authority for this rule includes but is not limited to sections 44-10-202(4), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-401(2)(b)(IV), and 44-10-604, C.R.S. The purpose of this rule is to clarify a Retail Marijuana Testing Facility's responsibility to notify the Retail Marijuana Business and accurately report in the inventory tracking system any failed contaminant test result. This Rule 6-455 was previously Rule R 712(D), 1 CCR 212-2.

6-455 – Notification of Retail Marijuana Business

If Retail Marijuana failed a contaminant test, then the Retail Marijuana Testing Facility must immediately (1) notify the Retail Marijuana Business that submitted the Test Batch or Sample for testing and any Person as directed by an approved Research Project (2) report the failure in accordance with the Inventory Tracking System reporting requirements in Rule 3-825(B).

6-500 Series – Retail Marijuana Transporters

Basis and Purpose – 6-505

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2)(b)(V), and 44-10-605, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to Retail Marijuana Transporters. This Rule 6-505 was previously Rule R 1601, 1 CCR 212-2.

6-505 – Retail Marijuana Transporter: License Privileges

A. Licensed Premises. A separate license is required for each specific business or business entity and geographical location. A Retail Marijuana Transporter may share a location with an identically owned Medical Marijuana Transporter. However, a separate license is required for each specific business or business entity, regardless of geographical location.

B. Transportation of Retail Marijuana and Retail Marijuana Product Authorized. A Retail Marijuana Transporter may take transportation orders, receive, transport, temporarily store, and deliver Retail Marijuana to Retail Marijuana Businesses.

C. Authorized Sources of Retail Marijuana and Retail Marijuana Product. A Retail Marijuana Transporter may only transport and store Retail Marijuana that it received directly from the originating Retail Marijuana Business.

D. Authorized On-Premises Storage. A Retail Marijuana Transporter is authorized to store transported Retail Marijuana on its Licensed Premises or permitted off-premises storage facility. All transported Retail Marijuana must be secured in a Limited Access Area, and tracked consistently with the inventory tracking rules.

E. Delivery to Consumers Pursuant to Delivery Permit.

1. Prior to January 2, 2021, all Retail Marijuana Transporters are prohibited from delivering Regulated Marijuana to consumers.

2. After January 2, 2021, only Retail Marijuana Transporters that possess a valid delivery permit may delivery Retail Marijuana pursuant to contracts with Retail Marijuana Stores

that also possess valid delivery permits. All deliveries of Retail Marijuana consumers must also comply with all requirements of Rule 3-615.

3. Violation affecting Public Safety. Any violation of paragraph E of this Rule is a license violation affecting public safety.

Basis and Purpose – 6-510

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(n), 44-10-203(3)(c), 44-10-401(2)(b)(V), and 44-10-605, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Transporter. This Rule 6-510 was previously Rule R 1602, 1 CCR 212-2.

6-510 – Retail Marijuana Transporter: General Limitations or Prohibited Acts

A. Sales, Liens, and Secured Interests Prohibited. A Retail Marijuana Transporter is prohibited from buying, selling, or giving away Retail Marijuana or from receiving complimentary Retail Marijuana. A Retail Marijuana Transporter shall not place or hold a lien or secured interest on Retail Marijuana.

B. Licensed Premises Permitted. A Retail Marijuana Transporter shall maintain a Licensed Premises if it: (1) temporarily stores any Retail Marijuana or (2) modifies any information in the Inventory Tracking System generated transport manifest. The Licensed Premises shall be in a Local Jurisdiction that authorizes the operation of Retail Marijuana Stores. If a Retail Marijuana Transporter Licensed Premises is co-located with a Medical Marijuana Transporter Licensed Premises, then the combined Licensed Premises shall be in a Local Jurisdiction that authorizes the operation of both Retail Marijuana Stores and Medical Marijuana Stores.

C. Off-Premises Storage Permit. A Retail Marijuana Transporter may maintain one or more permitted off-premises storage facilities. *See* Rule 3-610 – Off-Premises Storage of Regulated Marijuana: All Regulated Marijuana Businesses.

D. Storage Duration. A Retail Marijuana Transporter shall not store Retail Marijuana for longer than seven days from receiving it at its Licensed Premises or off-premises storage facility. The total allowable seven day storage duration begins and applies regardless of which of the Retail Marijuana Transporter's premises receives the Retail Marijuana first, i.e. the Retail Marijuana Transporter's Licensed Premises, or any of its off-premises storage facilities. A Retail Marijuana Transporter with a valid delivery permit may store Retail Marijuana for delivery to consumers pursuant to the delivery permit for no longer than seven days from receipt at its Licensed Premises or off-premises storage facility.

E. Control of Retail Marijuana. A Retail Marijuana Transporter is responsible for the Retail Marijuana once it takes control of the Retail Marijuana and until the Retail Marijuana Transporter delivers it to the receiving Retail Marijuana Business, Pesticide Manufacturer, or to a consumer pursuant to a valid delivery permit. For purposes of this Rule, taking control of the Retail Marijuana means removing it from the originating Retail Marijuana Business's Licensed Premises and placing the Retail Marijuana in the transport vehicle or the Delivery Motor Vehicle.

F. Location of Orders Taken and Delivered. A Retail Marijuana Transporter is permitted to take orders on the Licensed Premises of any Retail Marijuana Business to transport Retail Marijuana between Retail Marijuana Businesses. The Retail Marijuana Transporter shall deliver the Retail Marijuana to the Licensed Premises of a licensed Retail Marijuana Business, or a Pesticide Manufacturer. A Retail Marijuana Transporter may also delivery Retail Marijuana to consumers pursuant to a contract with a Retail Marijuana Store if it possesses a valid delivery permit.

G. A Retail Marijuana Transporter shall receive Retail Marijuana from the originating Licensee packaged in the way that it is intended to be delivered to the final destination Licensee or Pesticide Manufacturer. The Retail Marijuana Transporter shall deliver the Retail Marijuana in the same, unaltered packaging to the final destination Licensee.

H. A Retail Marijuana Transporter with a valid delivery permit shall receive Retail Marijuana that has been weighed, packaged, prepared, and labeled for delivery on the Licensed Premises of a Retail Marijuana Store or at the Retail Marijuana Store's off-premises storage facility after receipt of a delivery order. Retail Marijuana cannot be placed into a Delivery Motor Vehicle until after an order has been received and the Retail Marijuana has been packaged and labeled for delivery to the consumer as required by the 3-1000 Series Rules.

I. A Retail Marijuana Transporter must not deliver Retail Marijuana to consumers while also transporting Regulated Marijuana between Licensed Premises in the Delivery Motor Vehicle.

J. Opening of Bulk Packages or Containers and Re-Packaging Prohibited. A Retail Marijuana Transporter shall not open Containers of Retail Marijuana. Retail Marijuana Transporters are prohibited from re-packaging Retail Marijuana.

K. Temperature-Controlled Transport Vehicles. A Retail Marijuana Transporter shall utilize temperature-controlled transport vehicles when necessary to prevent spoilage of the transported Retail Marijuana.

L. Damaged, Refused, or Undeliverable Retail Marijuana. Any damaged Retail Marijuana that is undeliverable to the final destination Retail Marijuana Business, or any Retail Marijuana that is refused by the final destination Retail Marijuana Business shall be transported back to the originating Retail Marijuana Business. Any Retail Marijuana that cannot be delivered to a consumer pursuant to a valid delivery permit shall be returned to the originating Retail Marijuana Store or the Retail Marijuana Store's off-premises storage facility within the same business day or pursuant to paragraph D of this Rule.

M. Transport of Retail Marijuana Vegetative Plants Authorized. Retail Marijuana Vegetative plants may only be transported between Licensed Premises and such transport shall only be permitted due to an approved change of location pursuant to Rule 2-255. Transportation of Vegetative plants to a permitted off-premises storage facility shall not be allowed.

6-600 Series – Retail Marijuana Business Operators

Basis and Purpose – 6-605

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(b)(VI), and 44-10-606, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to Retail Marijuana Business Operators. This Rule 6-605 was previously Rule R 1701, 1 CCR 212-2.

6-605 – Retail Marijuana Business Operator: License Privileges

A. Privileges Granted. A Retail Marijuana Business Operator shall only exercise those privileges granted to it by the Marijuana Code, the rules promulgated pursuant thereto and the State Licensing Authority. A Retail Marijuana Business Operator may exercise those privileges only on behalf of the Retail Marijuana Business(es) it operates. A Retail Marijuana Business shall not contract to have more than one Retail Marijuana Business Operator providing services to the Retail Marijuana Business at any given time.

B. Licensed Premises of the Retail Marijuana Business(es) Operated. A separate License is required for each specific Retail Marijuana Business Operator, and each such licensed Retail Marijuana Business Operator may operate one or more other Retail Marijuana Business(es). A Retail Marijuana Business Operator will not have its own Licensed Premises, but shall maintain its own place of business, and may exercise the privileges of a Retail Marijuana Business Operator at the Licensed Premises of the Retail Marijuana Business(es) it operates.

C. Entities Eligible to Hold Retail Marijuana Business Operator License. A Retail Marijuana Business Operator License may be held only by a business entity, including, but not limited to, a corporation, limited liability company, partnership, or sole proprietorship.

D. Separate Place of Business. A Retail Marijuana Business Operator shall designate and maintain a place of business separate from the Licensed Premises of any Retail Marijuana Business(es) it operates. A Retail Marijuana Business Operator's separate place of business shall not be considered a Licensed Premises, and shall not be subject to the requirements applicable to the Licensed Premises of other Retail Marijuana Businesses, except as set forth in Rules 6-610 and 6-620. Possession, storage, use, cultivation, manufacture, sale, distribution, or testing of Retail Marijuana is prohibited at a Retail Marijuana Business Operator's separate place of business.

E. Agency Relationship and Discipline for Violations. A Retail Marijuana Business Operator and each of its Controlling Beneficial Owners required to hold an Owner License, as well as the agents and employees of the Retail Marijuana Business Operator, shall be agents of the Retail Marijuana Business(es) the Retail Marijuana Business Operator is contracted to operate, when engaged in activities related, directly, or indirectly, to the operation of such Retail Marijuana Business(es), including for purposes of taking administrative action against the Retail Marijuana Business being operated. *See* § 44-10-901(1), C.R.S. Similarly, a Retail Marijuana Business Operator and its Controlling Beneficial Owners required to hold an Owner License, as well as the officers, agents and employees of the Retail Marijuana Business Operator, may be disciplined for violations committed by the Controlling Beneficial Owners, agents or employees of the Retail Marijuana Business acting under their direction or control. A Retail Marijuana Business Operator may also be disciplined for violations not directly related to a Retail Marijuana Business it is operating.

F. Compliance with Applicable State and Local Law, Ordinances, Rules, and Regulations. A Retail Marijuana Business Operator, and each of its Controlling Beneficial Owners, agents and employees engaged, directly or indirectly in the operation of the Retail Marijuana Business it operates, shall comply with all state and local laws, ordinances, rules and regulations applicable to the Retail Marijuana Business(es) being operated.

Basis and Purpose – 6-610

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-401(2)(b)(VI), and 44-10-606, C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Business Operator. This Rule 6-610 was previously Rule R 1702, 1 CCR 212-2.

6-610 – Retail Marijuana Business Operators: General Limitations or Prohibited Acts

A. Financial Interest. A Person who holds an Owner's Interest in a Retail Marijuana Business Operator may hold an Owner's Interest in another Retail Marijuana Business. A Retail Marijuana Business may be operated by a Retail Marijuana Business Operator where each has one or more Controlling Beneficial Owners or Passive Beneficial Owners in common. A Person may receive compensation for services provided by a Retail Marijuana Business Operator in accordance with these rules.

B. Sale of Marijuana Prohibited. A Retail Marijuana Business Operator is prohibited from selling, distributing, or Transferring Retail Marijuana to another Retail Marijuana Business or a consumer, except when acting as an agent of a Retail Marijuana Business (s) operated by the Retail Marijuana Business Operator.

C. Consumption Prohibited. A Retail Marijuana Business Operator, and its Controlling Beneficial Owners, Passive Beneficial Owners, agents and employees, shall not permit the consumption of marijuana or marijuana products at its separate place of business.

D. Inventory Tracking System. A Retail Marijuana Business Operator, and any of its Controlling Beneficial Owners, agents or employees engaged in the operation of the Retail Marijuana Business(es) it operates, must use the Inventory Tracking System account of the Retail Marijuana Business(es) it operates, in accordance with all requirements, limitations and prohibitions applicable to the Retail Marijuana Business(es) it operates.

E. Compliance with Requirements and Limitations Applicable to the Retail Marijuana Business(es) Operated. In operating any other Retail Marijuana Business, a Retail Marijuana Business Operator, and its Controlling Beneficial Owners who are required to hold Owner Licenses, as well as the agents and employees of the Retail Marijuana Business Operator, shall comply with all requirements, limitations and prohibitions applicable to the type(s) of Retail Marijuana Business(es) being operated, under state and local laws, ordinances, rules, and regulations, and may be disciplined for violation of the same.

F. Inventory Tracking System Access. A Retail Marijuana Business may grant access to its Inventory Tracking System account to the Controlling Beneficial Owners, agents and employees of a Retail Marijuana Business Operator having duties related to Inventory Tracking System activities of the Retail Marijuana Business(es) being operated.

1. The Controlling Beneficial Owners, agents and employees of a Retail Marijuana Business Operator granted access to a Retail Marijuana Business's Inventory Tracking System account, shall comply with all Inventory Tracking System rules.

2. At least one Controlling Beneficial Owner of a Retail Marijuana Business being operated by a Retail Marijuana Business Operator must be an Inventory Tracking System Trained Administrator for the Retail Marijuana Business's Inventory Tracking System account. That Inventory Tracking System Trained Administrator shall control access to its Inventory Tracking System account, and shall promptly terminate the access of the Retail Marijuana Business Operator's Controlling Beneficial Owners, agents and employees:

    a. When its contract with the Retail Marijuana Business Operator expires by its terms;

    b. When its contract with the Retail Marijuana Business Operator is terminated by any party; or

    c. When it is notified that the License of the Retail Marijuana Business Operator, or a specific Controlling Beneficial Owner, agent or employee of the Retail Marijuana Business Operator, has expired, or has been suspended or revoked.

G. Limitations on Use of Documents and Information Obtained from Retail Marijuana Businesses. A Retail Marijuana Business Operator, and its agents and employees, shall maintain the confidentiality of documents and information obtained from the other Retail Marijuana Business(es) it operates, and shall not use or disseminate documents or information obtained from a Retail Marijuana Business it operates for any purpose not authorized by the Marijuana Code and the rules promulgated pursuant thereto, and shall not engage in data mining or other

use of the information obtained from a Retail Marijuana Business to promote the interests of the Retail Marijuana Business Operator or its Controlling Beneficial Owners, Passive Beneficial Owners, agents or employees, or any Person other than the Retail Marijuana Business it operates.

H. Form and Structure of Allowable Agreement(s) Between Operators and Owners. Any agreement between a Retail Marijuana Business and a Retail Marijuana Business Operator:

1. Must acknowledge that the Retail Marijuana Business Operator, and its Controlling Beneficial Owners, agents and employees who are engaged, directly or indirectly, in operating the Retail Marijuana Business, are agents of the Retail Marijuana Business being operated, and must not disclaim an agency relationship;

2. May provide for the Retail Marijuana Business Operator to receive direct remuneration from the Retail Marijuana Business, including a portion of the profits of the Retail Marijuana Business being operated, subject to the following limitations:

a. The portion of the profits to be paid to the Retail Marijuana Business Operator shall be commercially reasonable, and in any event shall not exceed the portion of the net profits to be retained by the Retail Marijuana Business being operated;

b. The Retail Marijuana Business Operator shall not be granted, and may not accept:

i. A security interest in the Retail Marijuana Business being operated, or in any assets of the Retail Marijuana Business;

ii. An ownership or membership interest, shares, or shares of stock, or any right to obtain any direct or indirect beneficial ownership interest in the Retail Marijuana Business being operated, or a future or contingent right to the same, including but not limited to options or warrants;

c. The Retail Marijuana Business Operator shall not guarantee the Retail Marijuana Business's debts or production levels.

3. Shall permit the Retail Marijuana Business being operated to terminate the contract with the Retail Marijuana Business Operator at any time, with or without cause.

I. A Retail Marijuana Business Operator may engage in dual operation of a Retail Marijuana Business and a Medical Marijuana Business at a single location, to the extent the Retail Marijuana Business being operated is permitted to do so, the Retail Marijuana Business Operator shall comply with the rules promulgated pursuant to the Marijuana Code, including the requirement of obtaining a valid registration as a Medical Marijuana Business Operator.

J. Any Retail Marijuana Business Operators and the Retail Marijuana Business Operator's Owner Licensee(s) that are appointed by a court to serve as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person and take possession of, operate, manage, or control a Retail Marijuana Business must comply with Rule 2-275(F).

Basis and Purpose – 6-615

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(o), 44-10-313(12), 44-10-401(2)(b)(VI), and 44-10-401(2)(c) C.R.S. The purpose of this rule is to establish employee license requirements for the Retail Marijuana Business

Operator's Controlling Beneficial Owners, agents and employees, including those directly or indirectly engaged in the operation of other Retail Marijuana Business(es). This Rule 6-615 was previously Rule R 1703, 1 CCR 212-2.

6-615 – Retail Marijuana Business Operators: Employee Licenses for Personnel

A. Required Licenses.

1. Owner Licenses. All natural persons who are Controlling Beneficial Owners in a Retail Marijuana Business Operator must have a valid Owner License, associated with the Retail Marijuana Business Operator License. Such an Owner License shall satisfy all licensing requirements for work related to the business of the Retail Marijuana Business Operator and for work performed on behalf of, or at the Licensed Premises of, the Retail Marijuana Business(es) operated by the Retail Marijuana Business Operator.

2. Employee Licenses. All other natural persons who are agents or employees of a Retail Marijuana Business Operator that are actively engaged, directly or indirectly, in the management, supervision, or operation of one or more other Retail Marijuana Businesses, including but not limited to all agents or employees who will come into contact with Retail Marijuana, who will have access to Limited Access Areas, or who will have access to the Inventory Tracking System account of the Retail Marijuana Business(es) being operated, must hold a valid Employee License. The Employee License shall satisfy all licensing requirements for work related to the business of the Retail Marijuana Business Operator and for work at the Licensed Premises of, or on behalf of, the Retail Marijuana Business(es) operated by the Retail Marijuana Business Operator.

B. Employee Licenses Not Required. Employee Licenses are not required for Passive Beneficial Owners of a Retail Marijuana Business Operator, or for natural persons who will not come into contact with Retail Marijuana, will not have access Limited Access Area(s) of the Retail Marijuana Business(es) being operated, and will not have access to the Inventory Tracking System account of the Retail Marijuana Business(es) being operated.

C. Designation of Management Personnel of a Retail Marijuana Business Operated by a Retail Marijuana Business Operator. If a Retail Marijuana Business Operator is contracted to manage the overall operations of a Retail Marijuana Business's Licensed Premises, the Retail Marijuana Business shall designate a separate and distinct management personnel on the Licensed Premises who is an officer, agent or employee of the Retail Marijuana Business Operator, which shall be a natural person with a valid Owner License or Employee License, as set forth in paragraph A of this Rule, and the Retail Marijuana Business shall comply with the reporting provisions of subsection 44-10-313(12), C.R.S.

Basis and Purpose – 6-620

The statutory authority for this rule includes but is not limited to 44-10-202(1)(c), 44-10-203(1)(c), and 44-10-203(1)(k), C.R.S. The purpose of this rule is to establish records retention standards for a Retail Marijuana Business Operators. This Rule 6-620 was previously Rule R 1704, 1 CCR 212-2.

6-620 – Retail Marijuana Business Operators: Business Records Required

A. General Requirement. A Retail Marijuana Business Operator must maintain all required business records as set forth in Rule 3-905 - Business Records Required, except that:

1. A Retail Marijuana Business Operator is not required to maintain secure facility information, diagrams of its designated place of business, or a visitor log for its separate

place of business, because a Retail Marijuana Business Operator will not come into contact with Retail Marijuana at its separate place of business; and

2. A Retail Marijuana Business Operator is not required to maintain records related to inventory tracking, or transport, because a Retail Marijuana Business Operator is prohibited from engaging in activities on its own behalf that would require inventory tracking or transport. All records relating to inventory tracking activities and records related to transport pertaining to the Retail Marijuana Business(es) operated by the Retail Marijuana Business Operator shall be maintained at the Licensed Premises of such Retail Marijuana Business(es).

B. All records required to be maintained shall be maintained at the Retail Marijuana Business Operator's separate place of business, and not at the Licensed Premises of the Retail Marijuana Business(es) it operates.

6-700 Series – Accelerator Cultivator Licenses

Basis and Purpose – 6-705

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-203(2)(r), 44-10-203(2)(aa), 44-10-203(3)(c), 44-10-401(2)(b)(VII), 44-10-602, and 44-10-607 C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to an Accelerator Cultivator licensee.

6-705 – Accelerator Cultivator: License Privileges

A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Cultivator may operate on the same Licensed Premises as a Retail Marijuana Cultivation Facility that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

2. Separate Licensed Premises. An Accelerator Cultivator may operate on a separate premises in the possession of a Retail Marijuana Cultivation Facility that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

3. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Cultivation Facility may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Cultivation Facility. However, a separate license is required for each specific business or business entity, regardless of geographical location. A Regulated Marijuana Business that is operating at the same premises as a commonly owned Medical Marijuana Business may become an Accelerator-Endorsed Licensee. An Accelerator Cultivator may operate at the premises where the Accelerator-Endorsed Licensee operates along with the commonly owned Medical Marijuana Cultivation Facility.

B. Cultivation of Retail Marijuana and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate Authorized. An Accelerator Cultivator may propagate, cultivate, harvest, prepare, cure, package, store, and label Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate. An Accelerator Cultivator may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana from Physical Separation-Based Retail Marijuana Concentrate.

C. Authorized Transfers. An Accelerator Cultivator may only Transfer Retail Marijuana and Physical Separation-Based Retail Marijuana Concentrate to another Retail Marijuana Business and in compliance with Rule 6-230.

1. An Accelerator Cultivator shall not Transfer Flowering plants. An Accelerator Cultivator may only Transfer Vegetative plants as authorized pursuant to Rule 3-605.

2. An Accelerator Cultivator may Transfer Sampling Units of Retail Marijuana or Retail Marijuana Concentrate to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-602(6), C.R.S., and Rule 6-725.

3. An Accelerator Cultivator may Transfer Retail Marijuana or Retail Marijuana Concentrate to another Accelerator Cultivator or Retail Marijuana Cultivation Facility prior to testing required by these rules for the purpose of Decontamination only after all other steps outlined in the Accelerator Cultivator's standard operating procedures have been completed, including but not limited to drying, curing, and trimming.

D. Authorized On-Premises Storage. An Accelerator Cultivator is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area and tracked consistently with the inventory tracking rules.

E. Samples Provided for Testing. An Accelerator Cultivator may provide Samples of its Retail Marijuana to a Retail Marijuana Testing Facility for testing and research purposes. The Accelerator Cultivator shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. An Accelerator Cultivator is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents an Accelerator Cultivator from transporting its own Retail Marijuana.

G. Performance-Based Incentives. An Accelerator Cultivator may compensate its employees using performance-based incentives, including sales-based performance-based incentives. However, an Accelerator Cultivator may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-725 – Sampling Unit Protocols.

H. Authorized Sources of Retail Marijuana Seeds and Immature Plants. An Accelerator Cultivator shall only obtain Retail Marijuana seeds or Immature Plants from its own Retail Marijuana or properly transferred from another Retail Marijuana Business pursuant to the inventory tracking requirements in the 3-800 Series Rules. An Accelerator Cultivator may not bring seeds, Immature Plants, or other marijuana that is not Regulated Marijuana onto the Licensed Premises at any time.

I. Centralized Distribution Permit. An Accelerator Cultivator may apply to the State Licensing Authority for a Centralized Distribution Permit for authorization to temporarily store Retail Marijuana Concentrate and Retail Marijuana Product received from a Retail Marijuana Products Manufacturer for the sole purpose of Transfer to commonly owned Accelerator Stores.

1. For purposes of a Centralized Distribution Permit only, the term "commonly owned" means at least one natural person has a minimum of five percent ownership in both the Accelerator Cultivator possessing a Centralized Distribution Permit and the Accelerator Store to which the Retail Marijuana Concentrate and Retail Marijuana Product will be Transferred.

2. To apply for a Centralized Distribution Permit, an Accelerator Cultivator may submit an addendum to its new or renewal application or a separate addendum prior to a renewal application on forms prepared by the Division to request a Centralized Distribution Permit. The Accelerator Cultivator shall send a copy of its Centralized Distribution Permit addendum to the Local Licensing Authority in the jurisdiction in which the Centralized Distribution Permit is proposed at the same time it submits the addendum to the State Licensing Authority.

3. An Accelerator Cultivator that has been issued a Centralized Distribution Permit and has obtained all required approvals from the local licensing jurisdiction where it is located, if any, may accept Transfers of Retail Marijuana Concentrate and Retail Marijuana Product from a Retail Marijuana Products Manufacturer for the sole purpose of temporary storage and Transfer to commonly owned Accelerator Stores.

    a. An Accelerator Cultivator may only accept Retail Marijuana Concentrate and Retail Marijuana Product that is packaged and labeled for sale to a consumer pursuant to the 3-1000 Series Rules.

    b. An Accelerator Cultivator storing Retail Marijuana Concentrate and Retail Marijuana Product pursuant to a Centralized Distribution Permit shall not store such Retail Marijuana Concentrate or Retail Marijuana Product on the Accelerator Cultivator's Licensed Premises for more than 90 days from the date of receipt.

    c. All Transfers of Retail Marijuana Concentrate and Retail Marijuana Product by an Accelerator Cultivator pursuant to a Centralized Distribution Permit shall be without consideration.

4. All security and surveillance requirements that apply to an Accelerator Cultivator apply to activities conducted pursuant to the privileges of a Centralized Distribution Permit.

J. Transition Permit. An Accelerator Cultivator may only operate at two geographical locations pursuant to Rule 2-255(D).

Basis and Purpose – 6-710

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(h), 44-10-203(2)(j), 44-10-602, 44-10-701(2)(a), C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by an Accelerator Cultivator.

6-710 - Accelerator Cultivator: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. An Accelerator Cultivator is prohibited from Transferring Retail Marijuana that is not packaged and labeled in accordance with these rules. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. Transfer to Consumer Prohibited. An Accelerator Cultivator is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-602(6), C.R.S., and Rule 6-725.

C. Excise Tax Paid. An Accelerator Cultivator shall remit any applicable excise tax due pursuant to Article 28.8 of Title 39, C.R.S.

D. Corrective and Preventive Action. This paragraph D shall be effective January 1, 2021. An Accelerator Cultivator shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

E. Adverse Health Event Reporting. An Accelerator Cultivator must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-715

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(r), 44-10-401(2)(b)(VII), and 44-10-602, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at Accelerator Cultivator and standards for the production of Retail Marijuana Concentrate.

6-715 – Accelerator Cultivator: Retail Marijuana Concentrate Production

A. Permitted Production of Certain Categories of Retail Marijuana Concentrate. An Accelerator Cultivator may only produce Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises and only in an area clearly designated as a Limited Access Area. *See* Rule 3-905- Business Records Required. No other method of production or extraction for Retail Marijuana Concentrate may be conducted within the Licensed Premises of An Accelerator Cultivator unless the Controlling Beneficial Owner(s) of the Accelerator Cultivator also has a valid Accelerator Manufacturer license and the room in which Retail Marijuana Concentrate is to be produced is physically separated from all cultivation areas and has clear signage identifying the room.

B. Safety and Sanitary Requirements for Concentrate Production. If An Accelerator Cultivator produces Retail Marijuana Concentrate, then all areas in which the Retail Marijuana Concentrate are produced and all Controlling Beneficial Owners and Employee Licensees engaged in the production of the Retail Marijuana Concentrate shall be subject to all of the requirements imposed upon an Accelerator Manufacturer that produces Retail Marijuana Concentrate, including all general requirements. *See* 3-300 Series Rules – Health and Safety Regulations and Rule 6-815 – Accelerator Manufacturer: Retail Marijuana Concentrate Production.

C. Possession of Other Categories of Retail Marijuana Concentrate.

1. It shall be considered a violation of this Rule if an Accelerator Cultivator possesses a Retail Marijuana Concentrate other than a Physical Separation-Based Retail Marijuana Concentrate on its Licensed Premises unless: the Controlling Beneficial Owner(s) of the Accelerator Cultivator also has a valid Accelerator Manufacturer license; or the Accelerator Cultivator has been issued a Centralized Distribution Permit and is in possession of the Retail Marijuana Concentrate in compliance with Rule 6-705(I).

2. Notwithstanding subparagraph (C)(1) of this Rule 6-715, an Accelerator Cultivator shall be permitted to possess Solvent-Based Retail Marijuana Concentrate only when the possession is due to the Transfer of Retail Marijuana flower or trim that failed microbial testing to an Accelerator Manufacturer for processing into a Solvent-Based Retail Marijuana Concentrate, and the Accelerator Manufacturer Transfers the resultant Solvent-Based Retail Marijuana Concentrate back to the originating Accelerator Cultivator.

a. The Accelerator Cultivator shall comply with all requirements in Rule 4-135(C) when having Solvent-Based Retail Marijuana Concentrate manufactured out of Retail Marijuana flower or trim that failed microbial testing.

b. The Accelerator Cultivator is responsible for submitting the Solvent-Based Retail Marijuana Concentrate for all required testing for contaminants pursuant to Rule 4-120 – Regulated Marijuana Testing Program – Contaminant Testing, for potency pursuant to Rule 4-125 – Regulated Marijuana Testing Program – Potency Testing, and any other testing required or allowed by the Marijuana Rules or the Marijuana Code.

c. Nothing in this Rule removes or alters the responsibility of the Accelerator Cultivator that Transfers the Retail Marijuana that failed microbial testing from complying with the requirement to pay excise tax pursuant to Rule 6-210(C).

D. Production of Alternative Use Product or Audited Product Prohibited. An Accelerator Cultivator shall not produce an Alternative Use Product or Audited Product.

E. Possession of Alternative Use Product or Audited Product. An Accelerator Cultivator is authorized to possess or Transfer Alternative Use Product and/or Audited Product only if the Accelerator Cultivator received the Alternative Use Product and/or Audited Product pursuant to a Centralized Distribution Permit from an Accelerator Manufacturer that is manufacturing and Transferring the Alternative Use Product or Audited Product in accordance with Rule 6-325.

Basis and Purpose – 6-720

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(6), 44-10-401(2)(b)(VII), 44-10-602 and 44-10-607 C.R.S. The rule establishes a means by which to manage the overall production of Retail Marijuana in the state of Colorado. The intent of this rule is to encourage responsible production to meet demand for Retail

Marijuana consumers, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana. Existing and prospective licensees should be on notice that the new or revised regulations may impact the production limits provided for in this rule.

6-720 - Accelerator Cultivator: Production Management

A. Number of Accelerator Cultivators per Licensed Premises

1. An Accelerator Cultivator may only own and operate a single Accelerator Cultivation per Licensed Premises.

2 A Retail Marijuana Cultivation Facility Licensee that is an Accelerator-Endorsed Licensee may host more than one Accelerator Cultivation owned by different Social Equity Licensees at a single Licensed Premises.

B. Production Management.

1. Production Management Tiers.

a. Tier 1: 1 - 1,800 plants

b. Tier 2: 1,801 – 3,600 plants

c. Tier 3: 3,601 – 6,000 plants

d. Tier 4: 6,001 – 10,200 plants

e. Tier 5: 10,201 – 13,800+ plants

i. Tier 5 shall not have a cap on the maximum authorized plant count.

ii. The maximum authorized plant count above 10,200 plants shall increase in one or two increments of 3,600 plants. An Accelerator Cultivator shall be allowed to increase its maximum authorized plant count one or two increments of 3,600 plants at a time upon application and approval by the Division pursuant to the requirements of paragraph (E) of this Rule 6-720.

2. All Accelerator Cultivator licenses granted on or after January 1, 2020, will be issued as a Tier 1 License.

3. Immature Plants. For purposes of calculating the maximum number of authorized plants, Immature Plants are excluded.

4. Ground for Denial. The Division may deny an application for additional plants pursuant to paragraph E of this Rule if the Licensee exceeded the authorized plant count during the relevant time period for production.

5. Violation Affecting Public Safety. It may be considered a license violation affecting public safety for a Licensee to exceed the authorized plant count pursuant to these Rules.

C. Inventory Management.

1. Inventory Management for Accelerator Cultivators that Have One or Two Harvest Seasons a Year. Beginning the 721st day from the commencement of its first cultivation activities, an Accelerator Cultivator that has one or two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 720 days.

2. Inventory Management for Accelerator Cultivators That Have More Than Two Harvest Seasons a Year. Beginning the 181st day from the commencement of its first cultivation activities, an Accelerator Cultivator that has more than two harvest seasons a year may not accumulate Harvested Marijuana in excess of the total amount of Retail Marijuana flower and trim the Licensee reported as a package in the Inventory Tracking System that was Transferred to another Retail Marijuana Business in the previous 180 days.

D. Tier Decrease. For Accelerator Cultivators that are authorized to cultivate more than 1,800 plants, the Division may review the purchases, Transfers, and cultivated plant count of the Accelerator Cultivator in connection with the license renewal process or after an investigation. Based on the Division's review, the Division may reduce the Accelerator Cultivator's maximum allowed plant count to a lower production management tier pursuant to subparagraph (C)(1) of this Rule. When determining whether to reduce the maximum authorized plant count, the Division may consider the following non-exhaustive factors including but not limited to:

1. The Accelerator Licensee sold less than 70% of what the inventory it reported as packaged in the Inventory Tracking System during any 180 day review period;

2. On average during the previous 180 days the Accelerator Licensee actually cultivated less than 90% of the maximum number of plants authorized by the next lower production management tier;

3. Whether the plants/inventory suffered a catastrophic event during the review period;

4. Excise tax payment history;

5. Existing inventory and inventory history;

6. Sales contracts; and

7. Any other factors relevant to ensuring responsible cultivation, production, and inventory management.

E. Application for Additional Plants.

1. Accelerator Cultivators That Have One or Two Harvest Seasons Per Year.

a. After accruing at least one harvest season of Transfers, an Accelerator Cultivator may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That during the previous harvest season prior to the tier increase application, it consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count;

ii. That the Accelerator Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System in the previous 360 days to another Retail Marijuana Business;

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the previous 360 days, if the Licensee cultivated between 75% and 85% of its maximum authorized plant count; and

iv. Any other information requested to aid the Division in its evaluation of the production management tier increase application.

b. If the Division approves the production management tier increase application, the Accelerator Licensee shall pay the applicable expanded production management tier fee prior to cultivating the additional authorized plants.

c. For an Accelerator Licensee with an authorized plant count in tiers 2-5 to continue producing at its expanded authorized plant count, the Accelerator Licensee shall pay the requisite Accelerator Cultivator license fee and the expanded production management tier fee, if applicable, at license renewal.

d. After accruing one harvest season during which the Accelerator Cultivator Transferred and consistently cultivated the Accelerator Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a production management Tier 5, two increments of 3,600 plants (7,200 plants total), every 360 days. It is within the Division's discretion to determine whether or not to grant the requested two tiers or increments of 3,600 plants (7,200 plants total).

i. The Accelerator Licensee must demonstrate:

A. That the Accelerator Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Accelerator Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

C. If the Accelerator Cultivator cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking System during that time period and/or Transfers into the Accelerator Cultivator or related Accelerator Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Accelerator Cultivator currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two 3,600 plant increments;

B. The Accelerator Cultivator cultivated at least 90% of its maximum authorized plant count and during the preceding 360 days the Accelerator Cultivator and/or any commonly owned Accelerator Store Transferred in Retail Marijuana from one or more unrelated Accelerator Cultivator(s) or Retail Marijuana Cultivation Facility(ies);

C. The Accelerator Cultivator has contracts for the sale of Retail Marijuana in the next 360 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Accelerator Cultivator;

E. Any history of noncompliance with the Marijuana Code and/or Rules by the Accelerator Cultivator, or any commonly owned Retail Marijuana Business, and/or any investigation of, or administrative action(s) against, the Accelerator Cultivator, or any commonly owned Retail Marijuana Business; or

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

2. Accelerator Cultivators that have more than two harvest seasons per year.

a. After a 180-day period during which the Accelerator Cultivator Transferred and consistently cultivated, the Accelerator Licensee may apply to the Division for a production management tier increase to be authorized to cultivate the number of plants in the next highest production management tier. The Division may consider the following in determining whether to approve the production management tier increase:

i. That for 180 days prior to the tier increase application, the Accelerator Licensee consistently cultivated an average amount of plants that is at least 85% of its maximum authorized plant count, and

ii. That the Accelerator Licensee Transferred at least 85% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business.

iii. The Division may also consider Transfers of over 85% of the inventory it reported as a package in the Inventory Tracking System during the 180-day time period if the Licensee cultivated between 75% and 85% of its maximum authorized plant count.

iv. Any other information requested to aid the Division in its evaluation of the tier increase application.

b. If the Division approves the production management tier increase application, the Accelerator Licensee shall pay the applicable expanded production management tier fee, if applicable, prior to cultivating the additional authorized plants.

c. For an Accelerator Licensee with an authorized plant count in tier 2-5 to continue producing at its expanded authorized plant count, the Accelerator Licensee shall

pay the requisite Accelerator Cultivator license fee and the applicable expanded production management tier fee, if applicable, at license renewal.

d. After accruing 180 days during which the Accelerator Cultivator Transferred and consistently cultivated the Accelerator Licensee may apply to increase its authorized plant count by: (a) two production management tiers or (b) if already authorized to cultivate at a tier 5, two increments of 3,600 plants (7,200 plants total) every 180 days. It is within the Division's discretion to determine whether or not to grant the requested two tier or two increments of 3,600 plants (7,200 plants total).

i. The Accelerator Licensee must demonstrate:

A. That the Accelerator Licensee consistently cultivated an average amount of plants that is at least 90% of its maximum authorized plant count; and

B. That the Accelerator Licensee Transferred at least 90% of the inventory it reported as a package in the Inventory Tracking System during that time period to another Retail Marijuana Business;

C. If the Accelerator Cultivator cultivated between 80% and 90% of its maximum authorized plant count, the Division may also consider Transfers of over 90% of the inventory it reported as a package in the Inventory Tracking system during that time period and/or Transfers into the Accelerator Cultivator or related Accelerator Store(s).

ii. In making its determination, the Division may consider the following exclusive factors:

A. The Accelerator Cultivator currently has possession of, or has entered into a written agreement or contract to possess, sufficient space to grow the requested two tiers or two increments of 3,600 plants;

B. The Accelerator Cultivator cultivated at least 90% of its maximum authorized plant count and during the preceding 180 days the Accelerator Cultivator and/or any commonly owned Accelerator Store Transferred in Retail Marijuana from one or more unrelated Accelerator Cultivator(s) or Retail Marijuana Cultivation Facility(ies);

C. The Accelerator Cultivator has entered into a written agreement(s) or contract(s) for the sale of Retail Marijuana in the next 180 days supporting the requested two tiers or two increments of 3,600 plants;

D. An established history of responsible cultivation and Transfer by the Accelerator Cultivator;

E. Any history of noncompliance with the Marijuana Code and/or Rules by the Accelerator Cultivator or any commonly owned Retail Marijuana Business(es), and/or any investigation of, or

administrative action(s) against, the Accelerator Cultivator or any commonly owned Retail Marijuana Business;

F. Any other pertinent facts or circumstances regarding responsible production and inventory management.

3. Application for Tier Increase. Applications for a tier increase that include any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation will be denied. In addition to denial, any artificial increase of plant count, manipulation of Transfer history, or other misrepresentation is a public safety violation that may result in administrative action.

Basis and Purpose – 6-725

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(VII), 44-10-602(6) and 44-10-607, C.R.S. The purpose of this rule is to establish the circumstances under which an Accelerator Cultivator may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's Regulated Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on an Accelerator Cultivator that Transfer Sampling Units.

6-725 – Accelerator Cultivator - Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, an Accelerator Cultivator may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Accelerator Cultivator who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. A person may be designated as a Sampling Manager by more than one Medical Marijuana Business or Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. An Accelerator Cultivator that wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-602(6), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-225. *See also* Rule 3-905 – Business Records Required. An Accelerator Cultivator shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Harvest Batch or Production Batch. A Sampling Unit shall not be designated until the Harvest Batch or Production Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana flower or trim shall not exceed one gram.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one-quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the

intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Excise Tax Requirements. An Accelerator Cultivator must pay excise tax on Sampling Units of Retail Marijuana flower or trim, based on the average market rate of the unprocessed Retail Marijuana.

D. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Accelerator Cultivator as a Sampling Manager for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than one ounce of Retail Marijuana or eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (D)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (D)(3). Before Transferring any Sampling Units, an Accelerator Cultivator shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limits established in subparagraph (D)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

E. Compensation Prohibited. An Accelerator Cultivator may not use Sampling Units to compensate a Sampling Manager.

F. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

G. Acceptable Purposes. Sampling Units shall only be designated and Transferred for the purposes of quality control and product development in accordance with section 44-10-602(6), C.R.S.

H. Record keeping requirements. An Accelerator Cultivator shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, an Accelerator Cultivator shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of quality control or product development. An Accelerator Cultivator shall also maintain copies of the Accelerator Cultivator standard operating procedures provided to Sampling Managers.

I. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-730

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(II), 44-10-602(13)(a)-(c), 44-10-607, and 38-28.8-302(2)(b), C.R.S. The purpose of this rule is to allow a Medical Marijuana Cultivation Facility to receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from "Retail" to "Medical."

6-730 – Accelerator Cultivator: Ability to Change Designation from Retail Marijuana to Medical Marijuana

A. Changing Designation: Beginning July 1, 2022, an Accelerator Cultivator may Transfer Retail Marijuana to a Medical Marijuana Cultivation Facility in order to change its designation from Retail Marijuana to Medical Marijuana pursuant to the following requirements:

1. The Accelerator Cultivator may only Transfer Retail Marijuana that has passed all required testing;

2. The Medical Marijuana Cultivation Facility and the Accelerator Cultivator are co-located;

3. The Medical Marijuana Cultivation Facility and Accelerator Cultivator have at least one identical Controlling Beneficial Owner;

4. The Accelerator Cultivator must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana to Medical Marijuana occurs;

5. After the designation change, the Medical Marijuana cannot be Transferred to the originating Accelerator Cultivator or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The Inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules;

6. Both the Accelerator Cultivator and the Medical Marijuana Cultivation Facility must remain at, or under, its respective inventory limit before and after the Retail Marijuana changes its designation to Medical Marijuana; and

7. The Transfer and change of designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change of designation.

Basis and Purpose – 6-735

The Statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(j.5), 44-10-203(1)(k), 44-10-401(2)(b)(II), and 44-10-502(10)(a)-(c) The purpose of this rule is to allow an Accelerator Cultivator licensees that plan to cultivate Retail Marijuana outdoors to submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event.

6-735 Accelerator Cultivator: Contingency Plan for Outdoor Cultivation

A. Submission of Contingency Plan.

1. Beginning January 1, 2022, Accelerator Cultivator Licensees that plan to cultivate Retail Marijuana outdoors may submit a contingency plan to the Division for approval in anticipation of an Adverse Weather Event. The Accelerator Cultivator shall also submit a copy of the plan to the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-

premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

2. An Accelerator Cultivator may submit a contingency plan at any time, but it must be filed at least 7 days prior to taking action pursuant to the contingency plan and must be approved by the State Licensing Authority prior to taking action pursuant to the contingency plan.

3. After initial submission and approval of a contingency plan, a contingency plan must be submitted with the Accelerator Cultivator's license renewal application. Any significant change to a contingency plan prior to a renewal application must be submitted for review and approval pursuant to subsection (A)(2) above prior to taking action pursuant to the revised contingency plan.

4. The Division shall notify the appropriate Local Licensing Authorities of the approval of the contingency plan.

B. Requirements for Outdoor Contingency Plans.

1. Identification of the type of Adverse Weather Event that the plan applies to, including any deviations based on the type of Adverse Weather Event.

2. Primary contact. A primary contact for the Accelerator Cultivator must be identified on the contingency plan, including the: name, title, phone number, and email address of the primary contact. The Accelerator Cultivator shall notify the Division of any change to the primary contact or required contact information within 48 hours of the change.

3. Transport Manifest. If the contingency plan provides for the Transfer of Retail Marijuana, an Accelerator Cultivator shall submit a standing transport manifest that could be used by a Licensee upon approval during an Adverse Weather Event if creating a transport manifest through the Inventory Tracking System is impracticable. The standing transport manifest shall include: identification and address of the receiving Licensee.

4. Disclosure of Receiving Licensed Premises.

a. Retail Marijuana may only be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or an off-premises storage facility.

b. If Retail Marijuana will be Transferred to the Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility pursuant to a contingency plan, that plan must include the name, ownership, and address of the receiving Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, and/or off-premises storage facility, along with a diagram of the proposed receiving Licensed Premises.

c. The receiving Licensed Premises shall be an existing location that currently holds an approved state and local license or an off-premises storage facility permit. The receiving Licensee is not required to share any Controlling Beneficial Owners with the Transferring Retail Marijuana Cultivation Facility.

d. An Accelerator Cultivator that cultivates outdoors may identify and Transfer Retail Marijuana to no more than five receiving Licensed Premises' as part of a contingency plan.

5. Disclosure of Modifications to the Premises and Security and Surveillance. Proposed modifications to the Licenses Premises and any anticipated impacts to compliance with security and surveillance requirements pursuant to Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6).

C. License Requirements when Acting Pursuant to a Contingency Plan. To the extent that this subsection (C) conflicts with other rule sections, this subsection shall control during the time that a Licensee is acting pursuant to a contingency plan.

1. Notification.

   a. Notification of action pursuant to an approved contingency plan shall be made to the Division within 24 hours after initiating action pursuant to a contingency plan. An Accelerator Cultivator that cultivates outdoors must also notify the Local Licensing Authority in the local jurisdiction where the licensee operates, and if Transferring Retail Marijuana to the Licensed Premises of a Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or an off-premises storage facility outside of that jurisdiction, the Local Licensing Authority in that jurisdiction.

   b. Notification of ceasing action pursuant to the approved contingency plan shall be made to the Division within 24 hours of returning to normal business operations. If action will continue more than 7 days after initiating action pursuant to a contingency plan, the Licensee shall contact the Division and explain why it cannot return to normal business operations.

   c. Any notification shall be made in writing and can be made by email to the Division.

2. Production Management. Retail Marijuana Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility pursuant to a contingency plan is not included in the receiving Licensed Premises' inventory limit until the Accelerator Cultivator acting pursuant to the contingency plan returns to normal business operations.

3. Modification of Premises. An application for a modification of a Licensed Premises is not required as part of a contingency plan unless the modification or change in premises becomes a permanent modification. If that change becomes a permanent change, a modification of premises application must be submitted within 14 days.

4. Security Requirements. All security and surveillance requirements that apply to an Accelerator Cultivator apply to activities conducted pursuant to the contingency plan. If the contingency plan does not require the Transfer of Regulated Marijuana to another Licensed Premises, but requires plants to be covered or video surveillance to be otherwise temporarily obstructed, exemptions to the video surveillance requirements in Rules 3-225 (C)(1), 3-225 (C)(5) and 3-225 (C)(6) may be approved as part of the contingency plan.

5. Inventory Tracking Requirements. Licensees must use the Inventory Tracking System to ensure Retail Marijuana is identified and tracked during all times that action is being taken pursuant to a contingency plan. If an Accelerator Cultivator harvests, Transfers, or packages Retail Marijuana it must be fully reconciled in the Inventory Tracking System within 48 hours of initiating action pursuant to the contingency plan.

a. Harvest Requirements. If Retail Marijuana is harvested, the weight of Retail Marijuana can be captured on a per harvest level and equally applied to individual plants rather than requiring the initial wet weight of each plant. This initial harvest weight may be captured at a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility upon arrival at the Licensed Premises approved as part of the contingency plan. Harvest Batches and Inventory Tracking System packages must be reported by the Retail Marijuana Cultivation Facility acting pursuant to the contingency plan in the Inventory Tracking System.

b. Transport Manifest. The Accelerator Cultivator acting pursuant to the contingency plan must report all Retail Marijuana that is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility on a transport manifest.

i. A Licensee may use the approved standing transport manifest during an Adverse Weather Event only when using the Inventory Tracking System is not possible.

ii. The Licensee shall manually fill out the dates, times, and individual transporting Retail Marijuana on a copy of the standing transport manifest.

iii. The Licensee shall ensure the standing transport manifest and copy of the approved Contingency plan remain in the Licensee's possession during any transport of Retail Marijuana when it is not possible to use an Inventory Tracking System generated transportation manifest at the time of the Adverse Weather Event.

6. Transfers. If Retail Marijuana is Transferred to another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility it is exempted from the packaging and labeling requirements in Rule 3-1005(B).

7. Virtual and Physical Separation. If Retail Marijuana is Transferred to a receiving Licensed Premises of another Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility and/or off-premises storage facility that inventory must be virtually separated by Harvest Batch and must also be virtually and physically separated from the receiving Licensee's inventory. Harvest Batches must also be clearly identified at the receiving Licensed Premises with the Harvest Batch name and date of harvest.

8. Finishing Product. After Transferring Retail Marijuana to another Licensed Premises, an Accelerator Cultivator may finish that harvest at the receiving Licensed Premises if all Retail Marijuana is accounted for in the Inventory Tracking System and the Licensed Premises is in compliance with all surveillance requirements.

9. Testing. The originating Licensee acting pursuant to a contingency plan is responsible for the submission of Test Batch(es).

a. Each Harvest Batch or Production Batch Transferred pursuant to a contingency plan must be submitted for all required tests and is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

b. Any passing or failing tests of a Harvest Batch or Production Batch Transferred pursuant to a contingency plan will not count for or against a Licensee's Reduced Testing Allowance.

6-800 Series – Accelerator Manufacturer Licenses

Basis and Purpose – 6-805

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(2)(aa), 44-10-307(1)(j), 44-10-401(2)(b)(VIII), 44-10-603 and 44-10-608, C.R.S. The purpose of this rule is to establish the license privileges granted by the State Licensing Authority to an Accelerator Manufacturer.

6-805 – Accelerator Manufacturer: License Privileges

A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Manufacturer may operate on the same Licensed Premises as a Retail Marijuana Products Manufacturer that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

2. Separate Licensed Premises. An Accelerator Manufacturer may operate on a separate premises in the possession of a Retail Marijuana Products Manufacturer that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

3. To the extent authorized by Rule 3-215 – Regulated Marijuana Businesses: Shared Licensed Premises and Operational Separation, a Retail Marijuana Products Manufacturer may share, and operate at, the same Licensed Premises with a commonly owned Medical Marijuana Products Manufacturer Facility. However, a separate license is required for each specific business or business entity, regardless of geographical location. A Regulated Marijuana Business that is operating at the same premises as a commonly owned Medical Marijuana Business may become an Accelerator-Endorsed Licensee. An Accelerator Manufacturer may operate at the premises where the Accelerator-Endorsed Licensee operates along with the commonly owned Medical Marijuana Products Manufacturer.

B. Authorized Transfers. An Accelerator Manufacturer is authorized to Transfer Retail Marijuana as follows:

1. Retail Marijuana Concentrate and Retail Marijuana Product.

a. An Accelerator Manufacturer may Transfer Retail Marijuana Concentrate or Retail Marijuana Product to Retail Marijuana Stores, Accelerator Stores, other Accelerator Manufacturers, Retail Marijuana Products Manufacturers, Retail Marijuana Testing Facilities, Retail Marijuana Hospitality and Sales Businesses, and Pesticide Manufacturers.

b. An Accelerator Manufacturer may Transfer Retail Marijuana Product and Retail Marijuana Concentrate to a Retail Marijuana Cultivation Facility that has been issued a Centralized Distribution Permit.

i. Prior to any Transfer pursuant to this Rule 6-805(B)(1)(b), an Accelerator Manufacturer shall verify the Retail Marijuana Cultivation Facility possesses a valid Centralized Distribution Permit. *See* Rule 6-205 – Retail Marijuana Cultivation Facility: License Privileges.

ii. For any Transfer pursuant to this Rule 6-805(B)(1)(b), an Accelerator Manufacturer shall only Transfer Retail Marijuana Product and Retail

Marijuana Concentrate that is packaged and labeled for Transfer to a consumer. *See* 3-1000 Series Rules.

c. An Accelerator Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in compliance with Rule 6-335.

2. Retail Marijuana. An Accelerator Manufacturer may Transfer Retail Marijuana to other Accelerator Manufacturers, Retail Marijuana Products Manufacturer, Retail Marijuana Testing Facilities, Accelerator Stores, and Retail Marijuana Stores.

3. Sampling Units. An Accelerator Manufacturer may also Transfer Sampling Units of its own Retail Marijuana Concentrate or Retail Marijuana Product to a designated Sampling Manager in accordance with the restrictions set forth in section 44-10-603(10), C.R.S., and Rule 6-820.

C. Manufacture of Retail Marijuana Concentrate and Retail Marijuana Product and Production of Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana Authorized. An Accelerator Manufacturer may manufacture, prepare, package, store, and label Retail Marijuana Concentrate and Retail Marijuana Product comprised of Retail Marijuana and other Ingredients intended for use or consumption, such as Edible Retail Marijuana Products, ointments, or tinctures. An Accelerator Manufacturer may also produce Pre-Rolled Marijuana and Infused Pre-Rolled Marijuana.

1. Industrial Hemp Product Authorized. An Accelerator Manufacturer that uses Industrial Hemp Product as an Ingredient in the manufacture and preparation of Retail Marijuana Product must comply with this subparagraph (C)(1) of this Rule.

a. Prior to accepting and taking possession of any Industrial Hemp Product for use as an Ingredient in a Retail Marijuana Product the Accelerator Manufacturer shall verify the following:

i. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

ii. That the Person Transferring the Industrial Hemp Product to the Accelerator Manufacturer is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

D. Location Prohibited. An Accelerator Manufacturer may not manufacture, prepare, package, store, or label Retail Marijuana Concentrate or Retail Marijuana Product in a location that is operating as a retail food establishment.

E. Samples Provided for Testing. An Accelerator Manufacturer may provide samples of its Retail Marijuana Concentrate or Retail Marijuana Product to a Retail Marijuana Testing Facility for testing and research purposes. The Accelerator Manufacturer shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

F. Authorized Marijuana Transport. An Accelerator Manufacturer is authorized to utilize a Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken is a Retail Marijuana Business and the transportation order is delivered to a Retail Marijuana Business or Pesticide Manufacturer. Nothing in this Rule prevents an Accelerator Manufacturer from transporting its own Retail Marijuana.

G. Performance-Based Incentives An Accelerator Manufacturer may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

However, an Accelerator Manufacturer may not compensate a Sampling Manager using Sampling Units. *See* Rule 6-820 – Sampling Unit Protocols.

Basis and Purpose – 6-810

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(2)(aa), 44-10-203(3)(d), 44-10-401(2)(b)(VIII), 44-10-603, 44-10-608 and 44-10-701(2)(a), C.R.S. The purpose of this rule is to clarify those acts that are limited in some fashion or prohibited by an Accelerator Manufacturer.

6-810 – Accelerator Manufacturer: General Limitations or Prohibited Acts

A. Packaging and Labeling Standards Required. An Accelerator Manufacturer is prohibited from Transferring Retail Marijuana Concentrate or Retail Marijuana Product that are not properly packaged and labeled. *See* 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

B. THC Content Container Restriction. Each individually packaged Edible Retail Marijuana Product, even if comprised of multiple servings, may include no more than a total of 100 milligrams of active THC. *See* Rule 3-1010 – Packaging and Labeling – General Requirements Prior to Transfer to a Consumer.

1. Exception for Bulk Transfers to Retail Marijuana Hospitality and Sales Businesses. An individually packaged Edible Retail Marijuana Product comprised of multiple servings that is Transferred in bulk to a Retail Marijuana Hospitality and Sales Establishment may include more than a total of 100 milligrams of active THC.

i. An Accelerator Manufacturer shall develop and maintain standard operating procedures, and any additional equipment necessary, to ensure that a Retail Marijuana Hospitality and Sales Business receiving bulk Transfers of Edible Retail Marijuana Product can measure accurately the Edible Retail Marijuana Product in single serving sizes equal to or less than 10 milligrams of active THC per serving.

C. Transfer to Consumer Prohibited. An Accelerator Manufacturer is prohibited from Transferring Retail Marijuana to a consumer. This prohibition does not apply to Transfers to a Sampling Manager that comply with section 44-10-603(10), C.R.S., and Rule 6-820.

D. Adequate Care of Perishable Product. An Accelerator Manufacturer must provide adequate refrigeration for perishable Retail Marijuana Product that will be consumed and shall utilize adequate storage facilities and transport methods.

E. Homogeneity of Edible Retail Marijuana Product. An Accelerator Manufacturer must ensure that its manufacturing processes are designed so that the Cannabinoid content of any Edible Retail Marijuana Product is homogenous.

F. Use of Ingredients. An Accelerator Manufacturer must obtain and maintain certificates of analysis or other records demonstrating the full composition of each Ingredient used in the manufacture of Vaporizer Delivery Devices or Pressurized Metered Dose Inhalers.

G. Corrective and Preventive Action. This paragraph G shall be effective January 1, 2021. An Accelerator Manufacturer shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required under this Rule, and their

results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation.

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

H. Adverse Health Event Reporting. An Accelerator Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-815

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-401(2)(b)(VIII), 44-10-203(2)(aa), 44-10-603, and 44-10-608, C.R.S. The purpose of this rule is to establish the categories of Retail Marijuana Concentrate that may be produced at an Accelerator Manufacturer and establish standards for the production of Retail Marijuana Concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S.

6-815 – Accelerator Manufacturer: Retail Marijuana Concentrate Production

A. Permitted Categories of Retail Marijuana Concentrate Production.

1. An Accelerator Manufacturer may produce Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate.

2. An Accelerator Manufacturer may also produce Solvent-Based Retail Marijuana Concentrate using only the following solvents: butane, propane, CO_2, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless it is approved by the Division.

3. An Accelerator Manufacturer may submit a request to the Division to consider the approval of solvents not permitted for use under this Rule during the next permanent rulemaking.

B. General Applicability. An Accelerator Manufacturer that engages in the production of Retail Marijuana Concentrate, regardless of the method of extraction or category of concentrate being produced, must:

1. Ensure that the space in which any Retail Marijuana Concentrate is to be produced is a fully enclosed room and clearly designated on the current diagram of the Licensed Premises. *See* Rule 3-905- Business Records Required.

2. Ensure that all applicable sanitary rules are followed. *See* 3-300 Series Rules.

3. Ensure that the standard operating procedure for each method used to produce a Retail Marijuana Concentrate includes, but need not be limited to, step-by-step instructions on how to safely and appropriately:

   a. Conduct all necessary safety checks prior to commencing production;

   b. Prepare Retail Marijuana for processing;

   c. Extract Cannabinoids and other essential components of Retail Marijuana;

   d. Purge any solvent or other unwanted components from a Retail Marijuana Concentrate,

   e. Clean all equipment, counters and surfaces thoroughly; and

   f. Dispose of any waste produced during the processing of Retail Marijuana in accordance with all applicable local, state and federal laws, rules and regulations. *See* Rule 3-230 – Waste Disposal.

4. Establish written and documentable quality control procedures designed to maximize safety for Owner Licensees and Employee Licensees and minimize potential product contamination.

5. Establish written emergency procedures to be followed by Owner Licensees or Employee Licensees in case of a fire, chemical spill or other emergency.

6. Have a comprehensive training manual that provides step-by-step instructions for each method used to produce a Retail Marijuana Concentrate. The training manual must include, but need not be limited to, the following topics:

   a. All standard operating procedures for each method of concentrate production used;

   b. The Accelerator Manufacturer’s quality control procedures;

   c. The emergency procedures;

   d. The appropriate use of any necessary safety or sanitary equipment;

   e. The hazards presented by all solvents used as described in the safety data sheet for each solvent;

f. Clear instructions on the safe use of all equipment involved in each process and in accordance with manufacturer's instructions, where applicable; and

g. Any additional periodic cleaning required to comply with all applicable sanitary rules.

7. Provide adequate training to every Owner Licensee or Employee Licensee prior to that individual undertaking any step in the process of producing a Retail Marijuana Concentrate.

a. Adequate training must include, but need not be limited to, providing a copy of the training manual for that Licensed Premises and live, in-person instruction detailing at least all of the topics required to be included in the training manual.

b. The individual training an Owner Licensee or Employee Licensee must sign and date a document attesting that all required aspects of training were conducted and that he or she is confident that the Owner Licensee or Employee Licensee can safely produce a Retail Marijuana Concentrate. *See* Rule 3-905 – Business Records Required.

c. The Owner Licensee or Employee Licensee that received the training must sign and date a document attesting that he or she can safely implement all standard operating procedures, quality control procedures, and emergency procedures, operate all closed-loop extraction systems, use all safety, sanitary and other equipment and understands all hazards presented by the solvents to be used within the Licensed Premises and any additional periodic cleaning required to maintain compliance with all applicable sanitary rules. *See* Rule 3-905 – Business Records Required.

8. Maintain clear and comprehensive records of the name, signature and Owner Licensee or Employee License number of every individual who engaged in any step related to the creation of a Production Batch of Retail Marijuana Concentrate and the step that individual performed. *See* Rule 3-905 – Business Records Required.

9. Accelerator Manufacturers Engaged in the Remediation of Retail Marijuana for elemental impurities. Retail Marijuana Products Manufacturers engaged in the Remediation of Retail Marijuana for elemental impurities shall:

a. Implement effective cleaning procedures, additional testing plans, and other measures that will be performed to prevent cross contamination.

i. If potentially contaminated equipment, ingredients, or solvents used in the Remediation process are used for processing other 'non remediated' material, the subsequent Production Batch made using the equipment, ingredients, or solvent must then be tested for elemental impurities, and the Production Batch made using that equipment, ingredients, or solvents is not eligible for a Reduced Testing Allowance or otherwise exempt from required testing.

ii. Manufacturers must document the equipment and lots of ingredients/solvents used in Remediation to ensure this requirement is met.

b. Register as a hazardous waste generator, obtain a U.S. Environmental Protection Agency ID number for manifesting hazardous waste, and must have a

disposal contract in place with a hazardous waste management company prior to attempting Remediation.

c. Have a staff member who has received basic training in hazardous waste identification, storage, and disposal procedures, or hire a consultant who satisfies this criteria.

d. Regardless of which type of analyte, if the Retail Marijuana flower, wet whole plant, or trim has failed testing for elemental impurities, the Licensee must implement Standard Operating Procedures to ensure:

i. That contaminated material is stored in a labelled container identifying the material as potentially hazardous, and that the container seals in such a way to prevent the risk of cross contamination or inhalation of dusts.

ii. That when material is removed from the sealed container and handled in any fashion (preparation, the extraction or other Remediation process, wasting, etc.), any workers exposed to dusts or particulates generated from the material must wear appropriate personal protective equipment (PPE), including at minimum: gloves, American National Standards Institute (ANSI) Z87.1 safety glasses, and a respirator rated to protect them from airborne dusts or particulates that may contain elemental impurities. Respirators should utilize National Institute for Occupational Safety and Health rated particulate filters of sufficient grade to prevent exposure to airborne dusts that could contain elemental impurities.

A. Workers utilizing a respirator must comply with applicable Occupational Safety and Health Administration regulations regarding respirator use before handling contaminated material. This includes receiving respirator clearance from a qualified professional and passing a respirator fit test before using a respirator.

e. Additional forms of environmental airborne particulate control, such as industrial air filtration systems, handling material inside of enclosures, etc. must be implemented by the licensee to minimize the risk of exposure or cross contamination of contaminated dusts.

f. These steps must be documented in the licensee's respiratory protection program that all employees exposed to elemental impurities contaminated plant material and waste products must be trained on.

g. The Licensee must establish and train employees on SOPs designed to safely handle this contaminated material and prevent cross contamination.

h. Mercury poses additional workplaces hazards since it is easily volatilized and since mercury vapor is highly toxic. Before attempting to remediate any Regulated Marijuana flower, wet whole plant, or trim that has failed elemental impurities testing and contains mercury, Licensees must additionally:

i. Work with a certified industrial hygienist to develop and implement some form of monitoring program that is capable of detecting mercury vapor concentrations in the areas where material contaminated with mercury will be processed and can be used to generate time weighted average

exposures to mercury vapor. The monitoring system must be sufficient to ensure airborne concentrations of mercury do not exceed Occupational Safety and Health Administration Permissible Exposure Limits for Airborne Contaminants.

ii. Have a certified industrial hygienist approve the licensee's air handling system for managing mercury vapors in a fashion that is compliant with the Occupational Safety and Health Administration, and other applicable federal, state, and local regulations.

iii. Utilize a National Institute for Occupational Safety and Health rated half mask respirator with cartridges rated specifically for mercury vapor.

i. A Licensee must ensure their processes and safety practices comply with applicable federal, state, and local environmental health and safety regulations.

C. Physical Separation-Based Retail Marijuana Concentrate, Food-Based Retail Marijuana Concentrate and Heat/Pressure-Based Retail Marijuana Concentrate. An Accelerator Manufacturer that engages in the production of a Retail Marijuana Concentrate must:

1. Ensure that all equipment, counters and surfaces used in the production of Retail Marijuana Concentrate is food-grade including ensuring that all counters and surface areas were constructed in such a manner that it reduces the potential for the development of microbials, molds and fungi and can be easily cleaned.

2. Ensure that all equipment, counters, and surfaces used in the production of a Retail Marijuana Concentrate are thoroughly cleaned after the completion of each Production Batch.

3. Ensure that any room in which dry ice is stored or used in processing Retail Marijuana into a Retail Marijuana Concentrate is well ventilated to prevent against the accumulation of dangerous levels of CO_2.

4. Ensure that the appropriate safety or sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Retail Marijuana Concentrate.

5. Ensure that only finished drinking water and ice made from finished drinking water is used in the production of a Physical Separation-Based Retail Marijuana Concentrate.

6. Ensure that if propylene glycol or glycerin is used in the production of a Food-Based Retail Marijuana Concentrate, then the propylene glycol or glycerin to be used is food-grade.

7. Follow all of the rules related to the production of a Solvent-Based Retail Marijuana Concentrate if a pressurized system is used in the production of a Retail Marijuana Concentrate.

D. Solvent-Based Retail Marijuana Concentrate. An Accelerator Manufacturer that engages in the production of Solvent-Based Retail Marijuana Concentrate must:

1. Obtain a report from an Industrial Hygienist or a Professional Engineer that certifies that the equipment, Licensed Premises and standard operating procedures comply with these rules and all applicable local and state building codes, fire codes, electrical codes and other laws. If a Local Jurisdiction has not adopted a local building code or fire code or if

local regulations do not address a specific issue, then the Industrial Hygienist or Professional Engineer shall certify compliance with the International Building Code of 2012 (http://www.iccsafe.org), the International Fire Code of 2012 (http://www.iccsafe.org) or the National Electric Code of 2014 (http://www.nfpa.org), as appropriate. Note that this Rule does not include any later amendments or editions to each Code. The Division has maintained a copy of each code, each of which is available to the public;

a. Flammable Solvent Determinations. If a Flammable Solvent is to be used in the processing of Retail Marijuana into a Retail Marijuana Concentrate, then the Industrial Hygienist or Professional Engineer must:

i. Establish a maximum amount of Flammable Solvents and other flammable materials that may be stored within that Licensed Premises in accordance with applicable laws, rules and regulations;

ii. Determine what type of electrical equipment, which may include but need not be limited to outlets, lights and junction boxes, must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored in accordance with applicable laws, rules and regulations;

iii. Determine whether a gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations; and

iv. Determine whether fire suppression system must be installed within the room in which Retail Marijuana Concentrate is to be produced or Flammable Solvents are to be stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

b. CO_2 Solvent Determination. If CO_2 is used as solvent at the Licensed Premises, then the Industrial Hygienist or Professional Engineer must determine whether a CO_2 gas monitoring system must be installed within the room in which Retail Marijuana Concentrate is to be produced or CO_2 is stored, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

c. Exhaust System Determination. The Industrial Hygienist or Professional Engineer must determine whether a fume vent hood or exhaust system must be installed within the room in which Retail Marijuana Concentrate is to be produced, and if required the system's specifications, in accordance with applicable laws, rules and regulations.

d. Material Change. If an Accelerator Manufacturer makes a Material Change to its equipment or a concentrate production procedure, in addition to all other requirements, it must obtain a report from an Industrial Hygienist or Professional Engineer re-certifying its standard operating procedures and, if changed, its equipment as well.

e. Manufacturer's Instructions. The Industrial Hygienist or Professional Engineer may review and consider any information provided to the Accelerator Manufacturer by the designer or manufacturer of any equipment used in the processing of Retail Marijuana into a Retail Marijuana Concentrate.

f. Records Retention. An Accelerator Manufacturer must maintain copy of all reports received from an Industrial Hygienist and Professional Engineer on its Licensed Premises. Notwithstanding any other law, rule, or regulation, compliance with this Rule is not satisfied by storing these reports outside of the Licensed Premises. Instead the reports must be maintained on the Licensed Premises until the Licensee ceases production of Retail Marijuana Concentrate on the Licensed Premises.

2. Ensure that all equipment, counters and surfaces used in the production of a Solvent-Based Retail Marijuana Concentrate are food-grade and do not react adversely with any of the solvents to be used in the Licensed Premises. Additionally, all counters and surface areas must be constructed in a manner that reduces the potential development of microbials, molds and fungi and can be easily cleaned;

3. Ensure that the room in which Solvent-Based Retail Marijuana Concentrate shall be produced must contain an emergency eye-wash station;

4. Ensure that only a professional grade, closed-loop extraction system capable of recovering the solvent is used to produce Solvent-Based Retail Marijuana Concentrate;

   a. UL or ETL Listing.

      i. If the system is UL or ETL listed, then an Accelerator Manufacturer may use the system in accordance with the manufacturer's instructions.

      ii. If the system is UL or ETL listed but the Accelerator Manufacturer intends to use a solvent in the system that is not listed in the manufacturer's instructions for use in the system, then, prior to using the unlisted solvent within the system, the Accelerator Manufacturer must obtain written approval for use of the non-listed solvent in the system from either the system's manufacturer or a Professional Engineer after the Professional Engineer has conducted a peer review of the system. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

      iii. If the system is not UL or ETL listed, then there must a designer of record. If the designer of record is not a Professional Engineer, then the system must be peer reviewed by a Professional Engineer. In reviewing the system, the Professional Engineer shall review and consider any information provided by the system's designer or manufacturer.

   b. Ethanol or Isopropanol. An Accelerator Manufacturer need not use a professional grade, closed-loop system extraction system capable of recovering the solvent for the production of a Solvent-Based Retail Marijuana Concentrate if ethanol or isopropanol are the only solvents being used in the production process.

5. Ensure that all solvents used in the extraction process are food-grade or at least 99% pure;

   a. An Accelerator Manufacturer must obtain a safety data sheet for each solvent used or stored on the Licensed Premises. An Accelerator Manufacturer must maintain a current copy of the safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process. *See* Rule 3-905 – Business Records Required.

b. An Accelerator Manufacturer is prohibited from using denatured alcohol to produce a Retail Marijuana Concentrate, unless the denaturant is an approved solvent listed in Rule 6-815(A)(2) and the alcohol and the denaturant meet all other requirements set forth in this Rule.

6. Ensure that all Flammable Solvents or other flammable materials, chemicals and waste are stored in accordance with all applicable laws, rules and regulations. At no time may an Accelerator Manufacturer store more Flammable Solvent on its Licensed Premises than the maximum amount established for that Licensed Premises by the Industrial Hygienist or Professional Engineer;

7. Ensure that the appropriate safety and sanitary equipment, including personal protective equipment, is provided to, and appropriately used by, each Owner Licensee or Employee Licensee engaged in the production of a Solvent-Based Retail Marijuana Concentrate; and

8. Ensure that a trained Owner Licensee or Employee Licensee is present at all times during the production of a Solvent-Based Retail Marijuana Concentrate whenever an extraction process requires the use of pressurized equipment.

E. Ethanol and Isopropanol. If an Accelerator Manufacturer only produces Solvent-Based Retail Marijuana Concentrate using ethanol or isopropanol at its Licensed Premises and no other solvent, then it shall be considered exempt from paragraph D of this Rule and instead must follow the requirements in paragraph C of this Rule. Regardless of which rule is followed, the ethanol or isopropanol must be food grade or at least 99% pure and denatured alcohol cannot be used. The Accelerator Manufacturer shall comply with contaminant testing required in Rule 4-120(C)(4).

F. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-820

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(2)(d), 44-10-203(1)(k), 44-10-203(2)(h), 44-10-401(2)(b)(VIII), 44-10-603(10), and 44-10-608 C.R.S. The purpose of this rule is to establish the circumstances under which an Accelerator Manufacturer may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Retail Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on an Accelerator Manufacturer that Transfer Sampling Units.

6-820 – Accelerator Manufacturer: Sampling Unit Protocols

A. Designation of Sampling Manager(s). In any calendar month, an Accelerator Manufacturer may designate no more than five Sampling Managers in the Inventory Tracking System.

1. Only management personnel of the Accelerator Manufacturer who holds an Owner License or an Employee License may be designated as a Sampling Manager.

2. An individual may be designated as a Sampling Manager by more than one Retail Marijuana Business.

3. By virtue of the decision to be designated as a Sampling Manager, the Sampling Manager expressly consents to being identified in the Inventory Tracking System and

makes a voluntary decision that any Sampling Units Transferred to the Sampling Manager will be identified in the Inventory Tracking System.

4. An Accelerator Manufacturer who wishes to provide Sampling Units to a Sampling Manager shall first establish and provide to each Sampling Manager standard operating procedures that explain the requirements of section 44-10-603(10), C.R.S., the personal possession limits pursuant to section 18-18-406, C.R.S., and the requirements of this Rule 6-820. *See also* Rule 3-905 – Business Records Required. An Accelerator Marijuana Products Manufacturer shall maintain and update such standard operating procedures as necessary to reflect accurately any changes in the relevant statutes and rules.

B. Sampling Unit Limits. Only one Sampling Unit may be designated per Production Batch. A Sampling Unit shall not be designated until the Production Batch has satisfied the testing requirements in the 4-100 Series Rules – Regulated Marijuana Testing Program.

1. A Sampling Unit of Retail Marijuana Product shall not exceed one Standardized Serving of Marijuana.

2. A Sampling Unit of Retail Marijuana Concentrate shall not exceed one quarter of one gram; except that a Sampling Unit of Retail Marijuana Concentrate which has the intended use of being delivered in a vaporized form shall not exceed one-half of one gram.

C. Transfer Restrictions.

1. No Sampling Unit shall be Transferred unless it is packaged and labeled in accordance with the requirements in the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

2. No Sampling Unit shall be Transferred to any individual who is not currently designated in the Inventory Tracking System by the Accelerator Manufacturer as a Sampling Manger for the calendar month in which the Transfer occurs.

3. In any calendar month, a Sampling Manager shall not receive Sampling Units totaling more than:

   a. With respect to Retail Marijuana Product, fourteen Standardized Servings of Marijuana; and

   b. Eight grams of Retail Marijuana Concentrate.

4. The monthly limit established in subparagraph (C)(3) applies to each Sampling Manager, regardless of the number of Retail Marijuana Businesses with which the Sampling Manager is associated.

5. A Sampling Manager shall not accept Sampling Units in excess of the monthly limit established in subparagraph (C)(3). Before Transferring any Sampling Units, an Accelerator Manufacturer shall verify with the recipient Sampling Manager that the Sampling Manager will not exceed the monthly limit established in subparagraph (C)(3).

6. A Sampling Manager shall not Transfer any Sampling Unit to any other Person, including but not limited to any other Person designated as a Sampling Manager.

D. Compensation Prohibited. An Accelerator Manufacturer may not use Sampling Units to compensate a Sampling Manager.

E. On-Premises Consumption Prohibited. A Sampling Manager shall not consume any Sampling Unit on any Licensed Premises.

F. Acceptable Purposes. Sampling Units shall only be designated and Transferred for purposes of quality control and product development in accordance with section 44-10-603(10), C.R.S.

G. Record keeping requirements. An Accelerator Manufacturer shall maintain copies of any material documents created regarding the quality control and product development purpose(s) of each Sampling Unit. Such documents shall constitute business records under Rule 3-905 – Business Records Required. At a minimum, an Accelerator Manufacturer shall maintain records that show whether a Sampling Unit Transferred to a Sampling Manager is for the purpose of either quality control or product development. An Accelerator Manufacturer shall also maintain copies of the Accelerator Manufacturer's standard operating procedures provided to Sampling Managers.

H. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-825

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(a), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(d), 44-10-203(2)(f), 44-10-203(2)(g), 44-10-203(2)(i), 44-10-203(2)(y), 44-10-203(3)(b), 44-10-203(3)(e), 44-10-401(2)(b)(VIII), 44-10-603, 44-10-701(3)(c) and 44-10-608, C.R.S. The purpose of this rule is to define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Accelerator Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule 3-1015 may raise public health concerns that outweigh its manufacture or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for an Accelerator Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Retail Marijuana Product that is not within an intended use identified in Rule 3-1015.

6-825 – Accelerator Manufacturer: Audited Product and Alternative Use Product

A. General Rule. An Accelerator Manufacturer shall not Transfer Audited Product to a Retail Marijuana Store, an Accelerator Store, a Retail Marijuana Products Manufacturer, another Accelerator Manufacturer, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator that has obtained a Centralized Distribution Permit except in accordance with all requirements of this Rule 6-825. The requirements of this Rule 6-825 are in addition to all other Rules that apply to Accelerator Manufacturers; except where the context otherwise clearly requires this Rule 6-825 controls.

B. Audited Products – Mandatory Audit Prior to Transfer. Following submission of an independent third-party audit to the Division and, if applicable, to the Local Jurisdiction as required by this Rule, an Accelerator Manufacturer may Transfer Audited Product with an intended use of: (1) metered dose nasal spray, (2) vaginal administration, or (3) rectal administration.

1. A written audit report from an independent third-party auditor that was completed within the last 24 months shall be submitted to the Division and, if applicable to the Local Licensing Authority: (i) before the first Transfer of Audited Product to any Retail Marijuana

Store, (ii) prior to Transfer of any Audited Product following a Material Change to any standard operating procedure or master formulation record regarding the Audited Product, and (iii) with the Accelerator Manufacturer's renewal application if the Accelerator Manufacturer will Transfer Audited Product after renewal.

2. The independent third-party audit shall be performed by either a certified quality auditor or a certified GMP auditor. The Accelerator Manufacturer shall be responsible for all costs associated with obtaining the independent third-party audit.

3. The independent third-party written audit report shall include the following minimum requirements:

    a. The independent third-party auditor's qualifications and an attestation that the certified quality auditor or certified GMP auditor has no conflict of interest;

    b. Establish that the Accelerator Manufacturer and the Audited Product meet all requirements of this Rule 6-825, including but not limited to the specific requirements of this Rule 6-825(C), 6-825(D), 6-825(E), 6-825(G), and 6-825(H);

    c. Verify the written standard operating procedure(s) for Audited Product include sufficient and detailed step-by-step instructions on how to produce the Audited Product in a manner that prevents contamination and protects the public health and safety;

    d. Verify, based upon a physical inspection, the manufacture of Audited Product by the Accelerator Manufacturer adheres to all applicable standard operating procedures;

    e. Verify, based upon a physical inspection, of any Licensed Premises that such Licensed Premises complies with the requirements of this Rule 6-825(E), including any Limited Access Area where the Audited Product is to be manufactured;

    f. Include the independent third-party auditor's findings;

    g. Include the plan of correction identifying any corrective actions and/or preventative actions implemented as a result of the findings of the independent third-party audit; and

    h. Include the independent third-party auditor's assessment that the Accelerator Manufacturer demonstrated compliance with all requirements of Rule 6-825 and with the requirements of all standard operating procedures, master formulation records, and Batch manufacturing records that apply to the Audited Product.

C. Products Liability Insurance. Any Accelerator Manufacturer that intends to Transfer Audited Product shall first obtain products liability insurance providing coverage for liability arising from manufacture or Transfer of Audited Product and shall provide an unredacted certificate of product liability insurance to the Division and the independent third-party auditor.

D. Audited Product Requirements. Audited Product shall meet the following minimum product requirements:

1. Inactive Ingredients. Audited Product must meet the requirements in Rule 3-335 – Production of Regulated Marijuana Products.

a. If the Audited Product contains a fungicidal or bactericidal Ingredient listed in, and with a concentration that is at or below the maximum concentration permitted in, the Federal Food and Drug Administration Inactive Ingredients Database, https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm, the Audited Product is not required to undergo microbial contaminant testing required by Rules 4-115 and 4-120.

2. Required Product Development Testing. The Accelerator Manufacturer must establish the Audited Product meets the following through independent third-party testing:

a. The Audited Product must deliver the amount of each cannabinoid identified on the label throughout the entire volume of the Audited Product using the intended delivery device and in accordance with the instructions provided by the Accelerator Manufacturer, as demonstrated by testing at a Retail Marijuana Testing Facility.

i. For Audited Product with an intended use of metered dose nasal spray, compliance with this requirement shall be established by test results verifying the delivered dose of each cannabinoid identified on the label using the methods described in The United States Pharmacopeia Physical Test and Determination Chapter 601, *Aerosols, Nasal Sprays, Metered-Dose Inhalers, and Dry Powder Inhalers*.

ii. For Audited Product with an intended use of either vaginal administration or rectal administration, compliance with this testing requirement shall be established by test results demonstrating that each cannabinoid identified on the label is within +/- 15% of the amount identified on the label.

b. The expiration date identified on the label of the Audited Product is appropriate when the Audited Product is stored at room temperature, as demonstrated by testing from a Retail Marijuana Testing Facility.

c. Identification of all non-cannabis derived Ingredients and constituents in the Audited Product at concentrations of 1%, which verification is obtained from one or more of the following:

i. Testing by a Retail Marijuana Testing Facility;

ii. Testing by a laboratory that is ISO 17025 accredited but is not a Retail Marijuana Testing Facility, except that no Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product may be Transferred to such a laboratory; and/or

iii. One or more certificate(s) of analysis from the manufacturer of any Ingredient or constituent included in the Audited Product.

E. Additional Production Requirements for Audited Product. In addition to all other requirements applicable to Accelerator Manufacturer, an Accelerator Manufacturer that manufactures and Transfers Audited Product shall meet the following additional requirements:

1. Personnel Training. All personnel directly involved in the manufacture and handling of Audited Product must be trained, must demonstrate competency, and must undergo annual refresher training, which shall be documented and maintained at the Accelerator Marijuana Products Manufacturer’s Licensed Premises. Personnel directly involved in the

manufacture and handling of Audited Product must be trained and demonstrate proficiency in hand hygiene, cleaning and sanitizing, performing necessary calculations, measuring and mixing, and documenting the manufacturing process including master formulation records and batch manufacturing records.

2. Facility Requirements. An Accelerator Manufacturer must have a space that is specifically designated for the manufacture of Audited Products that is designed and operated to prevent cross contamination from other areas of the Licensed Premises. The surfaces, walls, floors, fixtures, shelving, work surfaces, and cabinets in this designated area must be non-porous and cleanable.

3. Cleaning and Sanitizing. An Accelerator Manufacturer must clean and sanitize surfaces where Audited Product is manufactured and handled on a regular basis and at a minimum, work surfaces and floors must be cleaned and sanitized daily. All other surfaces must be cleaned and sanitized at least every three months. An Accelerator Manufacturer must clean and sanitize all surfaces when a spill occurs and when surfaces, floors, and walls are visibly soiled.

4. Hand Hygiene. Hand hygiene is required when entering and re-entering any area where Audited Product is manufactured and handled. Hand hygiene includes washing hands and forearms up to the elbows with soap and water for at least 30 seconds followed by drying completely with disposable towels. Alcohol hand sanitizers alone are not sufficient.

    a. Gloves are required to be worn for all mixing activities. Other garb such as shoe covers, head and facial hair covers, face masks, and gowns must be worn as appropriate to protect Licensees and/or prevent contamination of the Audited Product.

5. Equipment. Mechanical, electronic, and other types of equipment used in mixing, measuring, or testing of Audited Product must be inspected prior to use and verified for accuracy at the frequency recommended by the manufacturer, and at least annually.

6. Ingredient Quality. All Ingredients used to manufacture Audited Product must be handled and stored in accordance with the manufacturer's instructions. Ingredients that lack a manufacturer's expiration date shall not be used if a reasonable manufacturer would not use the Ingredient or after 1 year from the date of receipt, whichever period is shorter.

7. Master Formulation Record. A master formulation record must be prepared and maintained for each unique Audited Product an Accelerator Manufacturer manufactures. A master formulation record must include at least the following information:

    a. Name of the Audited Product;

    b. Ingredient identities and amounts;

    c. Specifications on the delivery device (if applicable);

    d. Complete instructions for preparing the Audited Product, including equipment, supplies, and description of the manufacturing steps;

    e. Quality control procedures; and

    f. Any other information needed to describe the Retail Marijuana Products Manufacturer's production and ensure its repeatability.

8. Batch Manufacturing Records. A batch manufacturing record shall be created for each Production Batch of Audited Product. This record shall include at the least the following information:

    a. Name of the Audited Product;

    b. Master formulation record reference for the Audited Product;

    c. Date and time of preparation of the Audited Product;

    d. Production Batch number;

    e. Signature or initials of individuals involved in each manufacturing step;

    f. Name, vendor, or manufacturer, Production Batch number, and expiration date of each Ingredient;

    g. Weight or measurement of each Ingredient;

    h. Documentation of quality control procedures;

    i. Any deviations from the master formulation record, and any problems or errors experienced during the manufacture; and

    j. Total quantity of the Audited Product manufactured.

F. Audited Product Testing. For each Production Batch, the Audited Product shall undergo all required testing in the 4-100 Series Rules for Retail Marijuana Product and/or Audited Product. *See also* Rule 4-115 – Regulated Marijuana Testing Program: Sampling and Testing Program.

G. Packaging and Labeling of Audited Product. Audited Product must be packaged and labeled in accordance with all requirements of the 3-1000 Series Rules regarding packaging and labeling for Transfer to a consumer prior to any Transfer.

H. Adverse Event Reporting. An Accelerator Manufacturer must report Adverse Health Events pursuant to Rule 3-920.

I. Alternative Use Designation – Any Other Method of Consumption or Administration. An Accelerator Manufacturer shall not Transfer to a Retail Marijuana Store, an Accelerator Store, a Retail Marijuana Products Manufacturer, another Accelerator Manufacturer, a Retail Marijuana Cultivation Facility, or an Accelerator Cultivator that has obtained a Centralized Distribution Permit any Retail Marijuana Concentrate or Retail Marijuana Product that is not within any intended use identified in Rule 3-1015(B) until it applies for and receives an Alternative Use Designation from the State Licensing Authority in consultation with the Colorado Department of Public Health and Environment. In the process of applying for an Alternative Use Designation, the Accelerator Manufacturer shall work with the Division and the Colorado Department of Public Health and Environment to determine whether the proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when particular independent review factors, safeguards, and tests are in place. The following are minimum requirements for any application for an Alternative Use Designation:

1. The Accelerator Manufacturer shall identify provisions of this Rule 6-825 that apply to its Alternative Use Product, any proposed additional or alternative requirements, and how any proposed alternatives protect public health and safety. The Accelerator Manufacturer

shall also provide any additional information as may be requested by the Division, in consultation with the Colorado Department of Public Health and Environment.

2. The Accelerator Manufacturer bears the burden of proving its proposed Alternative Use Product may be manufactured in a manner that does not pose a threat to public health and safety when the identified independent review factors, safeguards, and tests are in place.

3. An Accelerator Manufacturer seeking an Alternative Use Designation shall cooperate with the Division. Failure to cooperate with the Division is grounds for denial of an Alternative Use Designation.

4. The granting of an Alternative Use Designation shall rest in the discretion of the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment. The State Licensing Authority may in his or her discretion deny an Alternative Use Designation where the Accelerator Manufacturer does not meet the burden established in this Rule 6-825.

J. Alternative Use Designation – Packaging and Labeling Requirements. If the Division recommends, and the State Licensing Authority grants, an Alternative Use Designation, the State Licensing Authority, in consultation with the Colorado Department of Public Health and Environment shall provide the Accelerator Manufacturer the appropriate statement of intended use label to be affixed to the Alternative Use Product, and any additional or distinct packaging and labeling requirements applicable to the Alternative Use Product. *See* Rules 3-1010 and 3-1015.

K. Required Records. An Accelerator Manufacturer manufacturing or Transferring Audited Product and/or Alternative Use Product shall maintain accurate and comprehensive records on the Licensed Premises regarding the manufacturing process, a list of all active and inactive Ingredients used in the Audited Product and/or Alternative Use Product, and such other documentation as required by this Rule 6-825. *See* Rule 3-905 – Business Records Required.

Basis and Purpose – 6-830

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-401(2)(b)(III), and 44-10-603, 44-10-603(15)(a)-(b), 44-10-608, and 38-28.8-302(2)(b) C.R.S. The purpose of this rule is to allow a Medical Marijuana Products Manufacturer to receive Transfers of Retail Marijuana Concentrate from a Retail Marijuana Products Manufacturer in order to change its designation from “Retail” to “Medical.”

6-830 – Accelerator Manufacturer: Ability to Change Designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate.

A. Changing Designation: Beginning July 1, 2022, an Accelerator Manufacturer may Transfer Retail Marijuana Concentrate to a Medical Marijuana Products Manufacturer in order to change its designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate pursuant to the following requirements:

1. The Accelerator Manufacturer may only Transfer Retail Marijuana Concentrate that has passed all required testing;

2. The Medical Marijuana Products Manufacturer and the Accelerator Manufacturer are co-located;

3. The Medical Marijuana Products Manufacturer and Accelerator Manufacturer have at least one identical Controlling Beneficial Owner;

4. The Accelerator Manufacturer must report the Transfer in the Inventory Tracking System the same day that the change in designation from Retail Marijuana Concentrate to Medical Marijuana Concentrate occurs;

5. After the designation change, the Medical Marijuana Concentrate cannot be Transferred to the originating Accelerator Manufacturer or any other Retail Marijuana Business or otherwise be treated as Retail Marijuana. The inventory is Medical Marijuana and is subject to all permissions and limitations in the 5-200 series rules; and

6. The Transfer and change in designation does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer and change in designation.

6-900 Series – Licensed Hospitality Businesses

Basis and Purpose – 6-905

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish general provisions for Licensed Hospitality Businesses.

6-905 – Licensed Hospitality Businesses: General Provisions

A. Privileges Granted. A Licensed Hospitality Business shall only exercise those privileges granted pursuant to the Marijuana Code and these Rules.

B. Local Approval Required. No Licensed Hospitality Business may operate in a Local Jurisdiction that does not have an ordinance or resolution authorizing the operation of that type of Licensed Hospitality Business within the Local Jurisdiction. A Licensed Hospitality Business must comply with any requirements or restrictions on its operations imposed by the Local Jurisdiction's ordinance or resolution.

C. Liability Insurance Required. Licensed Hospitality Businesses are required to carry general liability insurance. If a Licensed Hospitality Business has not obtained general liability insurance at the time of its initial license application, it must obtain general liability insurance prior to submitting the Licensee's first renewal application.

D. Responsible Vendor Training Required. All Controlling Beneficial Owners and employees of a Licensed Hospitality Business shall complete annual responsible vendor training that satisfies the requirements of the responsible vendor program established in the 3-500 Series Rules.

E. No Visible Consumption of Regulated Marijuana. A Licensed Hospitality Business shall ensure that the display and consumption of any marijuana is not visible from outside of its Licensed Premises. The requirement in this paragraph (E) also applies to Licensed Hospitality Businesses that operate in an isolated portion of a Retail Food Establishment. *See* Rule 6-915 – Licensed Hospitality Businesses: Operation Within A Retail Food Establishment.

1. Outdoor Consumption Areas Permitted. A Licensed Hospitality Business may have a Consumption Area outdoors under the following conditions:

a. The Licensed Hospitality Business shall ensure that all marijuana is kept out of plain sight and is not visible from a public place without the use of optical aids, such as telescopes or binoculars, or aircraft; and

b. The Licensed Hospitality Business shall ensure that the Consumption Area is surrounded by a sight-obscuring wall, fence, hedge, or other opaque or translucent barrier.

F. Required Signage.

1. Identification of Consumption Area. A Licensed Hospitality Business shall ensure all areas ingress and egress to the Consumption Area(s) be clearly identified by the posting of a sign which shall not be less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Consumption Area – No One Under 21 Years of Age Allowed."

2. Required Warning. Licensed Hospitality Businesses must post, at all times and in a prominent place inside the Consumption Area, a warning that is at minimum twelve inches high and twelve inches wide that reads as follows:

"Must be 21 or older to enter

Marijuana may only be consumed in designated areas out of public view

No consumption of alcohol or tobacco products on site

We reserve the right to refuse entry or service for reasons including visible intoxication

It is against the law to drive while impaired by marijuana"

G. Entry By A Person Under 21 Years Prohibited. A Licensed Hospitality Business shall not allow any individual under 21 years of age to enter its Licensed Premises. A Licensed Hospitality Business shall verify that every individual entering the Licensed Premises has a valid government-issued photo identification showing that the individual is 21 years of age or older. *See* Rule 3-405 – Acceptable Forms of Identification.

H. Customers in Consumption Area. The Consumption Area must be supervised by a Licensee at all times when consumers are present to ensure that only persons who are 21 years of age or older are permitted to enter. A Licensed Hospitality Business shall reasonably monitor consumers in the Consumption Area to ensure compliance with these 6-900 Series Rules.

I. Conduct on the Licensed Premises.

1. Consumption By Intoxicated Patrons Prohibited. A Licensed Hospitality Business shall not permit the use or consumption of marijuana by any person displaying any visible signs of intoxication.

2. Alcohol Consumption Prohibited. No consumption of alcohol is permitted in a Licensed Hospitality Business. A Licensed Hospitality Business is responsible for preventing the consumption of alcohol within its Licensed Premises.

3. Tobacco Consumption Prohibited. No smoking of tobacco or tobacco products is permitted in a Licensed Hospitality Business. A Licensed Hospitality Business is responsible for preventing the smoking of tobacco and tobacco products within its Licensed Premises.

4. Employee Consumption Prohibited. No employee of a Licensed Hospitality Business who is on duty may use or consume marijuana. A Licensed Hospitality Business is responsible

for preventing the use or consumption of marijuana by on-duty employees within its Licensed Premises.

5. Flammable Instrument Restrictions. A Licensed Hospitality Business shall not allow the use of the following devices in the Licensed Premises if prohibited by a local ordinance or resolution:

   a. Any device using liquid petroleum gas;

   b. A butane torch;

   c. A butane lighter; or

   d. Matches.

6. Orderliness. A Licensed Hospitality Business shall operate the business in a decent, orderly, and respectable manner. A Licensed Hospitality Business shall not knowingly permit any activity or acts of disorderly conduct as defined by and provided for in section 18-9-106, C.R.S., nor shall a Licensed Hospitality Business permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the Licensed Hospitality Business is located.

J. Free Marijuana Prohibited. A Licensed Hospitality Business may not give away marijuana to a consumer for any reason.

K. Food Products Permitted. A Licensed Hospitality Business is permitted to sell or give away consumable products that do not contain marijuana under the following circumstances:

1. The Licensed Hospitality Business operates in an isolated portion of a Retail Food Establishment;

2. A Licensed Hospitality Business that is not a Retail Food Establishment may prepare and serve hot coffee, hot tea, instant hot beverages, and nonpotentially hazardous doughnuts or pastries obtained from sources complying with all laws related to food and food labeling; or

3. A Licensed Hospitality Business that is not a Retail Food Establishment may sell or give away nonpotentially hazardous prepackaged food and commercially prepared, prepackaged foods requiring no preparation other than the heating of food within its original container or package.

L. Emergency Entry by Public Safety Personnel. If an emergency requires law enforcement, firefighters, emergency medical service providers, or other public safety personnel to enter the Licensed Premises of a Licensed Hospitality Business, the Licensed Hospitality Business is responsible for ensuring that all consumption and other activities, including sales, if applicable, cease until such personnel have completed their investigation or services and have left the Licensed Premises.

M. Criminal Activity Reporting Requirements. In addition to other reporting requirements set forth in these Rules, a Licensed Hospitality Business must report directly to the Division any criminal activity requiring an in-person response from law enforcement. Any report required under this Rule must be submitted within 48 hours after an Owner Licensee or Employee Licensee of the Licensed Hospitality Business learns of the event.

N. Removal of Persons from the Licensed Premises. A Licensed Hospitality Business may remove a person from the Licensed Premises for any reason, including but not limited to, any consumer showing any visible signs of intoxication.

O. Control and Disposal of Marijuana Left by a Consumer. A Licensed Hospitality Business is responsible for the collection and disposal of any marijuana left on the Licensed Premises by a consumer. When a consumer leaves any marijuana on the Licensed Premises, a Licensed Hospitality Business must promptly collect and remove the marijuana from the Restricted Access Area and either immediately destroy or store and secure the marijuana in a Limited Access Area or an area inaccessible to consumers in accordance with Rule 6-920(A).

1. Marijuana Consumer Waste. In conjunction with the collecting and securing of any remaining marijuana, a Licensed Hospitality Business may segregate any Marijuana Consumer Waste in order to Transfer the Marijuana Consumer Waste for purposes of recycling in accordance with Rule 3-240 – Collection of Marijuana Consumer Waste.

2. Destruction Required. At, or before, the end of each business day, a Licensed Hospitality Business shall destroy any marijuana left on its Licensed Premises by a consumer in conformance with Rule 3-230 – Waste Disposal. The Licensed Hospitality Business shall document any destruction of Regulated Marijuana in a waste log. *See* Rule 3-905 – Business Records Required.

P. Consumer Education Materials. A Licensed Hospitality Business must provide Consumer Education Materials regarding the safe consumption of marijuana. Consumer Education Materials may be made available in print or digital form, may never make claims regarding health or physical benefits of marijuana, and must be prominently displayed. Consumer Education Materials shall at a minimum include the following statement:

> **"WARNING**: Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.
>
> Create a transportation plan ahead of time. Don't operate a vehicle impaired.
>
> Impairing effects of marijuana may be delayed."

Basis and Purpose – 6-910

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish additional health and safety regulations for Licensed Hospitality Businesses.

6-910 – Licensed Hospitality Businesses: Additional Health and Safety Regulations

A. Local Safety Requirements and Inspections. A Licensed Hospitality Business must comply with any safety requirements or required inspections imposed by the Local Jurisdiction's ordinance or resolution which authorizes the Licensed Hospitality Business's operation.

B. Sanitation of Consumption Equipment. If a Licensed Hospitality Business provides consumers with reusable equipment or devices to aid in the use or consumption of marijuana, the Licensed Hospitality Business shall ensure the equipment or device is sanitized properly. A Licensed Hospitality Business shall maintain standard operating procedures regarding reusable equipment and device sanitation practices. Failure to maintain records and/or sanitize reusable equipment may constitute a license violation affecting public safety.

Basis and Purpose – 6-915

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish requirements for Licensed Hospitality Businesses operating within a Retail Food Establishment or on the Licensed Premises of any establishment with a license issued pursuant to articles 3, 4, or 5 of Title 44.

6-915 – Licensed Hospitality Businesses: Operation Within a Retail Food Establishment

A. Alcohol Beverage License Prohibited. A Licensed Hospitality Business shall not operate within a Retail Food Establishment that holds a license or permit issued pursuant to article 3, 4, or 5 of title 44.

1. The Licensed Premises of a Licensed Hospitality Business must be completely separate from, and shall not overlap with, the licensed premises of any license issued pursuant to articles 3, 4, or 5 of Title 44. To be considered completely separate:

a. The Licensed Premises of a Licensed Hospitality Business shall not overlap with or share any physical space with, at any time, the licensed premises of a license issued pursuant to articles 3, 4, or 5 of Title 44. Alternating use of the same location at different times by a license issued pursuant to article 10 of Title 44 and a license or permit issued pursuant to article 3, 4, or 5 of Title 44 is prohibited.

b. The Licensed Premises of a Licensed Hospitality Business may be adjacent to the licensed premises of any license issued pursuant to article 3, 4, or 5 of Title 44, so long as all of the following conditions are met:

i. Each has a separate address, which may be separate units within a street address so long as each unit has separate entrances and exits from the other, and consumers may not pass through the licensed premises of one to reach the licensed premises of the other;

ii. There is no door, hallway, or passageway by or through which a consumer may pass between the Licensed Premises of a Licensed Hospitality Business and the adjacent licensed premises of any license issued pursuant to articles 3, 4, or 5 of Title 44; and

iii. Any window on a shared wall is covered, or rendered opaque or translucent, to ensure the display or consumption of marijuana within a Licensed Hospitality Business is not visible to any person outside the Licensed Premises, including by a person within the adjacent licensed premises of a license issued pursuant to articles 3, 4, or 5 of Title 44.

B. Isolation From Unlicensed Portions of the Retail Food Establishment. A Licensed Hospitality Business that operates within a Retail Food Establishment shall ensure that its Licensed Premises are isolated from the rest of the Retail Food Establishment.

1. Consumers may enter the Licensed Premises from the unlicensed portion of the Retail Food Establishment. However, in order to be isolated from the rest of the Retail Food Establishment, the Licensed Premises shall:

a. Not overlap with the operations of the Retail Food Establishment; and

b. Be separated by a sight-obscuring wall, or other opaque or translucent barrier, and a secure door to ensure only consumers 21 years of age or older are permitted into the Licensed Premises.

2. Segregation of Marijuana. A Licensed Hospitality Business shall not store marijuana—either for purposes of sale or destruction—in any location containing other inventory of the Retail Food Establishment.

C. Manufacturing of Regulated Marijuana Products Prohibited. A Licensed Hospitality Business shall ensure that the Retail Food Establishment is not used to manufacture Regulated Marijuana Products or to add marijuana to foods produced or provided at the Retail Food Establishment.

D. Food Service Permitted. Nothing in this Rule 6-915 prohibits employees of the Retail Food Establishment from taking orders for, or serving, foods, produced or provided at the Retail Food Establishment within the Licensed Premises of the Licensed Hospitality Business. Any employee of the Retail Food Establishment who has unescorted access to the Limited Access Area or Restricted Access Area of a Licensed Hospitality Business, or who may handle marijuana for destruction, or any other purpose, shall first obtain an Employee License and Identification Badge.

Basis and Purpose – 6-920

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), and 44-10-610, C.R.S. The purpose of this rule is to establish requirements for the display of Retail Marijuana on the Licensed Premises of a Retail Marijuana Hospitality and Sales Business, and to establish that a Retail Marijuana Hospitality and Sales Business must control and safeguard access to certain areas where Retail Marijuana will be sold.

6-920 – Retail Marijuana Hospitality and Sales Businesses Point of Sale: Restricted Access Area

A. Display of Retail Marijuana. The display of Retail Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the consumer must be supervised by the Owner Licensee or Employee Licensees at all times when consumers are present.

Basis and Purpose – 6-925

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to clarify additional license privileges and restrictions for Retail Marijuana Hospitality and Sales Businesses that do not apply to Marijuana Hospitality Businesses.

6-925 – Retail Marijuana Hospitality and Sales Businesses: Additional License Privileges and Restrictions

A. Authorized Sources of Retail Marijuana. A Retail Marijuana Hospitality and Sales Business may only Transfer Retail Marijuana that it obtained from another Retail Marijuana Business.

B. Restriction on Transfers to Consumers. A Retail Marijuana Hospitality and Sales Business and its employees are prohibited from Transferring Retail Marijuana to a consumer if the Retail Marijuana Hospitality and Sales Business' employee knows or reasonably should know that the consumer does not intend to consume the Retail Marijuana on the Licensed Premises of the Retail Marijuana Hospitality and Sales Business or previously during the same business day the consumer already received the relevant quantity limitation in this Rule. In determining the

imposition of any penalty for violation of this Rule 6-925, the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235.

C. Inventory Tracking System Requirements. A Retail Marijuana Hospitality and Sales Business must use the Inventory Tracking System in accordance with the requirements of the 3-800 Series Rules.

D. Samples Provided for Testing. A Retail Marijuana Hospitality and Sales Business may provide Samples of Retail Marijuana for testing purposes to a Retail Marijuana Testing Facility. The Retail Marijuana Hospitality and Sales Business shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

E. Authorized On-Premises Storage. A Retail Marijuana Hospitality and Sales Business may store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules. *See* Rule 3-800 Series Rules – Regulated Marijuana Business: Inventory Tracking System.

F. Authorized Marijuana Transport. A Retail Marijuana Hospitality and Sales Business is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where the transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents a Retail Marijuana Hospitality and Sales Business from transporting its own Retail Marijuana to the Licensed Premises of its Retail Marijuana Hospitality and Sales Business.

G. Quantity Limitations on Sales. All Transfers of Retail Marijuana by a Retail Marijuana Hospitality and Sales Business to a consumer shall not exceed the following sales limits:

1. More than two grams of Retail Marijuana flower;

2. More than one-half of one gram of Retail Marijuana Concentrate; or

3. A Retail Marijuana Product containing more than 20 milligrams of active THC. For any Transfer of Retail Marijuana Product containing more than 10 milligrams of active THC, the Retail Marijuana Product must be Transferred to a consumer in separate serving sizes containing no more than 10 milligrams of active THC per serving.

H. Measurement Procedures and Equipment.

1. A Retail Marijuana Hospitality and Sales Business shall develop and maintain standard operating procedures, and any additional equipment necessary, to ensure any Retail Marijuana Product Transferred to a consumer does not exceed the quantity limitation set forth in subparagraph G(3).

2. A Retail Marijuana Hospitality and Sales Business Transferring Multiple-Serving Edible Retail Marijuana Product or Multiple-Serving Liquid Edible Retail Marijuana Product to a consumer shall provide a measurement device necessary for the consumer to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of active THC per serving.

I. Packaging and Labeling.

1. Packaging and Labeling Not Required at Time of Transfer. A Retail Marijuana Hospitality and Sales Business may Transfer Retail Marijuana to a consumer without packaging and labeling so long as the Retail Marijuana Hospitality and Sales Business complies with the

requirements of Rule 3-1020. *See* Rule 3-1020 – Packaging and Labeling: Requirements Prior to Transfer to a Consumer at a Retail Marijuana Hospitality and Sales Business.

2. Packaging and Labeling Required Before Retail Marijuana Removed from Licensed Premises. A Retail Marijuana Hospitality and Sales Business shall not permit a consumer to leave the Licensed Premises with any unconsumed marijuana unless the Retail Marijuana Hospitality and Sales Business has ensured unconsumed marijuana is packaged and labeled in accordance with the requirements of Rule 3-1020. *See* Rule 3-1020 – Packaging and Labeling: Requirements Prior to Transfer to a Consumer at a Retail Marijuana Hospitality and Sales Business.

J. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product to a consumer.

Basis and Purpose – 6-930

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish general limitations and prohibited acts for Retail Marijuana Hospitality and Sales Businesses.

6-930 – Retail Marijuana Hospitality and Sales Businesses: General Limitations and Prohibited Acts

A. Age Verification. Prior to Initiating the Transfer of Retail Marijuana a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older. *See* Rule 3-405 – Acceptable Forms of Identification.

B. Purchases Only Within Restricted Access Area. A consumer must be physically present within the Restricted Access Area of the Retail Marijuana Hospitality and Sales Business's Licensed Premises to purchase Retail Marijuana. The consumer must consume or use the Retail Marijuana purchased in the Retail Marijuana Hospitality and Sales Business in that Businesses' Restricted Access Area.

1. Application to Retail Marijuana Hospitality and Sales Businesses Operating in a Retail Food Establishment. The requirement of paragraph (B) also applies to all Retail Marijuana Hospitality and Sales Businesses operating in an isolated portion of the Retail Food Establishment. All Transfers of Retail Marijuana may occur only in the Retail Marijuana Hospitality and Sales Business' Restricted Access Area, and not in any other area of the Retail Food Establishment.

C. Prohibited Sales and Activity.

1. Sales to Persons Under 21 Years. A Retail Marijuana Hospitality and Sales Business is prohibited from Transferring, giving, or distributing Regulated Marijuana to persons under 21 years of age.

2. Alternative Use Products. A Retail Marijuana Hospitality and Sales Business shall not Transfer, or permit the use or consumption of, any Alternative Use Product.

3. Marijuana Not Transferred by the Retail Marijuana Hospitality and Sales Business. A Retail Marijuana Hospitality and Sales Business shall not permit the purchase, use or consumption of any marijuana other than the Retail Marijuana it Transfers pursuant to these rules.

4. Nicotine or Alcohol. A Retail Marijuana Hospitality and Sales Business is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of alcohol would require a license pursuant to articles 3, 4, or 5 of Title 44, C.R.S.

5. Transfer of Expired Product. A Retail Marijuana Hospitality and Sales Business shall not Transfer any expired Retail Marijuana Product to a consumer.

6. Transporter Transfer Restrictions. A Retail Marijuana Hospitality and Sales Business shall not Transfer Retail Marijuana to a Retail Marijuana Transporter, and shall not buy or receive complimentary Retail Marijuana from a Retail Marijuana Transporter.

7. Possession and Transfer of Sampling Units. A Retail Marijuana Hospitality and Sales Business may not possess or Transfer Sampling Units.

8. Research Transfers. A Retail Marijuana Hospitality and Sales Business shall not Transfer any Retail Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

D. Storage and Display Limitations.

1. A Retail Marijuana Hospitality and Sales Business shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Area or Restricted Access Area.

2. Any product displays that are readily accessible to the customer must be supervised by the Owner Licensee or Employee Licensee at all times when consumers are present.

E. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

F. Adverse Health Event Reporting. A Retail Hospitality and Sales Business must report Adverse Health Events pursuant to Rule 3-920.

Basis and Purpose – 6-935

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), 44-10-609, and 44-10-610, C.R.S. The purpose of this rule is to establish Limited Access Area and security exemptions and requirements for Marijuana Hospitality Businesses.

6-935 – Marijuana Hospitality Business: Limited Access Areas and Security Standards

A. Limited Access Area Permitted But Not Required. A Marijuana Hospitality Business is not required to maintain a Limited Access Area as part of the Licensed Premises so long as the Marijuana Hospitality Business demonstrates the following:

1. It has established policies, procedures, and methods to ensure marijuana collected pursuant to Rule 6-905(O) will be secured in an area inaccessible to patrons of the Marijuana Hospitality Business prior to destruction; and

2. Its surveillance recording equipment is housed in a designated, locked, and secured room or other enclosure with access limited to authorized employees, agents of the Division, and the relevant Local Licensing Authority or Local Jurisdiction, state or local law enforcement agencies for a purpose authorized by the Marijuana Code or for any other state or local law enforcement purpose, and service personnel or contractors.

B. Security Standards. A Marijuana Hospitality Business shall comply with Rule 3-220 Security Alarm Systems and Lock Standards and Rule 3-225 Video Surveillance, except that its Licensed Premises need only be monitored when consumers are on the Licensed Premises or during periods when marijuana collected pursuant to Rule 6-905(O) remains on the Licensed Premises prior to destruction.

Basis and Purpose – 6-940

The statutory authority for this rule includes but is not limited to sections 44-10-202(1), 44-10-203(2)(ff), 44-10-305(2)(b), and 44-10-609, C.R.S. The purpose of this rule is to establish requirements for Marijuana Hospitality Businesses with a Mobile Premises.

6-940 – Marijuana Hospitality Business: Requirements for Mobile Premises

A. Separate License Required for Each Mobile Premises. Each Mobile Premises requires a separate Marijuana Hospitality Business License.

B. Consumption Area of the Mobile Premises. The Consumption Area of the Mobile Premises shall exclude the area designed to seat the driver and front seat passenger.

C. Requirements for Motor Vehicles Designated as Mobile Premises. A Marijuana Hospitality Business must ensure that the motor vehicle serving as the Mobile Premises of a Marijuana Hospitality Business complies with all state and local registration and permitting requirements. At each initial and renewal application, a Marijuana Hospitality Business must provide the Division with the following information regarding its Mobile Premises:

a. Documentation that the Mobile Premises is owned or leased by the Marijuana Hospitality Business;

b. The vehicle manufacturer/make, model, and model year associated with the Mobile Premises;

c. The vehicle identification number (VIN) associated with the Mobile Premises;

d. The Colorado license plate number and copy of the registration associated with the Mobile Premises;

e. If applicable, the automatic vehicle identification tag associated with the Mobile Premises; and

f. A copy of a valid permit issued by the Public Utilities Commission to the Marijuana Hospitality Business.

D. Local Approval Required. A Marijuana Hospitality Business with a Mobile Premises may only operate in Local Jurisdictions that have an ordinance or resolution authorizing the operation of Mobile Premises and for which it holds any required valid local license(s). A Mobile Premises' operation includes, but is not limited to, allowing passengers to consume marijuana and boarding or disembarking the Mobile Premises.

E. Additional Requirements for Mobile Premises. Before receiving a License for a Mobile Premises, a Marijuana Hospitality Business must establish that the Mobile Premises will be able to meet the following requirements:

1. Global position system tracking of the Mobile Premises;

2. Written standard operating procedures that address the logging of the route(s) of each Mobile Premises;

3. Video surveillance inside of the Mobile Premises, including the entry and exit points to the Mobile Premises and driver's area of the vehicle;

4. Proper ventilation within the vehicle, which includes, if marijuana is smoked or vaped in the Licensed Premises, that air is not circulated into the driver's area of the Licensed Premises;

5. Policies and procedures to ensure that no marijuana is possessed or consumed in the area designed to seat the driver and front seat passenger in a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

6. Methods to ensure consumption activity is not visible outside the vehicle;

7. Policies, procedures or other measures to ensure that consumers are prohibited from entering the driver's area of the Mobile Premises; and

8. Display of the Marijuana Hospitality Business license on the dashboard of the Mobile Premises.

F. Separate Place of Business. A Marijuana Hospitality Business with a Mobile Premises shall designate and maintain a fixed place of business in Colorado that is separate from the Mobile Premises. The fixed place of business does not need to be a Licensed Premises. However, if the Marijuana Hospitality Business will transport any marijuana to the separate place of business for purposes of destruction, the separate place of business shall also be a Licensed Premises and is subject to any applicable state and local licensing requirements or restrictions.

1. Shared Places of Business. Multiple Marijuana Hospitality Business Licensees with Mobile Premises may share a single separate place of business so long as the Marijuana Hospitality Businesses are identically owned.

2. Shared Premises with Another Licensed Hospitality Business. A Marijuana Hospitality Business with a Mobile Premises may designate the location of another Marijuana Hospitality Business's Licensed Premises as its separate place of business subject to the following conditions:

a. The relevant Local Licensing Authority or Local Jurisdiction permit a Marijuana Hospitality Business with a Mobile Premises to designate the location of another Marijuana Hospitality Business's Licensed Premises as its separate place of business;

b. The Marijuana Hospitality Businesses are identically owned; and

c. Record-keeping shall enable the Division and the Local Licensing Authority or Local Jurisdiction to distinguish clearly the business transactions and operations of each Marijuana Hospitality Business.

G. Business Records. All records required to be maintained by these rules must be maintained at the Marijuana Hospitality Business's separate place of business, and not at the Mobile Premises, except that when the Mobile Premises is in operation it must maintain its current route log on the Mobile Premises.

1. A Marijuana Hospitality Business is not required to maintain records related to inventory tracking because a Marijuana Hospitality Business is prohibited from engaging in Transfers of marijuana.

H. Health and Safety Requirements. A Marijuana Hospitality Business' Mobile Premises shall comply with all relevant requirements in the 3-300 Series Rules. Hand-washing facilities, however, need not be in the Mobile Premises, but may be located in the Marijuana Hospitality Business's separate place of business.

I. Operating Restrictions. A Marijuana Hospitality Business shall ensure that its Mobile Premises does not operate outside of the state of Colorado.

6-1100 Series – Accelerator Store Licenses

Basis and Purpose – 6-1105

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-203(2)(dd), 44-10-401(2)(b)(I), 44-10-601, 44-10-605, and 44-10-611, C.R.S. The purpose of this rule is to establish the license privileges of an Accelerator Store.

6-1105 – Accelerator Store: License Privileges

A. Licensed Premises.

1. Shared Licensed Premises. An Accelerator Store may operate on the same Licensed Premises as a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

2. Separate Licensed Premises. An Accelerator Store may operate on a separate premises in the possession of a Retail Marijuana Store that is an Accelerator-Endorsed Licensee pursuant to the 3-1100 Series Rules.

3. To the extent authorized by Rule 3-215 – Regulated Marijuana Business– Shared Licensed Premises and Operational Separation, an Accelerator Store may share, and operate at, the same Licensed Premises as an Accelerator-Endorsed Licensee's Retail Marijuana Store that shares a Licensed Premises with a Medical Marijuana Store.

B. Authorized Sources of Retail Marijuana. An Accelerator Store may only Transfer Retail Marijuana that was obtained from another Retail Marijuana Business.

C. Samples Provided for Testing. An Accelerator Store may provide Samples of its products for testing and research purposes to a Retail Marijuana Testing Facility. The Accelerator Store shall maintain the testing results as part of its business books and records. *See* Rule 3-905 – Business Records Required.

D. Authorized On-Premises Storage. An Accelerator Store is authorized to store inventory on the Licensed Premises. All inventory stored on the Licensed Premises must be secured in a Limited Access Area or Restricted Access Area, and tracked consistently with the inventory tracking rules.

E. Authorized Marijuana Transport. An Accelerator Store is authorized to utilize a licensed Retail Marijuana Transporter for transportation of its Retail Marijuana so long as the place where transportation orders are taken and delivered is a licensed Retail Marijuana Business. Nothing in this Rule prevents an Accelerator Store from transporting its own Retail Marijuana.

F. Performance-Based Incentives. An Accelerator Store may compensate its employees using performance-based incentives, including sales-based performance-based incentives.

G. Authorized Transfers of Industrial Hemp Products. An Accelerator Store may Transfer Industrial Hemp Product to a consumer only after it has confirmed:

1. That the Industrial Hemp Product has passed all required testing pursuant to the 4-100 Series Rules at a Retail Marijuana Testing Facility; and

2. That the Person Transferring the Industrial Hemp Product to the Retail Marijuana Store is registered with the Colorado Department of Public Health and Environment pursuant to section 25-5-426, C.R.S.

H. Automated Vending Machine. An Accelerator Store may use an automated machine in the Restricted Access Area of its Licensed Premises to dispense Regulated Marijuana to consumers without interaction with an Owner Licensee or Employee Licensee if the automated machine is reasonably monitored and complies with all requirements of these rules including but not limited to:

1. Health and safety standards,

2. Testing,

3. Packaging and labeling requirements,

4. Inventory tracking,

5. Identification requirements, and

6. Transfer limits to consumers.

I. Walk-up Window or Drive-up Window. An Accelerator Store may serve customers through a walk-up window or drive-up window pursuant to the requirements of this rule.

1. Modification of Premises Required. Before accepting orders for sales of Retail Marijuana to a customer through either a walk-up window or drive-up window, an Accelerator Store shall apply for, and obtain approval of, an application for a modification of its Licensed Premises for the addition of a walk-up window or drive-up window.

2. The area immediately outside the walk-up window or drive-up window must be under the Licensee's possession and control and cannot include any public property such as public streets, public sidewalks, or public parking lots.

3. Order and Identification Requirements.

a. Prior to accepting an order or Transferring Retail Marijuana to a customer, the Employee Licensee or Owner Licensee must physically view and inspect the consumer's identification and ensure that the consumer is 21 years of age or older.

b. The Accelerator Store may accept telephone orders or may accept orders from the customer at the walk-up window or drive-up window. Accelerator Stores may not accept orders or payment for Retail Marijuana over the internet.

c. All orders received through a walk-up window or a drive-up window must be placed by the customer from a menu. The Accelerator Store may not display Retail Marijuana at the walk-up or drive-up window.

4. Payment Requirements. Cash, credit, debit, cashless ATM, or other payment methods are permitted for payments for Retail Marijuana at the walk-up window or drive-up window.

5. Video Surveillance Requirements. For every Transfer of Regulated Marijuana through either a walk-up window or drive-up window, the Accelerator Store's video surveillance must enable the recording of the consumer's identity (and consumer's vehicle in the event of drive-up window), and must enable the recording of the Licensee verifying the consumer's identification and completion of the transaction through the Transfer of Regulated Marijuana.

6. Packaging and Labeling Requirements. An Accelerator Store utilizing a walk-up window or drive-up window must ensure that all Retail Marijuana is packaged and labeled in accordance with Rule 3-1010 and Rule 3-1015 prior to Transfer to the consumer.

7. Local Restrictions. Transfers of Regulated Marijuana using a walk-up window or drive-up window are subject to requirements and restrictions imposed by the relevant Local Jurisdiction.

Basis and Purpose – 6-1110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(g), 44-10-203(2)(h), 44-10-203(4)(b), 44-10-203(1)(k), 44-10-203(2)(aa), 44-10-401(2)(b)(I), 44-10-601, 44-10-611, 44-10-701(1)(a), and 44-10-701(3)(d) and (f), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to clarify those acts that are limited in some fashion, or prohibited, by an Accelerator Store. Such limitations include, but are not limited to, quantity limitations on sales and equivalencies for Retail Marijuana Concentrate and Retail Marijuana Product to Retail Marijuana flower. The establishment of equivalencies also provides information to stakeholders including Licensees, the general public, and law enforcement to aid in the enforcement of and compliance with the lawful personal possession limit of one ounce or less of marijuana. Setting these equivalencies provides Accelerator Stores and their employees with necessary information to avoid being complicit in a patron acquiring more marijuana than is lawful to possess under the Colorado Constitution pursuant to Article XVIII, Subsection 16(3)(a).

6-1110 – Accelerator Store: General Limitations or Prohibited Acts

A. Sales to Persons Under 21 Years. Licensees are prohibited from Transferring, giving, or distributing Retail Marijuana to persons under 21 years of age. Licensees are prohibited from permitting a person under the age of 21 years of age from entering the Restricted Access Area.

B. Age Verification. Prior to initiating the Transfer of Retail Marijuana, a Licensee must verify that the purchaser has a valid government-issued photo identification showing that the purchaser is 21 years of age or older.

C. Quantity Limitations On Sales.

1. An Accelerator Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product or more than six Retail Marijuana seeds in a single transaction to a consumer. A single transaction includes multiple Transfers to the same consumer during the same business day where the Accelerator Store employee knows or

reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana. In determining the imposition of any penalty for violation of this Rule 6-1110(C), the State Licensing Authority will consider any mitigating and aggravating factors set forth in Rule 8-235(C).

2. Equivalency. Non-edible, non-psychoactive Retail Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the one-ounce quantity limit on Transfers. For all other Retail Marijuana Products or Retail Marijuana Concentrate, the following equivalency applies for the one ounce quantity Transfer limit:

    a. One ounce of Retail Marijuana flower shall be equivalent to eight grams of Retail Marijuana Concentrate.

    b. One ounce of Retail Marijuana flower shall be equivalent to 80 ten-milligram servings of THC in Retail Marijuana Product.

C.5. Educational Resource. When completing a sale of Retail Marijuana Concentrate, an Accelerator Store shall provide the consumer with the tangible educational resource created by the State Licensing Authority regarding the use of Regulated Marijuana Concentrate.

D. Licensees May Refuse Sales. Nothing in these rules prohibits a Licensee from refusing to Transfer Retail Marijuana to a consumer.

E. Sales over the Internet. A Licensee is prohibited from selling Retail Marijuana over the internet. Any Transfer of Retail Marijuana must occur within the Accelerator Store's Restricted Access Area. Only a Licensee holding a valid delivery permit may make sales over the internet or deliver to a private residence.

F. Delivery Outside Colorado Prohibited. An Accelerator Store holding a valid delivery permit shall not deliver Retail Marijuana to an address that is outside the state of Colorado.

G. Prohibited Items. An Accelerator Store is prohibited from selling or giving away any consumable product that is not a Retail Marijuana Product or an Industrial Hemp Product including, but not limited to, cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not Retail Marijuana Product.

H. Free Product Prohibited. An Accelerator Store may not give away Retail Marijuana to a consumer for any reason.

I. Nicotine or Alcohol Prohibited. An Accelerator Store is prohibited from Transferring Retail Marijuana that contain nicotine or alcohol, if the sale of the alcohol would require a license pursuant to Articles 46 or 47 of Title 12, C.R.S.

J. Storage and Display Limitations.

1. An Accelerator Store shall not display Retail Marijuana outside of a designated Restricted Access Area or in a manner in which Retail Marijuana can be seen from outside the Licensed Premises. Storage of Retail Marijuana shall otherwise be maintained in Limited Access Areas or Restricted Access Area.

2. Any Retail Marijuana Concentrate displayed in an Accelerator Store must include the potency of the concentrate on a sign next to the name of the product.

a. The font on the sign must be large enough for a consumer to reasonably see from the location where a consumer would usually view the concentrate.

b. The potency displayed on the sign must be within plus or minus fifteen percent of the concentrate's actual potency.

K. Transfer of Expired Product Prohibited. An Accelerator Store shall not Transfer any expired Retail Marijuana Product to a consumer.

L. Transfer Restriction.

1. Sampling Units. An Accelerator Store may not possess or Transfer Sampling Units.

2. Research Transfers Prohibited. An Accelerator Store shall not Transfer any Retail Marijuana to a Pesticide Manufacturer or a Marijuana Research and Development Facility.

L.5. Standard Operating Procedures. An Accelerator Store must establish written standard operating procedures for the management and storage of Retail Marijuana inventory and the sale of Retail Marijuana to consumers. A written copy of the standard operating procedures must be maintained on the Licensed Premises.

1. Provide adequate training to every Owner Licensee and Employee Licensee who performs a task or set of tasks that are referenced in the standard operating procedures. Adequate training must include, but need not be limited to, providing a copy of the standard operating procedures for that Licensed Premises detailing at least all of the topics required to be included in the standard operating procedures.

M. Edibles Prohibited that are Shaped like a Human, Animal, or Fruit.

1. The sale of Edible Retail Marijuana Products in the following shapes is prohibited:

a. The distinct shape of a human, animal, or fruit; or

b. A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.

2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Retail Marijuana Business. Nothing in this subparagraph (M)(2) alters or eliminates a Licensee's obligation to comply with the requirements of the 3-1000 Series Rules – Labeling, Packaging, and Product Safety.

3. Edible Retail Marijuana Products that are geometric shapes and simply fruit flavored are not considered fruit and are permissible; and

4. Edible Retail Marijuana Products that are manufactured in the shape of a marijuana leaf are permissible.

N. Adverse Health Event Reporting. An Accelerator Store must report Adverse Health Events pursuant to Rule 3-920.

O. Corrective and Preventive Action. An Accelerator Store shall establish and maintain written procedures for implementing Corrective Action and Preventive Action. The written procedures shall include the requirements listed below as determined by the Licensee. All activities required

under this Rule, and their results, shall be documented and kept as business records. *See* Rule 3-905. The written procedures shall include requirements, as appropriate, for:

1. What constitutes a Nonconformance in the Licensee's business operation;

2. Analyzing processes, work operations, reports, records, service records, complaints, returned product, and/or other sources of data to identify existing and potential root causes of Nonconformances or other quality problems;

3. Investigating the root cause of Nonconformances relating to product, processes, and the quality system;

4. Identifying the action(s) needed to correct and prevent recurrence of Nonconformance and other quality problems;

5. Verifying the Corrective Action or Preventive Action to ensure that such action is effective and does not adversely affect finished products;

6. Implementing and recording changes in methods and procedures needed to correct and prevent identified quality problems;

7. Ensuring the information related to quality problems or Nonconformances is disseminated to those directly responsible for assuring the quality of products or the prevention of such problems; and

8. Submitting relevant information on identified quality problems and Corrective Action and Preventive Action documentation, and confirming the result of the evaluation, for management review.

P. Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

Basis and Purpose – 6-1115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(k), 44-10-203(2)(z), 44-10-203(2)(aa), 44-10-202(3)(h), 44-10-401(2)(b)(I), and 44-10-611, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V) and 16(5)(a)(VIII). The purpose of this rule is to establish that an Accelerator Store must control and safeguard access to certain areas where Retail Marijuana and Retail Marijuana Product will be sold to the general public and prevent the diversion of Retail Marijuana and Retail Marijuana Product to people under 21 years of age.

6-1115 – Point of Sale: Restricted Access Area

A. Identification of Restricted Access Area. All areas where Retail Marijuana are sold, possessed for sale, displayed, or dispensed for sale shall be identified as a Restricted Access Area and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – No One Under 21 Years of Age Allowed."

B. Consumers in Restricted Access Area. The Restricted Access Area must be supervised by a Licensee at all times when consumers are present to ensure that only persons who are 21 years of age or older are permitted to enter. When allowing a customer access to a Restricted Access Area, Owner Licensees and Employee Licensees shall make reasonable efforts to limit the

number of consumers in relation to the number of Owners Licensees and Employee Licensees in the Restricted Access Area at any time.

C. Display of Retail Marijuana. The display of Retail Marijuana for sale is allowed only in Restricted Access Areas. Any product displays that are readily accessible to the consumer must be supervised by the Owner Licensee or Employee Licensees at all times when consumers are present.

D. Pregnancy Warning. Accelerator Stores must post, at all times and in a prominent place inside the Restricted Access Area, a warning that is at minimum three inches high and six inches wide that reads:

> **WARNING:** Using marijuana, in any form, while you are pregnant or breastfeeding passes THC to your baby and may be harmful to your baby. There is no known safe amount of marijuana use during pregnancy or breastfeeding.

Part 7 – Regulated Marijuana Transfers to Unlicensed Pesticide Manufacturers

7-105 – Medical Marijuana Transfers to Medical Research Facilities – **Repealed effective January 1, 2021.**

7-110 – Retail Marijuana Transfers to Medical Research Facilities – **Repealed effective January 1, 2021.**

Basis and Purpose – 7-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(a)(II), 44-10-202(1)(c), 44-10-203(1)(c), and 44-10-203(1)(k), C.R.S. The purpose of this rule is to establish requirements associated with the Transfer of Regulated Marijuana and Regulated Marijuana Product to Pesticide Manufacturers, including requirements for the possession and disposition of Regulated Marijuana and Regulated Marijuana Products by Pesticide Manufacturers. This Rule 7-115 was previously Rules M and R 1802, 1 CCR 212-1 and 1 CCR 212-2.

7-115 – Pesticide Manufacturers

A. Transfers to Pesticide Manufacturers. A Medical Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, Retail Marijuana Cultivation Facility, and Retail Marijuana Products Manufacturer may Transfer Regulated Marijuana to a Pesticide Manufacturer solely for the purpose of conducting research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Regulated Marijuana. *See* Rules 5-205, 5-305, 6-205, 6-305.

B. Written Documentation Required. A Licensee shall require, and shall not Transfer Regulated Marijuana prior to receiving, written proof under oath, as evidenced by an affidavit entered into by an authorized person on behalf of the Pesticide Manufacturer, affirming that the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this Rule. This documentation shall constitute a business record under Rule 3-905 – Business Records Required.

C. Agreement with Pesticide Manufacturer. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer that Transfers Regulated Marijuana to a Pesticide Manufacturer shall enter into a written agreement with the Pesticide Manufacturer prior to Transferring any Regulated Marijuana to the Pesticide Manufacturer. The written agreement, which shall constitute a business record under Rule 3-905, shall include:

1. The identity of the Pesticide Manufacturer;

2. The quantity of Regulated Marijuana that will be Transferred to the Pesticide Manufacturer;

3. The date(s) upon which Transfer of the Regulated Marijuana will occur;

4. An affirmation by the Pesticide Manufacturer that it:

   i. Has an establishment number with the U.S. Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*;

   ii. Is authorized to do business in Colorado;

   iii. Is in possession of a physical location in the State of Colorado where its research activities will occur;

   iv. Has applied for and received any necessary license, registration, certification, or permit from the Colorado Department of Agriculture pursuant to the Pesticide Act, sections 35-9-101 *et seq.*, C.R.S. and/or the Pesticide Applicators' Act, sections 35-10-101 *et seq.*, C.R.S.;

   v. Remains authorized to receive the quantity of Regulated Marijuana that will be Transferred to the Pesticide Manufacturer; and

   vi. Will only use the Transferred Regulated Marijuana for the purpose of research to establish safe and effective protocols for the use of Pesticides on Regulated Marijuana, which protocols may include but not be limited to establishing efficacy and toxicity; and

5. An affirmation by the Licensee that it has received written proof the Pesticide Manufacturer meets the requirements set forth in subparagraph (C)(4) of this Rule.

D. Inventory Tracking Requirements. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, and Retail Marijuana Products Manufacturer shall track all Regulated Marijuana in the Inventory Tracking System until it is delivered to a Pesticide Manufacturer.

1. Transport Manifest. A Licensee shall not deliver or permit the delivery of Regulated Marijuana unless a manifest is generated from the Inventory Tracking System.

2. Complete Manifest. A Licensee shall not relinquish possession or control of Regulated Marijuana to a Pesticide Manufacturer until a natural person authorized by the Pesticide Manufacturer acknowledges receipt of the Regulated Marijuana by signing the transport manifest.

3. No Inventory Tracking Following Delivery. Once Regulated Marijuana has been Transferred by a Licensee to a Pesticide Manufacturer, no further inventory tracking is required.

4. Licensee Delivery Responsibility. The originating Licensee is responsible for confirming delivery of all Regulated Marijuana in the Inventory Tracking System.

E. Packaging, Labeling, and Testing. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer that Transfers Regulated Marijuana to a Pesticide Manufacturer shall package, label, and test all Regulated Marijuana in conformance with these rules prior to Transferring the Regulated Marijuana. *See* – Labeling, Packaging, and Product Safety; – Regulated Marijuana Testing Program.

F. Business Records. A Medical Marijuana Cultivation Facility, Retail Marijuana Cultivation Facility, Medical Marijuana Products Manufacturer, or Retail Marijuana Products Manufacturer that Transfers Regulated Marijuana to a Pesticide Manufacturer shall keep all documents concerning the relationship and Transfer of any Regulated Marijuana in accordance with Rules 3-605 and 3-905.

G. Pesticide Manufacturer Authorized Activities. A Pesticide Manufacturer is only authorized to possess Transferred Regulated Marijuana in order to conduct research to establish safe and effective protocols, including but not limited to establishing efficacy and toxicity, for the use of Pesticides on Regulated Marijuana.

H. Quantity Limitations for Pesticide Manufacturer. In no event shall a Pesticide Manufacturer possess at any given time more than (i) 12 Medical Marijuana plants and (ii) four pounds of Medical Marijuana or its equivalency in Medical Marijuana Concentrate (512 grams) or Medical Marijuana Product (5,120 Medical Marijuana Products), and (i) 12 Retail Marijuana plants and (ii) four pounds of Retail Marijuana or its equivalency in Retail Marijuana Concentrate (512 grams) or Retail Marijuana Products (5,120 ten-milligram servings of Retail Marijuana Product).

I. Disposition of Transferred Regulated Marijuana. A Pesticide Manufacturer shall destroy all Transferred Regulated Marijuana received from a Licensee following completion of research activities.

1. A Pesticide Manufacturer shall destroy Transferred Regulated Marijuana in conformance with Rule 3-230 – Waste Disposal.

2. A Pesticide Manufacturer shall document the destruction of Transferred Regulated Marijuana, which documentation shall include:

    i. Whether the destroyed material was Transferred Regulated Marijuana;

    ii. The date of destruction;

    iii. The location of the destruction;

    iv. The manner in which the Transferred Regulated Marijuana was rendered unusable and Unrecognizable;

    v. The method of final disposition pursuant to Rule 3-230; and

    vi. The identity(ies) and contact information of all Person(s) involved in the destruction.

3. A Pesticide Manufacturer shall keep all documentation regarding destruction of Transferred Regulated Marijuana for the current year and three preceding calendar years.

J. No Pesticide on Licensed Premises. Under no circumstance may a Pesticide Manufacturer apply Pesticide(s) for research purposes on the Licensed Premises of a Regulated Marijuana Business.

1. Licensees Shall Not Permit Pesticide on Licensed Premises. Under no circumstance may a Licensee allow or permit the application of Pesticide(s) by a Pesticide Manufacturer for research purposes on the Licensed Premises of a Regulated Marijuana Business.

2. Violation Affecting Public Safety. A violation of this prohibition shall be considered a violation affecting public safety.

K. No Human or Animal Subjects. Under no circumstance shall a Pesticide Manufacturer receiving Regulated Marijuana from a Licensee engage in research involving human subjects. Additionally, under no circumstance shall a Pesticide Manufacturer receiving Regulated Marijuana from a Licensee engage in research involving animal subjects, as defined in the Animal Welfare Act, 7 U.S.C. § 2132(g).

1. Licensees Shall Not Permit Human or Animal Subject Research. If a Licensee knows or reasonably should know that a Pesticide Manufacturer intends to engage in or has engaged in marijuana-related research involving human and/or animal subjects, the Licensee shall not Transfer any Regulated Marijuana to the Pesticide Manufacturer.

2. Violation Affecting Public Safety. A violation of this Rule shall be considered a violation affecting public safety.

L. No Transfer to Licensees. Under no circumstance may a Licensee receive or obtain for any purposes any Transferred Regulated Marijuana from a Pesticide Manufacturer.

Part 8 – Enforcement and Discipline

8-100 Series - Enforcement

Basis and Purpose – 8-105

The statutory authority for this rule includes but is not limited to sections 44-10-201(4), 44-10-202(1)(c), 44-10-203(1)(e), 44-10-203(1)(f), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-204, and 44-10-902, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Regulated Marijuana. This Rule 8-105 was previously Rules M and R 1201, 1 CCR 212-1 and 1 CCR 212-2.

8-105 – Duties of Employees of the State Licensing Authority

A. Duties of Director.

1. The State Licensing Authority may delegate an act required to be performed by the State Licensing Authority related to the day-to-day operation of the Division to the Director.

2. The Director may authorize Division employees to perform tasks delegated from the State Licensing Authority.

3. The Director or his or her authorized Division employees may consult with any state or local agency for the purpose of the proper administration of these rules or the Marijuana Code.

B. Duties of Division Investigators. The State Licensing Authority, the Department's Senior Director of Enforcement, the Director, and Division investigators shall have all the powers of any peace officer to:

1. Investigate violations or suspected violations of the Marijuana Code and any rules promulgated pursuant to it. Make arrests, with or without warrant, for any violation of the Marijuana Code, any rules promulgated pursuant to it, Article 18 of Title 18, C.R.S., any other laws or regulations pertaining to Regulated Marijuana in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties pursuant to the Marijuana Code, probable cause exists that a crime related to such laws has been or is being committed;

2. Serve all warrants, summonses, subpoenas, administrative citations, notices or other processes relating to the enforcement of laws regulating Regulated Marijuana;

3. Assist or aid any law enforcement officer in the performance of his or her duties upon such law enforcement officer's request or the request of other local officials having jurisdiction;

4. Inspect, examine, or investigate any premises where the Licensee's Regulated Marijuana is grown, stored, cultivated, manufactured, tested, distributed, or sold, and any books and records in any way connected with any licensed or unlicensed activity;

5. Require any Licensee, upon demand, to permit an inspection of Licensed Premises during business hours or at any time of apparent operation, marijuana equipment, and marijuana accessories, or books and records; and, to permit the testing of or examination of Regulated Marijuana;

6. Require Applicants to submit complete and current applications and fees and other information the Division deems necessary to make licensing decisions and approve significant changes made by the Applicant or Licensee;

7. Conduct investigations into the character, criminal history, and all other relevant factors related to suitability of all Applicants and Licensees for Regulated Marijuana licenses and such other Persons with a direct or indirect interest in an Applicant or Licensee, as the State Licensing Authority may require; and

8. Exercise any other power or duty authorized by law.

C. Duties of State Licensing Authority and Division Employees.

1. Employees shall maintain the confidentiality of State Licensing Authority and Division records and information. For confidentiality requirements of State Licensing Authority and Division employees who leave the employment of the State Licensing Authority, *see* Rule 8-240 - Confidential Information and Former State Licensing Authority Employees.

2. Pursuant to subsection 44-10-201(3), C.R.S., State Licensing Authority employees with regulatory oversight responsibilities for marijuana businesses licensed by the State Licensing Authority shall not work for, represent, or provide consulting services to or otherwise derive pecuniary gain from a marijuana business licensed by the State Licensing Authority or other business entity established for the primary purpose of providing services to the marijuana industry for a period of six months following his or her last day of employment with the State Licensing Authority.

3. Pursuant to subsection 44-10-201(4), C.R.S., disclosure of confidential records or information in violation of the provisions of the Marijuana Code constitutes a class 1 misdemeanor.

Basis and Purpose – 8-110

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(f), 44-10-202(1)(g), 44-10-203(1)(k), and 44-10-902, C.R.S. This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Regulated Marijuana. This Rule 8-110 was previously Rules M and R 1202, 1 CCR 212-1 and 1 CCR 212-2.

8-110 – Requirement for Inspections and Investigations, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time

A. Applicants and Licensees Shall Cooperate with Division Employees.

1. Applicants and Licensees must cooperate with employees of the Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Marijuana Code.

2. No Applicant or Licensee shall by any means interfere with, obstruct, or impede the State Licensing Authority or any employee of the Division from exercising their duties pursuant to the provisions of the Marijuana Code and all rules promulgated pursuant to it. This would include, but is not limited to:

a. Threatening force or violence against an employee or investigator of the Division, or otherwise endeavoring to intimidate, obstruct, or impede employees or investigator of the Division, their supervisors, or any peace officers from exercising their duties. The term “threatening force” includes the threat of bodily harm to such individual or to a member of his or her family;

b. Denying investigators of the Division access to premises where the Licensee’s Regulated Marijuana are grown, stored, cultivated, manufactured, tested, distributed, or Transferred during business hours or times of apparent activity;

c. Providing false or misleading statements;

d. Providing false or misleading documents and records;

e. Failing to timely produce requested books and records required to be maintained by the Licensee; or

f. Failing to timely respond to any other request for information made by a Division employee or investigator in connection with an investigation of the qualifications, conduct or compliance of an Applicant or Licensee.

3. License Violation Affecting Public Safety. Failure to comply with this Rule may constitute a license violation affecting public safety.

B. Administrative Hold.

1. To prevent destruction of evidence, diversion, or other threats to public safety, while permitting a Licensee to retain its inventory pending further investigation, a Division investigator may order an administrative hold of Regulated Marijuana pursuant to the following procedure:

a. If during an investigation or inspection of a Licensee, a Division investigator develops reasonable grounds to believe certain Regulated Marijuana constitute evidence of acts in violation of the Marijuana Code or rules promulgated pursuant to it, or constitute a threat to the public safety, the Division investigator may issue a notice of administrative hold of any such Regulated Marijuana. The notice of administrative hold shall provide a documented description of the Regulated Marijuana to be subject to the administrative hold and a concise statement that is promptly issued and approved by the Director, or his or her designee, regarding the reasons for issuing the administrative hold.

b. Following the issuance of a notice of administrative hold, the Division will identify the Regulated Marijuana subject to the administrative hold in the Inventory Tracking System. The Licensee shall continue to comply with all tracking requirements. *See* Rule 3-805 Regulated Marijuana Businesses: Inventory Tracking System.

c. The Licensee shall completely and physically segregate the Regulated Marijuana subject to the administrative hold in a Limited Access Area of the Licensed Premises under investigation, where it shall be safeguarded by the Licensee.

d. While the administrative hold is in effect, the Licensee is prohibited from, giving away, Transferring, transporting, or destroying the Regulated Marijuana subject to the administrative hold, except as otherwise authorized by these rules.

e. While the administrative hold is in effect, the Licensee must safeguard the Regulated Marijuana subject to the administrative hold, must maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements as set forth in the Marijuana Code and the rules of the State Licensing Authority.

f. Nothing herein shall prevent a Licensee from voluntarily surrendering Regulated Marijuana that is subject to an administrative hold, except that the Licensee must follow the procedures set forth in paragraph (C) for voluntary surrender of Regulated Marijuana.

g. Nothing herein shall prevent a Licensee from the continued possession, cultivation or harvesting of the Regulated Marijuana subject to the administrative hold. All Regulated Marijuana subject to an administrative hold must be put into separate Harvest Batches.

h. At any time after the initiation of the administrative hold, the Division may lift the administrative hold, order the continuation of the administrative hold pending the administrative process, or seek other appropriate relief.

C. Voluntary Surrender of Regulated Marijuana.

1. A Licensee, prior to a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Regulated Marijuana to the Division.

a. Such voluntary surrender may require destruction of any Regulated Marijuana in the presence of a Division investigator and at the Licensee’s expense.

b. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

2. The voluntary surrender form may be utilized in connection with a stipulated agency order through which the Licensee waives the right to hearing and any associated rights.

3. The voluntary surrender form may be utilized even if the Licensee does not waive the right to hearing and any associated rights, with the understanding that the outcome of the hearing does not impact the validity of the voluntary surrender.

4. A Licensee, after a Final Agency Order and upon mutual agreement with the Division, may elect to voluntarily surrender any Regulated Marijuana to the Division.

a. The Licensee must complete and return the Division's voluntary surrender form within 15 calendar days of the date of the Final Agency Order.

b. Such voluntary surrender may require destruction of any Regulated Marijuana in the presence of a Division investigator and at the Licensee's expense.

c. The individual signing the Division's voluntary surrender form on behalf of the Licensee must certify that the individual has authority to represent and bind the Licensee.

Basis and Purpose – 8-115

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(c), 44-10-203(1)(f), 44-10-203(1)(g), 44-10-203(1)(k), and 44-10-902. The purpose of this rule is to provide guidance following either an agency decision or under any circumstances where the Licensee is ordered to surrender and/or destroy unauthorized Regulated Marijuana. This rule also provides guidance as to the need to preserve evidence during agency investigations or subject to agency order. This Rule 8-115 was previously Rules M and R 1203, 1 CCR 212-1 and 1 CCR 212-2.

8-115 – Disposition of Unauthorized Regulated Marijuana

A. After a Final Agency Order Mandates the Destruction of Regulated Marijuana. If the State Licensing Authority issues a Final Agency Order pursuant to section 44-10-902, C.R.S., that orders the destruction of some or all of the Licensee's unauthorized Regulated, the Licensee may:

1. Voluntarily Surrender. The Licensee may voluntarily surrender to the Division all of its unauthorized Regulated Marijuana that are described in the Final Agency Order in accordance with the provisions of Rule 8-110(C).

2. Seek A Stay. The Licensee may file a petition for a stay of the Final Agency Order with the Denver district court within 15 days of the date of the Final Agency Order.

3. Take No Action. If the Licensee does not either (1) voluntarily surrender its unauthorized Regulated Marijuana as set forth in subparagraph (A)(1) of this Rule; or (2) properly seek a stay of the Final Agency Order as set forth in subparagraph (A)(2) of this Rule, the Division will enter upon the Licensed Premises and seize and destroy the unauthorized Regulated Marijuana that are the subject of the Final Agency Order.

B. General Requirements Applicable To All Licensees Following Final Agency Order To Destroy Unauthorized Regulated Marijuana. The following requirements apply regardless of whether the

Licensee voluntarily surrenders its unauthorized Regulated Marijuana seeks a stay of agency action, or takes no action:

1. The 15 day period set forth in section 44-10-902(5), C.R.S., and this Rule shall include holidays and weekends.

2. During the period of time between the issuance of the Final Agency Order and the destruction of the unauthorized Regulated Marijuana the Licensee shall not sell, destroy, or otherwise let any unauthorized Regulated Marijuana that are subject to the Final Agency Order leave the Licensed Premises, unless specifically authorized by the State Licensing Authority or Court order.

3. During the period of time between the issuance of the Final Agency Order and the destruction of unauthorized Regulated Marijuana, the Licensee must safeguard any unauthorized Regulated Marijuana in its possession or control and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Marijuana Code and the rules of the State Licensing Authority.

4. Unless the State Licensing Authority otherwise orders, the Licensee may cultivate, water, or otherwise care for any unauthorized Regulated Marijuana that are subject to the Final Agency Order during the period of time between the issuance of the Final Agency order and the destruction of the unauthorized Regulated Marijuana.

5. If a district attorney notifies the Division that some or all of the unauthorized Regulated Marijuana is involved in an investigation, the Division shall not destroy the unauthorized Regulated Marijuana until approved by the district attorney.

Basis and Purpose – 8-120

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(f), 44-10-203(1)(g), 44-10-203(1)(k), and 44-10-203(2)(w), C.R.S. This rule explains that Division investigators may exercise discretion in issuing written warning when, during the course of a compliance check or investigation, the Division investigator identifies a violation(s) of the Marijuana Code or the rules promulgated thereunder. This rule also explains that the Director of the Division may exercise discretion to accept an assurance of voluntary compliance. It also explains the evidentiary value of a written warning or an assurance of voluntary compliance. This Rule 8-120 was previously Rules M and R 1204, 1 CCR 212-1 and 1 CCR 212-2.

8-120 – Written Warnings and Assurances of Voluntary Compliance

A. Written Warnings. During an investigation, if a Division investigator identifies a violation(s) of the Marijuana Code or the rules promulgated thereunder, the Division investigator may issue a written warning in lieu of recommending immediate administrative action.

1. The written warning shall identify the alleged violation(s).

2. The written warning shall not constitute an admission of a violation(s) for any purpose or finding of a violation(s) by the State Licensing Authority, and shall not be evidence that Licensee violated the Marijuana Code, or the rules promulgated thereunder.

3. A written warning shall constitute evidence in any subsequent administrative proceeding, if relevant, that the Licensee was previously warned of the violation(s).

4. The Division may in its discretion initiate a subsequent administrative action and prove the violation(s) that was the subject of the written warning

B. Assurances of Voluntary Compliance. The Director of the Division may accept an assurance of voluntary compliance regarding any act or practice alleged to violate the Marijuana Code, or the rules thereunder.

1. The assurance must be in writing and may include a stipulation for the voluntary payment of the cost commensurate with the acts or practices and an amount necessary to restore money or property which may have been acquired by the alleged violator because of the acts or practices.

2. An assurance of voluntary compliance may not be considered an admission of a violation(s) for any purpose or a finding of a violation(s) by the State Licensing Authority; however, the assurance of voluntary compliance shall constitute evidence in any subsequent administrative proceeding that Licensee entered into an agreement to comply with the Marijuana Code, and/or the rules promulgated thereunder.

3. The State Licensing Authority may approve or review an assurance of voluntary compliance.

C. Not a Disciplinary Action. Neither a written warning nor an assurance of voluntary compliance constitutes a disciplinary action.

Basis and Purpose – 8-125

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(b), 44-10-202(1)(c), 44-10-202(5), 44-10-203(1)(e), 44-10-203(1)(g), 44-10-203(1)(k), 44-10-203(2)(l), C.R.S. The purpose of this rule is to establish the circumstances under which the State Licensing Authority may seek from a district court an investigative subpoena and what reasonable efforts the Division may take prior to seeking an investigative subpoena. The Division has encountered circumstances that would have justified such an investigative subpoena. Establishing the criteria under which the Division may seek an investigative subpoena will provide district courts guidelines under which to evaluate a petition for an investigative subpoena.

8-125 – Investigative Subpoenas

A. Criteria. The State Licensing Authority may petition a district court for an investigative subpoena applicable to a Person who is not licensed pursuant to the Marijuana Code to obtain documents or information necessary to enforce the Marijuana Code and these Rules after the Division has taken reasonable efforts to obtain requested documents or information.

B. Reasonable Efforts. For purposes of this Rule 8-125, “reasonable efforts” may include but shall not be limited to obtaining the documents or information through a request to the unlicensed Person and such unlicensed Person has either declined to provide the documents or information, or failed to respond to the Division within the applicable time frame.

C. Affidavit. When seeking an investigative subpoena, the Division will supply the district court with a sworn affidavit explaining the bases for seeking the subpoena.

Basis and Purpose – 8-130

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(2)(e), 44-10-203(2)(l), 44-10-203(1)(e), 44-10-203(1)(g), and 44-10-203(2)(w), C.R.S. The purpose of this rule is to establish the circumstances under which the Division may seek from a district court an administrative

warrant to search and/or seize marijuana and marijuana products, or other evidence indicating a violation of the Marijuana Code or rules. The Division has encountered circumstances that would have justified such a warrant. Establishing the criteria under which the Division may seek an administrative warrant will give fair notice to the regulated community regarding the types of violations that would lead to a request for an administrative warrant. This Rule 8-130 was previously Rules M and R 1309, 1 CCR 212-1 and 1 CCR 212-2.

8-130 – Administrative Warrants

A. Criteria. The Division may seek from a district court an administrative search warrant authorizing search and seizure in circumstances in which the Division makes a proper showing that:

1. A Licensee has refused entry of Division investigators during business hours or times of apparent activity;

2. A Licensee subject to an administrative hold or summary suspension has failed to comply with applicable rules; or

3. A Licensee otherwise has acted in a manner demonstrating disregard for the Marijuana Code and the State Licensing Authority's rules or that threatens the public health, safety, and welfare.

B. Affidavit. When seeking an administrative search warrant, the Division will supply the district court with a sworn affidavit explaining the bases for seeking the warrant.

C. Seized Property. If the Division seizes marijuana, neither the Division nor the State Licensing Authority shall cultivate or care for any seized marijuana or marijuana products. The Division may seek from the district court an order to destroy any such marijuana or marijuana products.

8-200 Series - Discipline

Basis and Purpose – 8-205

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l), 44-10-701, 44-10-901, and 24-4-105 C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to clarify how the disciplinary process for non-summary license suspensions and license revocations is initiated. This Rule 8-205 was previously Rules M and R 1301, 1 CCR 212-1 and 1 CCR 212-2.

8-205 – Disciplinary Process: Non-Summary Suspensions

A. How a Disciplinary Action is Initiated.

1. If the State Licensing Authority, on its own initiative or based on a complaint, has reasonable cause to believe that a Licensee has violated the Marijuana Code, any rule promulgated pursuant to it, or any of its orders, the State Licensing Authority shall issue and serve upon the Licensee an Order to Show Cause (administrative citation) as to why its license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

2. The Order to Show Cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The order shall also provide an advisement that the license could be suspended, revoked, restricted, fined, or subject to other disciplinary sanction should the charges contained in the notice be sustained upon final hearing.

B. Disciplinary Hearings. Disciplinary hearings will be conducted in accordance with Rule 8-220 – Administrative Hearings.

C. Renewal. The issuance of an Order to Show Cause does not relieve the Licensee of the obligation to timely comply with all license renewal requirements.

Basis and Purpose – 8-210

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l), 24-4-104(4)(a), 44-10-701, 44-10-901, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to set forth the process for summary suspensions when the State Licensing Authority has cause to immediately suspend a license prior to and pending a hearing and final agency order. Summary suspensions will be imposed when the State Licensing Authority has reason to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation, or that the public health, safety, and welfare imperatively require emergency action. The rule ensures proper due process for Licensees when their licenses are temporarily or summarily suspended by requiring prompt initiation of disciplinary proceedings after such suspensions. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause. This Rule 8-210 was previously Rules M and R 1302, 1 CCR 212-1 and 1 CCR 212-2.

8-210 – Summary Suspensions

A. How a Summary Suspension Action is Initiated.

1. When the State Licensing Authority has reasonable grounds to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation or that the public health, safety, or welfare imperatively requires emergency action it shall serve upon the Licensee a Summary Suspension Order that temporarily or summarily suspends the license.

2. The Summary Suspension Order shall identify the nature of the State Licensing Authority's basis for the summary suspension. The Summary Suspension Order shall also provide an advisement that the License may be subject to further discipline or revocation following a hearing on an Order to Show Cause.

3. Proceedings for suspension or revocation shall be promptly instituted and determined after the Summary Suspension Order is issued in accordance with the following procedure:

a. After the Summary Suspension Order is issued, the State Licensing Authority shall promptly issue and serve upon the Licensee an Order to Show Cause (administrative citation) as to why the Licensee's license should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.

b. The Order to Show Cause shall identify the statute, rule, regulation, or order allegedly violated, and the facts alleged to constitute the violation. The Order to Show Cause shall also provide an advisement that the license could be suspended, revoked, restricted, fined or subject to disciplinary sanction should the charges contained in the Order to Show Cause be sustained upon final hearing.

c. The Order to Show Cause shall be filed with the Department's Hearings Division. The hearing on the allegations set forth in the Order to Show Cause shall be

expedited to the extent practicable and will be conducted in accordance with Rule 1304 – Administrative Hearings.

B. Duration of Summary Suspension. Unless lifted by the State Licensing Authority, the Summary Suspension Order shall remain in effect until issuance of a Final Agency Order.

Basis and Purpose – 8-215

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l), 44-10-701, 44-10-901, 24-4-104(4)(a), and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity), provided the Licensed Premises and all Regulated Marijuana is adequately secured. In addition, the rule clarifies what activity is always prohibited during such suspension. This Rule 8-215 was previously Rules M and R 1303, 1 CCR 212-1 and 1 CCR 212-2.

8-215 – Suspension Process: Regular and Summary Suspensions

A. Signs Required During Suspension. Every Licensee whose license has been suspended, whether summarily or after an administrative hearing, shall post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be at least 17 inches in length and 11 inches in width containing lettering not less than 1/2'' in height.

1. For suspension following issuance of a Final Agency Order, the sign shall be in the following form:

   NOTICE OF SUSPENSION

   REGULATED MARIJUANA LICENSES ISSUED

   FOR THESE PREMISES HAVE BEEN

   SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

   FOR VIOLATION OF THE COLORADO MARIJUANA CODE

2. For a summary suspension pending issuance of a Final Agency Order, the sign shall be in the following form:

   NOTICE OF SUSPENSION

   REGULATED MARIJUANA LICENSES ISSUED

   FOR THESE PREMISES HAVE BEEN

   SUSPENDED BY ORDER OF THE STATE LICENSING AUTHORITY

   FOR ALLEGED VIOLATION OF THE COLORADO MARIJUANA CODE

Any advertisement or posted signs that indicate that the premises have been closed or business suspended for any reason other than by the manner described in this Rule shall be deemed a violation of these rules.

B. Prohibited Activity During Active Suspension.

1. Unless otherwise ordered by the State Licensing Authority, during any period of active license suspension the Licensee shall not permit the serving, giving away, distribution, manufacture, sampling, acquisition, purchase, testing, Transfer, or transport of Regulated Marijuana on or from the Licensed Premises, nor allow patients or consumers to enter the Licensed Premises.

2. Unless otherwise ordered by the State Licensing Authority, during any period of suspension the Licensee may continue to possess, maintain, cultivate, or harvest Regulated Marijuana on the Licensed Premises. The Licensee must fully account for all such Regulated Marijuana in the Inventory Tracking System. The Licensee must safeguard any Regulated Marijuana in its possession or control. The Licensee must possess and maintain the Licensed Premises in reasonable condition according to health, safety, and sanitary standards, and must fully comply with all security requirements including but not limited to surveillance, lock and alarm requirements set forth in the Marijuana Code and the rules of the State Licensing Authority.

C. Removal and Destruction of Regulated Marijuana. Regulated Marijuana shall not be removed from the Licensed Premises or destroyed unless:

1. The provisions described in section 44-10-902, C.R.S., related to the proper destruction of unauthorized marijuana are met, and the State Licensing Authority orders forfeiture and destruction. *See also* Rule 8-115 – Disposition of Unauthorized Regulated Marijuana;

2. The Licensee has voluntarily surrendered the Regulated Marijuana in accordance with Rule 8-110(C) – Voluntary Surrender; or

3. The State Licensing Authority has seized the Regulated Marijuana pursuant to an Administrative Warrant. *See* Rule 8-130 – Administrative Warrant.

D. Renewal. The issuance of a suspension or an Order of Summary Suspension does not relieve the Licensee of the obligation to timely comply with all license renewal requirements.

Basis and Purpose – 8-220

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-203(2)(l), 44-10-204(1)(a), 44-10-701, 44-10-901, 24-4-104, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish what entity conducts the administrative hearings, the procedures governing administrative hearings, and other general hearings issues. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause, and to clarify that an answer is required only for two types of administrative notices: an Order to Show Cause and a Notice of Grounds for Denial. This Rule 8-220 was previously Rules M and R 1304, 1 CCR 212-1 and 1 CCR 212-2.

8-220 – Administrative Hearings

A. General Procedures.

1. Hearing Location. Hearings will generally be conducted by the Department's Hearings Division. Hearings will be held virtually unless otherwise ordered by the hearing officer for good cause. "Good cause" for an in-person hearing means that there are unusual circumstances where justice, judicial economy, and convenience of the parties would be served by holding a hearing in person. The Division, Respondent or Denied Applicant may request a hearing officer order an in-person hearing upon a showing of good cause. If the hearing officer orders an in-person hearing, the hearing will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer.

2. Scope of Hearing Rules. This Rule shall be construed to promote the just and efficient determination of all matters presented.

3. Right to Legal Counsel. Any Denied Applicant or Respondent has a right to legal counsel throughout all processes described in rules associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the Denied Applicant's or Respondent's expense. Unless a Denied Applicant that is an entity or Respondent that is an entity satisfies the exception in section 13-1-127(2), C.R.S., the Denied Applicant or Respondent must be represented by an attorney admitted to practice law in the state of Colorado.

B. Requesting a Hearing.

1. A Denied Applicant that has been served with a Notice of Denial may request a hearing within 60 days of the service of the Notice of Denial by making a written request for a hearing to the Division. The request must be submitted by United States mail or by hand delivery. Email or fax requests will not be considered. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a hearing must be received by the Division within the time stated in the Notice of Denial. An untimely request for hearing will not be considered.

2. A Denied Applicant that timely requests a hearing following issuance of a Notice of Denial shall be served with a Notice of Grounds for Denial, and shall be entitled to a hearing regarding the matters addressed therein.

3. A Respondent that has been served with an Order to Show Cause shall be entitled to a hearing regarding the matters addressed therein.

C. When a Responsive Pleading is Required.

1. A Respondent shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Order to Show Cause. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a Respondent fails to file a required answer, the Hearing Officer, upon motion, may enter a default against that Person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this Rule, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

2. A Denied Applicant shall file a written answer with the Hearings Division and the Division within 30 days after the date of mailing of any Notice of Grounds for Denial. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a Denied Applicant fails to file a required answer, the hearing officer, upon motion, may enter a default against that Person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this Rule, shown, the hearing officer may set aside the entry of default within ten days after the date of such entry.

D. Hearing Notices.

1. Notice to Set. The Division shall send a notice to set a hearing to the Denied Applicant or Respondent in writing by electronic mail or by first-class mail to the last mailing address of record if an electronic mail address is unknown.

2. Notice of Hearing. The Hearings Division shall notify the Division and Denied Applicant or Respondent of the date, place, time, and nature of the hearing regarding denial of the license application or whether discipline should be imposed against the Respondent's license at least 30 days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the Denied Applicant or Respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.

a. If an Order of Summary Suspension has issued, the hearing on the Order to Show Cause will be scheduled and held promptly.

b. Continuances may be granted for good cause, as described in this Rule, shown. A motion for a continuance must be timely.

c. "Good cause" for a continuance may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

E. Prehearing Matters Generally.

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the Hearing Officer's own motion. If a prehearing conference is held and a prehearing order is issued by the Hearing Officer, the prehearing order will control the course of the proceedings. Such prehearing conferences may occur by telephone.

2. Depositions. Depositions are generally not allowed; however, a hearing officer has discretion to allow a deposition if a party files a written motion and can show why such deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, C.R.C.P. 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with subsections (D)(2)(b) and (c) of this Rule.

3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each party a prehearing statement no later than seven calendar days

prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall not file exhibits with the Hearing Officer. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:

a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.

b. Experts. The name, mailing address, and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and Denied Applicant or Respondent using letters.

d. Stipulations. A list of all stipulations of fact or law reached, as well as a list of any additional stipulations requested or offered to facilitate disposition of the case.

4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if: (1) the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement; (2) it would not prejudice other parties; and (3) it would not necessitate a delay of the hearing.

5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including, but not limited to, striking proposed witnesses and exhibits.

F. Conduct of Hearings.

1. The hearing officer shall cause all hearings to be electronically recorded.

2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer when the prehearing statement is filed. Electronic filings will be accepted at: dor_regulatoryhearings@state.co.us.

3. The hearing officer shall administer oaths to all witnesses at hearing. The hearing officer may question any witness.

4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law.

a. Reports and other information that would otherwise be confidential pursuant to subsection 44-10-204(1)(a), C.R.S., may be introduced as exhibits at hearing.

b. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.

5. Court Rules.

   a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word “court,” “judge,” or “jury” appears in the Colorado Rules of Evidence, such word shall be construed to mean a Hearing Officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.

   b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean a Hearing Officer.

6. Exhibits.

   a. All documentary exhibits must be paginated by the party offering the exhibit into evidence.

   b. The Division shall use numbers to mark its exhibits.

   c. The Denied Applicant or Respondent shall use letters to mark its exhibits.

7. The hearing officer may proceed with the hearing or enter default judgment if any party fails to appear at hearing after proper notice.

G. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an Initial Decision subject to review by the State Licensing Authority pursuant to the Colorado Administrative Procedure Act and as set forth in Rule 8-230 – Administrative Hearing Appeals/Exceptions to Initial Decision.

H. No Ex Parte Communication. Ex parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the State Licensing Authority, or with conflicts counsel representing the hearing officer or State Licensing Authority, pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to the hearing officer or the State Licensing Authority in connection with a hearing or with the exceptions process.

I. Marijuana Enforcement Division representation. The Division shall be represented by the Colorado Department of Law.

Basis and Purpose – 8-225

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 24-4-105, and 44-10-901, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how all parties, including pro se parties, can obtain subpoenas during the administrative hearing process. This Rule 8-225 was previously Rules M and R 1305, 1 CCR 212-1 and 1 CCR 212-2.

8-225 – Administrative Subpoenas

A. Informal Exchange of Documents Encouraged. Parties are encouraged to exchange documents relevant to the Notice of Denial or Order to Show Cause prior to requesting subpoenas. In addition, to the extent practicable, parties are encouraged to secure the voluntary presence of witnesses necessary for the hearing prior to requesting subpoenas.

B. Hearing Officer May Issue Subpoenas.

1. A party or its counsel may request the hearing officer to issue subpoenas to secure the presence of witnesses or documents necessary for the hearing or a deposition, if one is allowed.

2. Requests for subpoenas to be issued by the hearing officer must be emailed to the Hearings Division at the Department of Revenue at dor_regulatoryhearings@state.co.us. Subpoena requests must include the return mailing address, and phone and facsimile numbers of the requesting party or its attorney.

3. Requests for subpoenas to be issued by the hearing officer must be made on a "Request for Subpoena" form authorized and provided by the Hearings Division. A hearing officer shall not issue a subpoena unless the request contains the following information:

a. Name of Denied Applicant or Respondent;

b. License or application number;

c. Case number;

d. Date of hearing;

e. Location of hearing, or telephone number for telephone check-in;

f. Time of hearing;

g. Name of witness to be subpoenaed; and

h. Mailing address of witness (home or business).

4. A request for a subpoena *duces tecum* must identify each document or category of documents to be produced.

5. Requests for subpoenas shall be signed by the requesting party or its counsel.

6. The hearing officer shall issue subpoenas without discrimination, as set forth in section 24-4-105(5), C.R.S. If the reviewing hearing officer denies the issuance of a subpoena, or alters a subpoena in any material way, specific findings and reasons for such denial or alteration must be made on the record, or by written order incorporated into the record.

C. Service of Subpoenas.

1. Service of any subpoena is the duty of the party requesting the subpoena.

2. All subpoenas must be served at least two business days prior to the hearing.

D. Subpoena Enforcement.

1. Any subpoenaed witness, entity, or custodian of documents may move to quash the subpoena with the Hearing Officer.

2. A hearing officer may quash a subpoena if he or she finds on the record that compliance would be unduly burdensome or impracticable, unreasonably expensive, or is unnecessary.

Basis and Purpose – 8-230

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-202(1)(d), 44-10-203(1)(k), 44-10-203(2)(a), 44-10-701, 44-10-901, and 24-4-105, C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I). The purpose of this rule is to establish how parties may appeal a hearing officer's Initial Decision pursuant to the Administrative Procedure Act. This Rule 8-230 was previously Rules M and R 1306, 1 CCR 212-1 and 1 CCR 212-2.

8-230 – Administrative Hearing Appeals/Exceptions to Initial Decision

A. Exception(s) Process. Any party may appeal an Initial Decision to the State Licensing Authority pursuant to the Colorado Administrative Procedure Act by filing written exception(s) within 30 days after the date of mailing of the Initial Decision to the Denied Applicant or Respondent and the Division. The written exception(s) shall include a statement giving the basis and grounds for the exception(s). Any party who fails to properly file written exception(s) within the time provided in these rules shall be deemed to have waived the right to an appeal. A copy of the exception(s) shall be served on all parties. The address of the State Licensing Authority is: State Licensing Authority, 1707 Cole Boulevard, Suite 350, Lakewood, CO 80401.

B. Designation of Record. Any party that seeks to reverse or modify the Initial Decision of the hearing officer shall file with the State Licensing Authority, within 20 days from the mailing of the Initial Decision, a designation of the relevant parts of the record and of the parts of the hearing transcript which shall be prepared, and advance the costs therefore. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefore. No transcript is required if the review is limited to a pure question of law. A copy of this designation of record shall be served on all parties.

C. Deadline Modifications. The State Licensing Authority may modify deadlines and procedures related to the filing of exceptions to the Initial Decision upon motion by either party for good cause shown.

D. No Oral Argument Allowed. Requests for oral argument will not be considered.

Basis and Purpose – 8-235

The statutory authority for this rule includes but is not limited to sections 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(l), 44-10-701, and 44-10-901(3)(b), C.R.S. Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IX). The purpose of this rule is to establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Marijuana Code, section 18-18-406.3(7), or any other applicable rule. The State Licensing Authority may pursue a violation in any of the categories described in this Rule and is not required to prove harm from any of the alleged violation types. This Rule 8-235 was previously Rules M and R 1307, 1 CCR 212-1 and 1 CCR 212-2.

8-235 – Penalties

A. Penalty Schedule. The State Licensing Authority will make determinations regarding the type of penalty to impose based on the severity of the violation in the following categories:

1. License Violations Affecting Public Safety. This category of violation is the most severe and may include, but is not limited to, Retail Marijuana sales to persons under the age of 21 years, Medical Marijuana sales to non-patients, consuming marijuana on the Licensed Premises, Regulated Marijuana sales in excess of the relevant sales limitations, permitting the diversion of Regulated Marijuana outside the regulated distribution system, possessing marijuana obtained from outside the regulated distribution system or from an unauthorized source, making misstatements or omissions in the Inventory Tracking System failure to report any transfer required by section 44-10-313(11), knowingly adulterating or altering or attempting to adulterate or alter any Samples of Regulated Marijuana, violations related to co-located Medical Marijuana Businesses and Retail Marijuana Businesses, violations related to R&D Co-Location Permits, failure to maintain books and records to fully account for all transactions of the business, failure to cooperate with Division investigators during the course of a Division investigation, failure to comply with any requirement related to the Transfer of Sampling Units, utilizing advertising material that is misleading, deceptive, or false, advertising violations directly targeting minors, or packaging or labeling violations that directly impact patient or consumer safety. Violations of this nature generally have an immediate or potential negative impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to $100,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

2. License Violations. This category of violation is more severe than a license infraction but generally does not have an immediate or potential negative impact on the health, safety, and welfare of the public at large. License violations may include but are not limited to, advertising and/or marketing violations, packaging or labeling violations that do not directly impact patient or consumer safety, failing to continuously escort a visitor in a Limited Access Area, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, or minor or clerical errors in the Inventory Tracking System. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to $50,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

3. License Infractions. This category of violation is the least severe and may include, but is not limited to, failure to display required Identification Badges, visitor badges, unauthorized modifications of the Licensed Premises of a minor nature, or failure to notify the State Licensing Authority of a minor change in ownership. The range of penalties for this category of violation may include license suspension, a fine per individual violation, and/or a fine in lieu of suspension of up to $10,000 depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.

B. Other Factors

1. The State Licensing Authority may take into consideration any aggravating and mitigating factors surrounding the violation which could impact the type or severity of penalty imposed.

2. The penalty structure is a framework providing guidance as to the range of violations, suspension description, fines, and mitigating and aggravating factors. The circumstances surrounding any penalty imposed will be determined on a case-by-case basis.

3. For all administrative offenses involving a proposed suspension, a Licensee may petition the State Licensing Authority for permission to pay a monetary fine, within the provisions of section 44-10-901, C.R.S., in lieu of having its license suspended for all or part of the suspension.

C. Mitigating and Aggravating Factors. The State Licensing Authority may consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:

1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

2. Good faith measures by the Licensee to prevent the violation, including the following:

a. Proper supervision;

b. Regularly-provided and documented employee training, provided the Licensee demonstrates all reasonable training measures were delivered prior to the Division's investigation;

c. Standard operating procedures established prior to the Division's investigation, and which include procedures directly addressing the conduct for which imposition of a penalty is being considered; and

d. Previously established and maintained responsible-vendor designation pursuant to the 3-500 Series Rules.

3. Licensee's past history of success or failure with compliance checks.

4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.

5. Willfulness and deliberateness of the violation.

6. Likelihood of reoccurrence of the violation.

7. Circumstances surrounding the violation, which may include, but are not limited to:

a. Prior notification letter to the Licensee that an underage compliance check would be forthcoming.

b. The dress or appearance of an underage operative used during an underage compliance check (*e.g.*, the operative was wearing a high school letter jacket).

c. Licensee self-reported violation(s) of the Marijuana Code or rules promulgated pursuant to the Marijuana Code.

8. Owner or management personnel is the violator or has directed an employee or other individual to violate the law.

Basis and Purpose – 8-240

The statutory authority for this rule includes but is not limited to sections 44-10-201(3), 44-10-201(4), 44-10-202(1)(c), 44-10-203(1)(k), 44-10-203(2)(l), 44-10-203(2)(m), 44-10-203(1)(e), and 44-10-204(1)(a), C.R.S. The purpose of this rule is to assure Licensees do not use unauthorized confidential information at any time and do not engage the services of former State Licensing Authority or Division employees with

regulatory oversight responsibilities for licensed marijuana businesses for the first 6 months following State Licensing Authority or Division employment. This Rule 8-240 was previously Rules M and R 1308, 1 CCR 212-1 and 1 CCR 212-2.

8-240 – Confidential Information and Former State Licensing Authority Employees

A. Misdemeanor if Disclosed. Disclosure of confidential records or information in violation of the Marijuana Code constitutes a class 1 misdemeanor pursuant to subsection 44-10-201(4), C.R.S.

1. Licensees, and employees or agents of Licensees, shall not obtain or utilize confidential information the Licensee, employee or agent is not lawfully entitled to possess and acquire through use or misuse of Division processes or Division-approved systems. For confidentiality requirements of State Licensing Authority and Division employees, *see* Rule 8-105 – Duties of Employees of the State Licensing Authority.

2. Any Licensee, and any employee or agent of a Licensee, who is authorized to access the Division's Inventory Tracking System and/or have access to confidential information derived from Division sources, shall utilize the confidential information only for a purpose authorized by the Division or these Rules.

3. All Licensees, and all employees and agents of Licensees, shall not use the Inventory Tracking System for any purpose other than tracking the Licensee's Regulated Marijuana and Regulated Marijuana Product.

B. Six-Month Prohibition from Working with Former State Licensing Authority Employees. State Licensing Authority or Division employees with regulatory oversight responsibilities for Regulated Marijuana Businesses are prohibited from working for, representing, or providing consulting services to or otherwise deriving pecuniary gain from a Licensee for a period of six months following his or her last day of employment with the State Licensing Authority or Division.

1. Any Licensee who utilizes, employs, consults, seeks advice from, or contracts with a former employee of the State Licensing Authority or the Division prior to the conclusion of the six-month period shall be in violation of the Marijuana Code.

2. Any Licensee who possesses, utilizes, or re-discloses confidential information obtained from a former State Licensing Authority or Division employee at any time shall be in violation of the Marijuana Code.

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Office of the Attorney General

Tracking number: 2021-00641

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

Marijuana Enforcement Division

on 11/10/2021

1 CCR 212-3

COLORADO MARIJUANA RULES

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:44:50

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

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-37

Rule title

1 CCR 301-37 RULES FOR THE ADMINISTRATION OF THE EDUCATOR LICENSING ACT OF 1991 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF EDUCATION

Colorado State Board of Education

COLORADO EDUCATOR LICENSING ACT OF 1991

1 CCR 301-37

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

1.00 Statement of Basis and Purpose

The statutory basis for these rules is found in section 22-60.5-101, et seq, C.R.S., the Colorado Educator Licensing Act of 1991, and section 22-2-109(1), State board of education – additional duties. These rules establish the standards and criteria for the issuance of licenses and authorizations to teachers, special services providers, principals, and administrators. The Act calls for the State Board of Education to adopt rules for a three-tiered system of licensure for education personnel which includes an initial license for entry-level educators, a professional license for experienced educators, and a voluntary master certificate for outstanding educators.

These rules also provide for the issuance of special authorizations to educators as necessary to meet the needs of Colorado schools and students. Standards and processes for the approval of educator preparation programs through institutions of higher education and other designated agencies are provided. Criteria for the renewal of licenses and authorizations, which provide for significant involvement of practicing educators, are established. Standards for endorsement in subject areas or other areas of educational specialization are prescribed.

These rules provide a process for the recognition of educator preparation programs in other states to facilitate the movement of educators among states. The rules establish the requirements for induction programs to assist new educators through support, supervision, ongoing professional development and evaluation.

The rules establish the standards and processes by which licenses may be denied, suspended, annulled or revoked for conviction of certain criminal offenses, unethical behavior, professional incompetence, and other reasons enumerated by statute. Other miscellaneous provisions are included to meet the requirements of the Act.

2.00 General Licensing Regulations

The Colorado Department of Education has the sole authority to issue educator licenses and authorizations. Pursuant to sections 22-63-201 and 22-32-126, C.R.S., a Colorado license or authorization is required for employment as a teacher, special services provider, or principal in a Colorado school or school district. All licenses and authorizations must be endorsed to indicate the grade levels/developmental levels and specialization area(s) which are appropriate to the applicant's preparation, training, and experience.

2.01 Definitions

2.01(1) Accepted institution of higher education: An institution of higher education that offers at least the standard bachelor's degree and is recognized by one of the following regional associations: Western Association of Schools and Colleges; Northwest Commission on Colleges and Universities; Higher Learning Commission; New England Commission of Higher Education; Southern Association of Colleges and Schools; or Middle States Commission on Higher Education.

2.01(2) Administrator: Any person who may or may not be licensed, but who administers, directs or supervises an education instructional or education-related program, or a portion thereof, in any school or school district, or nonpublic school in the state and who is not the chief executive officer or an assistant chief executive officer of such school.

2.01(3) Alternative principal: Any person employed as the chief executive officer or an assistant chief executive officer of any school in the state to administer, direct or supervise the education instruction program in such school or nonpublic school under a principal authorization and is actively participating in an alternative principal program or an individualized alternative principal program.

2.01(4) Alternative principal program: a program of study provided by a designated agency, as described in section 22-60.5-305.5(6), C.R.S., for principal preparation designed to provide the information, experience, and training to enable participants to develop the skills and obtain experience and training comparable to that possessed by a person who qualifies for an initial principal license.

2.01(5) Alternative teacher contract: A one- or two-year contract, as described in section 22-60.5-207 C.R.S., entered into by a holder of an alternative teacher license pursuant to section 22-60.5-201(1)(a), C.R.S., and a school district, board of cooperative services, nonpublic school, or charter school that provides or participates in, a one-year or two-year alternative teacher program.

2.01(6) Alternative teacher program: A one- or two-year program of study and training for teacher preparation for a person of demonstrated knowledge and ability who holds an alternative teacher license, which meets the standards of and has been approved by the State Board of Education, and that upon completion leads to a recommendation for initial licensure by the designated agency providing the program.

2.01(7) Alternative teacher support team: A team established by the designated agency for each holder of an alternative teacher license employed as an alternative teacher. At a minimum, each alternative teacher support team must be composed of the alternative teacher's mentor, the building principal and a representative of the approved designated agency.8) Alternative teacher: Any person employed to instruct students in any public or nonpublic school in the state under an alternative teacher license and actively participating in an alternative teacher program.

2.01(9) Approved content tests: assessments approved by the State Board of Education for the purpose of evaluating the required subject matter knowledge and skills for a license, authorization, and/or endorsement.

2.01(10) Approved induction program: A program of continuing professional development for initial license-holders that meets the requirements of and is approved by the State Board of Education, and that upon completion leads to a recommendation for a professional license by the school district or districts, charter school, nonpublic school, or the institute providing such induction program.

2.01(11) Approved program of preparation: A program of study for the preparation of educators that meets the requirements of the State Board of Education as outlined in 1 CCR 301-37 and 1 CCR 301-101 for public and private institutions, is approved by Colorado Commission on Higher Education, and that, upon completion, leads to a recommendation for licensure by an accepted institution of higher education.

2.01(12) Board of Cooperative Services (BOCES): A regional educational service unit designed to provide supporting, instructional, administrative, facility, community or any other services contracted by participating members.

2.01(13) Board of education: The governing body authorized by law to administer the affairs of any school district in the state except junior and community college districts. “Board of education” also includes a BOCES organized pursuant to section 22-5-101, C.R.S.2.01(14) Charter school: A school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22 or a school authorized by the state charter school institute pursuant to Part 5 of Article 30.5 of Title 22.

2.01(15) Colorado Academic Standards: The state academic standards that identify the knowledge and skills that a student should acquire as the student progresses from preschool through elementary and secondary education, as adopted by the State Board of Education in 2020 pursuant to section 22-7-1005, C.R.S. The Colorado Academic Standards herein incorporated by reference in these rules were adopted by the State Board of Education and are available at www.cde.state.co.us. Later amendments to the Colorado Academic Standards are not incorporated. The Department maintains a copy of the standards readily available for public inspection at 201 East Colfax Avenue, Denver, Colorado, during regular business hours.

2.01(16) Colorado Teacher of the Year: The Colorado teacher selected as Teacher of the Year in the state program administered by the Department and coordinated through the national teacher of the year program.

2.01(17) Critical teacher shortage: A grade level or content area in which a local education provider (LEP) determines there is a severe need and impact on students and in which an LEP has been unable to place an appropriately licensed teacher in the vacant position(s) despite reasonable attempts to fill the position.

2.01(18) Department of Education or Department: The Colorado State Department of Education (CDE) as defined in section 24-1-115, C.R.S.

2.01(19) Designated agency: A school district or districts, a BOCES, an accepted institution of higher education, a nonprofit organization, a charter school, nonpublic school, the institute, or any combination thereof, that is responsible for the organization, management and operation of an alternative teacher program or an alternative principal program.

2.01(20) Diversity: The backgrounds of all students and school personnel.

2.01(21) Endorsement: The designation on a license or an authorization of grade level(s) or developmental level(s), subject matter, or service specialization in accordance with the preparation, training and experience of the holder of such license or authorization. Endorsements typically reflect major areas of specialization.

2.01(22) Field-based experiences: Experiences conducted at a school site, school administration center, school clinic, or community agency. These experiences may include classroom observations; tutoring; assisting school principals, administrators, teachers or special services providers; participation in school- and community-wide activities; student teaching or internships.

2.01(23) Individualized alternative principal program: Created in collaboration between a school district, charter school, the institute, or nonpublic school and an individual identified as requiring principal preparation, it is a plan of preparation that aligns to the Principal Quality Standards in section 6.00 of these rules and comprises coursework, practicums, and other educational requirements the individual will complete while serving as a principal or assistant principal under a principal authorization in the collaborating school district, charter school, the institute or nonpublic school.

2.01(24) Institute: The state charter school institute created pursuant to section 22-30.5-503, C.R.S.

2.01(25) Licensure: The official recognition by a state governmental agency that an individual has met state-mandated minimum requirements and is approved to practice as a duly certified/licensed educator in the state.

2.01(26) Local education provider (LEP): A school district, a charter school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22, C.R.S., a charter school authorized by the State Charter School Institute pursuant to Part 5 of Article 30.5 of Title 22, C.R.S., or a BOCES created and operating pursuant to Article 5 of Title 22, C.R.S. that operates a public school.

2.01(27) Mentor administrator: Any administrator who is designated by a school district or districts, charter school, nonpublic school, or the institute providing an approved induction program for initial administrator license-holders, who has demonstrated outstanding administrative skills and school leadership and who can provide exemplary modeling and counseling to initial administrator license-holders participating in an approved induction program.

2.01(28) Mentor principal: Any principal who is designated by a school district or districts, charter school, nonpublic school, or the institute providing an approved induction program for initial principal license-holders, who has demonstrated outstanding principal skills and school leadership and who can provide exemplary modeling and counseling to initial principal license-holders participating in an approved induction program.

2.01(29) Mentor special services provider: Any special services provider who is designated by a school district or districts, charter school, nonpublic school, or the institute providing an approved induction program for initial special services license-holders, who has demonstrated outstanding special services provider skills and school leadership and who can provide exemplary modeling and counseling to initial special services license-holders participating in an approved induction program.

2.01(30) Mentor Teacher:

2.01(30)(a) A teacher who holds a professional license designated by a school district, charter school, or nonpublic school employing an alternative teacher, who has demonstrated outstanding teaching and school leadership and who can provide exemplary modeling and counseling to alternative teachers participating in an alternative teacher program; or

2.01(30)(b) Any teacher who is designated by a school district or districts, charter school, nonpublic school, or the institute providing an approved induction program for initial teacher license-holders, who has demonstrated outstanding teaching and school leadership and who can provide exemplary modeling and counseling to initial teacher license-holders participating in an approved induction program.

2.01(31) Nonpublic School: Any independent or parochial school that provides a basic academic education. Neither the State Board of Education nor any local school board has jurisdiction over the internal affairs of any independent or parochial school in Colorado.

2.01(32) Practicum: An intensive experience in which candidates practice and demonstrate professional skills and knowledge. Student teaching and internships are examples of a practicum.

2.01(33) Principal: Any person who is employed as the chief executive officer or an assistant chief executive officer of any school in the state and who administers, directs or supervises the education instruction program in such school or nonpublic school.

2.01(34) Qualified, licensed teacher: An individual who holds a valid Colorado teaching license in the grade level and subject endorsement area(s) in which that individual teaches or will teach.

2.01(35) Rural school district: A school district in Colorado that the Department determines is rural, based on the district's geographic size and its distance from the nearest large, urbanized area, with a total student enrollment of 6,500 students or fewer students.

2.01(36) School: Any of the public schools of the state.

2.01(37) School district: Any school district organized and existing pursuant to law, but not including junior or community college districts. "School district" includes a BOCES organized pursuant to 22-5-101, C.R.S.

2.01(38) Special services provider: Any person other than a teacher, principal or administrator who is employed by any school district, charter school, nonpublic school or the institute to provide professional services to students in direct support of the education instructional program.

2.01(39) Specialization area: The sequence of courses and experiences in the academic or professional area that the candidate plans to teach, for the grade level(s) or developmental level(s) at which the candidate plans to teach, and/or for the services that the candidate plans to provide. Examples of specialty areas include science (grades 7-12), elementary education (grades K-6), school counselor (ages birth-21), reading specialist (grades K-12) and physical education (grades K-12).

2.01(40) State Board of Education: The Colorado State Board of Education established by section 1 of Article IX of the Constitution of the State of Colorado.

2.01(41) Student teaching: Part of the field or clinical experience required in a teacher preparation program as identified in section 23-1-121(2)(d), C.R.S., that is an in-depth, direct teaching experience conducted in a school and classroom setting. It is considered a culminating field-based experience for the basic teacher preparation program where candidates practice and demonstrate professional skills and knowledge.

2.01(42) Teacher: Any person employed to instruct students in any public or nonpublic school in the state.

2.01(43) Teacher of record: A person licensed pursuant to section 22-60.5-201(1)(a.5), C.R.S.

2.02 Validity of certificates/license.

2.02(1) Certificates and letters of authorization issued by the Department prior to July 1, 1994, must remain valid for the period for which they were issued.

2.02(2) Endorsements placed on teacher or special services certificates prior to July 1, 1994, which were based on major areas of specialization or experience and academic credit, may be issued on subsequent teacher or special services license renewals provided all renewal requirements specified in section 7.00 of these rules have been met.

2.02(3) Certificates, licenses, and authorizations which have expired are not valid unless the applicant has a complete and active application on file with the Department before the expiration date identified on the applicant's current and active educator license, certificate, or authorization.

2.03 General Requirements for Colorado Licenses

2.03(1) Degree. Each applicant for a Colorado license must hold the appropriate academic degree for the license and/or endorsement sought from an accepted institution of higher education.

2.03(1)(a) It will be determined that an applicant "holds" or "has been awarded" the bachelor's or higher degree when the registrar of the accepted institution of higher education certifies that the applicant has met all institutional requirements for graduation with the degree, whether or not the degree has been conferred upon the applicant in formal ceremonies or otherwise conveyed to the individual.

2.03(1)(b) The Department and accepted institutions of higher education may recognize credits and degrees earned in foreign institutions of higher education if, after appropriate evaluation by an established credentials evaluation service as selected by the Department, there is evidence that such credits and degrees are the equivalent of those approved as fulfilling the specific license requirements.

2.03(2) Approved program of preparation. An initial license may be issued upon satisfactory completion of an approved program of preparation, an alternative teacher program, an alternative principal program, an individualized alternative principal program, or an out-of-state educator preparation program approved or authorized by a state other than Colorado as defined in section 2.03(3)(b) of these rules, and upon demonstration of required competencies as specified in these rules and in 1 CCR 301-101 Rules for the Administration of Educator License Endorsements. Applicants who completed an approved program in a state other than Colorado must meet the requirements in section 2.03(3) of these rules.

2.03(3) Out-of-state applicants. An initial license may be issued to an applicant from another state or country whose qualifications meet or exceed the requirements of the State Board of Education and who has met the following requirements:

2.03(3)(a) has completed the appropriate degree, experiences, and educational level for the license and endorsement(s) requested as specified in these rules;

2.03(3)(b) has successfully completed an educator preparation program approved or authorized by a state other than Colorado, including a program at an accepted institution of higher education in the endorsement area sought or another educator preparation program, including an alternative teacher preparation program;

2.03(3)(c) has successfully completed field-based experience that meets or exceeds Colorado's field-based experience requirement as provided by section 23-1-121(2)(d), C.R.S.;

2.03(3)(d) holds a standard license issued by the state education agency of another state or country, is eligible to hold a standard license issued by the state education agency of the preparing state, or meets the official requirements of the legally designated licensing agency of the preparing state; and

2.03(3)(e) has provided evidence of satisfactory completion of the approved content tests appropriate to the license and endorsement requested.

2.03(4) An out-of-state applicant must meet the subject matter knowledge requirements for every endorsement sought by passage of the required approved content test for each endorsement or by providing evidence of completion of three or more years of successful full-time, fully licensed, evaluated, post-preparation experience in the endorsement area(s) sought within the previous seven years as a teacher, special services provider, principal, or administrator in an established elementary or secondary school in another state or country.

2.03(4)(a) Applicants who satisfy the requirements of sections 2.03(3)(a)-(d) but not 2.03(3)(e) may be eligible for an interim authorization as provided in section 4.09 of these rules.

2.034)(b) Applicants who satisfy the requirements in sections 2.03(3)(a)-(d) but not 2.03(3)(e) and who provide evidence of completion of three or more years of successful full-time, fully licensed, evaluated post-preparation experience within the previous seven years as a teacher, special services provider, principal, or administrator in an established elementary or secondary school in another state or country, may be eligible for a Colorado professional license.

2.03(5) The State Board of Education may enter into interstate reciprocal agreements whereby the Department agrees to issue initial licenses to persons licensed in other states and such states agree to issue licenses to Colorado license-holders. Such agreements must not be inconsistent with section 2.03(3) of these rules.

2.03(6) Pursuant to section 22-60.5-201(3)(c), C.R.S., the state board may annually designate teacher shortage areas and modify the requirements in sections 4.00 and 5.00 of 1 CCR 301-101 for licensure and endorsement in such shortage areas for the purpose of issuing initial teacher licenses or interim authorizations as outlined in these rules to applicants.

2.03(7) Pursuant to section 22-60.5-201(3.5), C.R.S. the Department may issue professional teacher licenses to applicants who have earned and present certificates issued by the National Board for Professional Teaching Standards.

2.04 Application Procedures

2.04(1) Prior to submitting to the Department an application for a license, authorization, or endorsement, or for the renewal of a license or authorization, the applicant must submit to the Colorado Bureau of Investigation (CBI) a complete set of his or her fingerprints taken by a qualified law enforcement agency, an authorized employee of a school district or BOCES using fingerprinting equipment that meets the Federal Bureau of Investigation image quality standards, or any third party approved by the CBI for the purpose of obtaining a criminal history record check, and any fingerprint processing fee(s).

2.04(1)(a) The applicant must give his or her social security number, if any, to the CBI and must indicate to the CBI that the criminal history is to be forwarded to the Department.

2.04(1)(a)(i) If an individual submits an application or renewal application after the expiration of a credential, the individual must submit a new, complete set of fingerprints to the CBI.

2.04(1)(a)(ii) If an applicant previously submitted a complete set of fingerprints to the CBI pursuant to section 22-2-119.3, C.R.S., the individual need not submit a new set of fingerprints unless: (1) he or she has not continuously resided in Colorado for more than one full year; (2) he or she submits an application or renewal application after the expiration of a credential from the Department; or (3) the individual has been convicted of a felony or misdemeanor, other than a

misdemeanor traffic offense or traffic infraction, subsequent to the educator's licensure or authorization.

2.04(2) An applicant must submit a complete application to the Department via its online system, which includes all required information and documentation as set forth in these rules, the application form, and any other application instructions published by the Department on its website. Required information and documentation includes that which the applicant is responsible for submitting and any other information and documentation that may be required from other sources to support the application, including but not limited to the following:

2.04(2)(a) The applicant must provide official transcripts showing conferral of the degree required for the license and endorsement sought:

2.04(2)(a)(i) Each transcript must be authentic, original or photocopy, bearing the printed or embossed seal of the institution and the signature of the registrar, and include descriptive titles, course numbers, credits, and grades for each course listed and degrees conferred, if any. For the purpose of these rules, credits must be in semester hours. Quarter, trimester, unit or term credits will be converted to semester hours at the time of evaluation. Submission of an incomplete, unofficial, or illegible transcript may render an application incomplete.

2.04(2)(a)(ii) Transcripts from institutions of higher education outside the United States must be evaluated by an established credential evaluation service, selected by the Department, for course equivalence.

2.04(2)(a)(iii) Copies of official transcripts submitted with an application become part of the applicant's record with the Department and are not returnable.

2.04(2)(b) The applicant must provide an institutional recommendation from the educator preparation program, appropriate to the license sought and on the Department’s program verification form, which at a minimum confirms: the date of completion of an educator preparation program; endorsement area(s) and grade level(s); completion of student teaching, clinical experience, or practicum; that the applicant holds or is eligible to hold a license in the preparing state or territory; and any additional information requested on the Department form.

2.04(2)(b)(i) The recommendation must certify that the applicant completed the educator preparation program in a satisfactory manner and is in good standing; and

2.04(2)(b)(ii) The recommendation must indicate the subject and level or grades of student teaching, the number of hours of field-based experience performed, and the area of recommended endorsement as defined in 1 CCR 301-101 Rules for the Administration of Educator License Endorsements.

2.04(2)(b)(iii) An individual applying for an initial license or professional license for the first time who holds a valid license or certificate in another state and demonstrates three or more years of successful full-time, evaluated, fully licensed teaching experience (post completion of an educator preparation program) within the previous seven years may be exempt from the institutional recommendation requirement.

2.04(2)(c) The applicant must provide a copy of the official test score report(s) verifying completion of the approved content test(s) when a test or tests are required for a license

or endorsement. Submission of a score report for the wrong test or wrong version of a test will render the application incomplete.

2.04(2)(d) Out-of-state applicants must include a copy of any and all educator credentials held (valid or expired) in other states or territories.

2.04(2)(e) The applicant must submit the following to verify their identity:

2.04(2)(e)(i) the applicant's name and mailing address; and

2.04(2)(e)(ii) applicant's social security number, or if unavailable, the individual taxpayer identification number, or one of the following current documents verifying the applicant's identity: a clear copy of one of the following forms of government-issued photo identification: a valid passport or passport card; a valid driver's license from any state; an identification card or document from any state; a United States military card or a military dependent's identification card; a United States Coast Guard Merchant Mariner card; or a Native American tribal document.

2.04(2)(f) The applicant must submit a complete and accurate response, including but not limited to every required disclosure, form, and supporting document, to every applicable section of the online application and attest that all information submitted is true and complete to the best of the applicant's knowledge.

2.04(3) The fee for the evaluation and review of an application is established by the State Board of Education and shall be nonrefundable.

2.04(4) In any application for licensure, the applicant must indicate all endorsements sought and pay the established fees for the requested endorsement(s) at the time of submission of the application. If an applicant fails to indicate an endorsement(s) sought in a license application and subsequently seeks an endorsement, the Department will not consider the endorsement request until the applicant submits a complete added endorsement application and all required fees.

2.04(5) An application is deemed complete when all required information, documentation, and fees are received by the Department. An application that fails to include required information, documentation, or fees will be deemed incomplete. Within 45 days of submission of an application, applicants will be notified if their application is incomplete. An applicant whose application is deemed incomplete may cure the deficiency or submit to the Department a written request for reconsideration which states the basis for reconsideration. An applicant who fails to cure the deficiency or request reconsideration within 60 days of notification will be deemed to have withdrawn the application and such withdrawal shall not be subject to appeal or review. The Department will issue a written determination to an applicant in response to any request for reconsideration within 30 days of its receipt of the request.

2.04(6) Applications that are initiated in the Department's online system but not submitted will be closed and deemed withdrawn 14 days after initiation. Such closed and withdrawn applications shall not be subject to appeal or review.

2.04(7) The Department will promptly act upon complete applications. The Department may require additional information and documentation from an applicant to determine compliance with applicable laws and rules, or to verify any information and documentation submitted.

3.00 Types of Licenses

3.01 Initial Teacher License

An initial teacher license is valid for three years from the date of issuance and may be renewed as provided in section 7.01 of these rules.

3.01(1) An initial teacher license may be issued to an applicant who:

3.01(1)(a) holds an earned bachelor's or higher degree from an accepted institution of higher education;

3.01(1)(b) has completed an approved program of preparation at an accepted institution of higher education, including the field-based experience required by section 23-1-121(2)(d), C.R.S.;

3.01(1)(c) has provided an institutional recommendation which meets the requirements outlined in 2.04(2)(b), and:

3.01(1)(c)(i) verifies satisfactory completion of the approved program;

3.01(1)(c)(ii) specifies the grade/developmental level(s), endorsement area(s), or specialization(s) completed by the applicant;

3.01(1)(c)(iii) verifies successful completion of student teaching, internship, or practicum as specified in 2.01(41) of these rules; the grade/developmental level(s) and endorsement/specialization areas of the experience; and

3.01(1)(c)(iv) certifies that the applicant has demonstrated thorough knowledge of the subject matter to be taught and has the competencies essential for educational service.

3.01(1)(d) has submitted a complete application for a license as defined in section 2.04 of these rules; and

3.01(1)(e) has demonstrated subject matter knowledge necessary for teaching in the endorsement area:

3.01(1)(e)(i) for elementary education teachers (grades K-6), special education generalist teachers (ages 5-21), early childhood educators (ages birth- 8) and early childhood special education teachers (ages birth-8) by passage of the approved content tests.

3.01(1)(e)(ii) for secondary teachers (grades 7-12) and all other endorsement areas not identified in Rule 3.01(1)(e)(i), by:

3.01(1)(e)(ii)(A) an earned bachelor's or higher degree from an accepted institution of higher education in the endorsement area; or

3.01(1)(e)(ii)(B) passage of the approved content test(s) relevant to the area of endorsement; or

3.01(1)(e)(ii)(C) 24 semester hours of specific college/university coursework as demonstrated through transcript evaluation in the endorsement area.

3.01(2) An initial teacher license may be issued to an applicant who has completed an alternative teacher program and who:

3.01(2)(a) holds an alternative teacher license as prescribed in section 3.12 of these rules;

3.01(2)(b) has completed an alternative teacher program as defined in section 2.01(6) of these rules;

3.01(2)(c) has submitted a complete application for an initial license, as defined in section 2.04 of these rules;

3.01(2)(d) has provided an institutional recommendation from the approved designated agency and which meets the requirements outlined in 2.04(2)(b), and:

3.01(2)(d)(i) verifies satisfactory completion of the alternative teacher program;

3.01(2)(d)(ii) verifies employment as an alternative teacher as provided in sections 22-60.5-201 and 22-60.5-205, C.R.S., in the endorsement area sought; and

3.01(2)(d)(iii) certifies that the applicant has demonstrated thorough knowledge of the subject matter to be taught and has demonstrated the competencies essential for educational service.

3.01(2)(e) has demonstrated subject matter knowledge necessary for teaching in the endorsement area:

3.01(2)(e)(i) for elementary education teachers (grades K-6), special education generalist teachers (ages 5-21), early childhood educators (ages birth-8) and early childhood special education teachers (ages birth-8) by passage of the approved content tests.

3.01(2)(e)(ii) for secondary teachers (grades 7-12) and all other endorsement areas not identified in Rule 3.01(2)(e)(i), by:

3.01(2)(e)(ii)(A) holding an earned bachelor's or higher degree from an accepted institution of higher education in the endorsement area; or

3.01(2)(e)(ii)(B) passage of the approved content test relevant to the person's endorsement area; or

3.01(2)(e)(ii)(C) 24 semester hours of specific coursework as demonstrated through transcript evaluation in the endorsement area.

3.02 Initial Special Services License

An initial special services license is valid for three years from the date of issuance and may be renewed as provided in section 7.01 of these rules.

3.02(1) An initial special services license may be issued to an applicant who:

3.02(1)(a) holds an earned bachelor's or higher degree from an accepted institution of higher education;

3.02(1)(b) has completed an approved special services preparation program at an accepted institution of higher education;

3.02(1)(c) has supplied an institutional recommendation which meets the requirements outlined in 2.04(2)(b), and:

3.02(1)(c)(i) verifies satisfactory completion of the approved program;

3.02(1)(c)(ii) specifies the area(s) of endorsement/specialization completed by the applicant;

3.02(1)(c)(iii) verifies successful completion of student teaching, internship or practicum in a school setting or other appropriate setting in the endorsement/specialization area sought for licensure; and

3.02(1)(c)(iv) certifies that the applicant has demonstrated thorough knowledge of the special service area and has the competencies essential for educational service.

3.02(1)(d) has submitted a complete application for a license as defined in section 2.04 of these rules; and

3.02(1)(e) holds a valid license or certificate in the respective discipline, where applicable, and meets the requirements for the respective discipline as outlined in 1 CCR 301-101 Rules for the Administration of Educator License Endorsements.

3.03 Initial Principal License

An initial principal license is valid for three years from the date of issuance and may be renewed as provided in section 7.01 of these rules.

3.03(1) An initial principal license may be issued to an applicant who:

3.03(1)(a) holds an earned bachelor's or higher degree from an accepted institution of higher education;

3.03(1)(b) has completed an approved principal preparation program at an accepted institution of higher education, including the field-based experience required by section 23-1-121(2)(d), C.R.S., an individualized alternative principal program as defined in sections 22-60.5-305.5 and 22-60.5-111(14), C.R.S., an alternative principal program created by a designated agency and approved by the State Board of Education pursuant to section 22-60.5-305.5(6)(a), C.R.S., or has evidence of partial completion of an approved principal preparation program in each of two or more accepted institutions of higher education. Upon a finding by the Department of completion of the equivalent of any one program by combining work completed at different programs, the requested license may be issued, assuming all requirements set forth in these rules have been met;

3.03(1)(c) has provided an institutional recommendation from the principal preparation program, appropriate to the license sought and on the Department's program verification form, which at a minimum confirms:

3.03(1)(c)(i) the date of completion and verifies satisfactory completion of the approved program;

3.03(1)(c)(ii) specifies the area(s) of endorsement/specialization completed by the applicant;

3.03(1)(c)(iii) verifies successful completion of internship or practicum in a school setting or other appropriate setting in the endorsement/specialization area sought for licensure; and

3.03(1)(c)(iv) certifies that the applicant has demonstrated thorough knowledge of the Principal Quality Standards and has the competencies essential for educational service.

3.03(1)(d) provides documented evidence of three or more years of full-time, successful experience working with students as a licensed or certificated professional in a public or nonpublic elementary or secondary school in this state or another state or has three or more years of experience working with students as a professional in a nonpublic school;

3.03(1)(e) has submitted a complete application for an initial license as defined in section 2.04 of these rules; and

3.03(1)(f) has demonstrated professional competencies as evidenced by a passing score on the approved content test.

3.03(2) An initial principal license must be valid in any school district, BOCES, nonpublic or charter school which provides, participates in, or has been granted a waiver from providing an approved induction program for principals as described in section 9.00 of these rules.

3.03(3) An initial principal license must be valid for occasional teaching, which must not constitute more than one-half of a typical teaching assignment.

3.04 Initial Administrator License

An initial administrator license is valid for three years from the date of issuance and may be renewed as provided in section 7.01 of these rules.

3.04(1) An initial administrator license may be issued to an applicant who:

3.04(1)(a) holds an earned bachelor's or higher degree from an accepted institution of higher education;

3.04(1)(b) has completed an approved program for district-level administrators at an accepted institution of higher education or has evidence of partial completion of an approved administrator preparation program in each of two or more accepted institutions of higher education. Upon a finding of completion by the Department of completion of the equivalent of any one program by combining work completed at different programs, the requested license may be issued, assuming all requirements set forth in these rules have been met;

3.04(1)(c) has supplied an institutional recommendation from the preparing administrator preparation program, appropriate to the license sought and on the Department's program verification form, which at a minimum confirms:

3.04(1)(c)(i) the date of completion and verifies satisfactory completion of the approved program;

3.04(1)(c)(ii) specifies the area(s) of endorsement/specialization completed by the applicant;

3.04(1)(c)(iii) verifies successful completion of internship, or practicum in a school setting or other appropriate setting in the endorsement/specialization area sought for licensure; and

3.04(1)(c)(iv) certifies that the applicant has demonstrated thorough knowledge of the Principal Quality Standards and has the competencies essential for educational service.

3.04(1)(d) has submitted a complete application for an initial license as defined in section 2.04 of these rules; and

3.04(1)(e) has demonstrated professional competencies as evidenced by a passing score on the approved content test for administrators.

3.04(2) An initial administrator license must be valid in any school district, BOCES, nonpublic school or charter school, which provides, participates in, or has been granted a waiver from providing an approved induction program for administrators as described in section 9.00 of these rules.

3.04(3) A holder of an initial administrator license who has completed three or more years of full-time, continuous, successful experience working with students as a licensed professional in a public or nonpublic elementary or secondary school in this state or another state may function as an occasional teacher. For purposes of this section, occasional teaching is defined as no more than one-half of a typical teaching assignment.

3.04(4) The applicant for an initial administrator license with a director of gifted education endorsement must:

3.04(4)(a) hold a master's or higher degree in gifted education from an accepted institution of higher education or demonstrate knowledge and application of standards for the specialist, as determined upon evaluation by the Department;

3.04(4)(b) have a minimum of two years' full-time experience working with students with exceptional academic and talent aptitude;

3.04(4)(c) have completed an approved program for the preparation of directors of gifted education, which must include a supervised field-based experience, as confirmed on the institutional recommendation from the preparing program;

3.04(4)(d) have demonstrated professional competencies as evidenced by a passing score on the approved content test for administrators: and

3.04(4)(e) meet the professional competencies outlined in section 6.17.

3.04(5) The applicant for an initial administrator license with a director of special education endorsement must:

3.04(5)(a) hold a master's or higher degree in special education from an accepted institution of higher education or demonstrate knowledge and application of standards for the specialist, as determined upon evaluation by the Department;

3.04(5)(b) have a minimum of two years' full-time experience working with students with special needs;

3.04(5)(c) have completed an approved program for the preparation of directors of special education, which must include a supervised field-based experience, as confirmed on the institutional recommendation from the preparing program;

3.04(5)(d) have demonstrated professional competencies as evidenced by a passing score on the approved content test for administrators; and

3.04(5)(e) meet the professional competencies outlined in section 6.08.

3.05 Professional Teacher or Special Services License

A professional teacher or special services license is valid for a period of seven years from the date of issuance, and may be renewed as provided in section 7.02 of these rules.

3.05(1) A professional teacher or special services provider license may be issued to an applicant who:

3.05(1)(a) holds a Colorado initial teacher license or Colorado initial special services license;

3.05(1)(b) has successfully completed an approved teacher or special services provider induction program as prescribed in section 8.00 of these rules and/or has been recommended for the professional teacher or special services license by the district or BOCES providing such induction program; and

3.05(1)(c) has submitted a complete application for a professional teacher or special services license as defined in Rule 2.04.

3.05(2) Notwithstanding the provisions in 3.05(1)(b), the Department may issue a professional teacher license if the applicant meets the requirements for an initial teacher license and previously completed an induction program while teaching under an adjunct instructor authorization, an emergency authorization, an interim authorization, a temporary educator eligibility authorization or alternative teacher license. If the applicant is employed by a school district, charter school, the institute, nonpublic school, or BOCES that has obtained a waiver of the induction program requirement, the applicant must demonstrate completion of any requirements specified in the school district's, charter school's, the institute's, nonpublic school's or BOCES's plan for support, assistance, and training of an initially licensed educator.

3.05(3) Notwithstanding the provisions in 3.05(1)(b), the Department may issue a professional special services license if the applicant meets the requirements for an initial special services license and previously completed an induction program while serving under an emergency authorization or a temporary educator eligibility authorization. If the applicant is employed by a school district, charter school, the institute, nonpublic school, or BOCES that has obtained a waiver of the induction program requirement, the applicant must demonstrate completion of any requirements specified in the school district's, charter school's, the institute's, nonpublic school's, or BOCES's plan for support, assistance, and training of an initially licensed educator.

3.06 Professional Principal License

A professional principal license is valid for a period of seven years from the date of issuance and may be renewed as provided in section 7.02 of these rules.

3.06(1) A professional principal license may be issued to an applicant who:

3.06(1)(a) holds:

3.06(1)(a)(i) an earned master's degree from an accepted institution of higher education and has successfully completed an approved principal preparation program at an accepted institution of higher education, an alternative principal program, or an individualized alternative principal program; and

3.06(1)(a)(ii) an initial principal license;

3.06(1)(b) has successfully completed an approved principal induction program as described in section 9.00 of these rules;

3.06(1)(c) has been recommended for a professional license by the school district(s), BOCES, nonpublic school, charter school, or the institute which provided the induction program.

3.06(1)(d) has submitted a complete application for a professional license as defined in Rule 2.04.

3.06(2) Notwithstanding the provisions in 3.06(1)(b), the Department may issue a professional principal license if the applicant meets the requirements for an initial principal license and completed an approved principal induction program while employed under an emergency authorization, interim authorization or principal authorization. The applicant need not complete an approved induction program as an initial principal license-holder if the applicant previously completed an induction program while employed under an emergency authorization, interim authorization, or a principal authorization or if the school district, BOCES, nonpublic school, charter school or the institute in which the applicant is employed has obtained waiver of the induction program requirement pursuant to section 22-60.5-114(2), C.R.S.

3.06(3) A professional principal license is valid for occasional teaching, which must not constitute more than one-half of a typical teaching assignment. A principal who has previously held a professional teacher license may be reissued that license upon application and completion of the renewal requirements as outlined in 7.02.

3.07 Professional Administrator License

A professional administrator license is valid for a period of seven years from the date of issuance and may be renewed as provided in section 7.02 of these rules.

3.07(1) A professional administrator license may be issued to an applicant who:

3.07(1)(a) holds:

3.07(1)(a)(i) an earned master's degree from an accepted institution of higher education and has completed an approved administrator program at an accepted institution of higher education; and

3.07(1)(a)(ii) a valid initial administrator license; and

3.07(1)(a)(ii)(A) completes an approved administrator induction program; and

3.07(1)(a)(ii)(B) has been recommended for professional licensure by the school district, charter school, the institute, nonpublic school, or BOCES that provided such induction program.

3.07(2) Notwithstanding the provisions of section 3.07(1)(a)(ii), the Department may issue a professional administrator license if an applicant meets the requirements for an initial administrator license and completed an approved administrator induction program while employed under an emergency authorization, interim authorization or a temporary educator eligibility authorization. The applicant need not complete an approved induction program as an initial license-holder if the applicant previously completed an induction program while employed under an emergency authorization, interim authorization, or a temporary educator eligibility authorization or if the school district, BOCES, nonpublic school, charter school or the institute in which the applicant is employed has obtained waiver of the induction program requirement pursuant to section 22-60.5-306(1)(b)(C), C.R.S.

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3.07(4) A holder of professional administrator licenses who has completed three or more years of full-time, continuous, successful, evaluated experience working with students as a licensed or certificated professional in a public or nonpublic elementary or secondary school in this state or another state may function as an occasional teacher. For purposes of this section, occasional teaching is defined as no more than one-half of a typical teaching assignment.

3.08 Master Certificate - Teacher

A master certificate represents achievements and contributions over and above expectations in the Teacher Quality Standards outlined in section 5.0 of these rules. A master certificate is valid for the period of time for which the applicant's professional teacher license is valid and is renewable as provided in section 7.02(6) of these rules.

3.08(1) A master certificate may be issued to an applicant who holds a valid Colorado professional teacher license and who has demonstrated advanced teaching competencies or expertise through:

3.08(1)(a) the attainment of National Board for Professional Teaching Standards certification; or

3.08(1)(b) demonstrated excellence in the following standards:

3.08(1)(b)(i) Standard 1: The master teacher develops a personal leadership vision focused on the successful learning and development of each student.

3.08(1)(b)(i)(A) Element A: The master teacher develops a leadership mission that promotes whole-child success and the well-being of each student.

3.08(1)(b)(i)(B) Element B: The master teacher articulates, advocates for, and cultivates core values that promote student-centered education, high expectations, learner support, equity, inclusiveness, social justice, openness, caring, trust, and continuous improvement.

3.08(1)(b)(i)(C) Element C: The master teacher strategically develops, implements and evaluates actions to achieve one’s personal leadership mission and vision.

3.08(1)(b)(i)(D) Element D: The master teacher anticipates, identifies and addresses barriers to achieving one’s leadership vision and mission.

3.08(1)(b)(i)(E) Element E: The master teacher models one’s leadership mission, vision and core values in all interactions with students, colleagues, parents and community members.

3.08(1)(b)(ii) Standard 2: The master teacher understands the principles of adult learning and knows how to develop a collaborative culture of collective responsibility in the school. The master teacher uses this knowledge to promote an environment of collegiality, trust, and respect that focuses on continuous improvement in instruction and student learning.3.08(1)(b)(ii)(A) Element A: The master teacher utilizes group processes to help colleagues (for the purposes of this section, including all members of the school community involved in the education of children) work collaboratively to solve problems, make decisions, manage conflict, and promote meaningful change.

3.08(1)(b)(ii)(B) Element B: The master teacher models effective skills in listening, presenting ideas, leading discussions, clarifying, mediating, and identifying the needs of self and others to advance shared goals and professional learning.

3.08(1)(b)(ii)(C) Element C: The master teacher facilitates the creation of trust among colleagues, development of collective wisdom, building ownership, and action that supports collective efficacy and student learning.

3.08(1)(b)(ii)(D) Element D: The master teacher uses knowledge and understanding of different backgrounds, races, ethnicities, cultures, and languages to create an inclusive culture and promote effective interactions among colleagues.

3.08(1)(b)(iii) Standard 3: The master teacher understands how research creates new knowledge, informs policies and practices, and improves teaching and learning. The master teacher models and facilitates the use of systematic inquiry as a critical component of teachers' ongoing learning and development.

3.08(1)(b)(iii)(A): Element A: The master teacher assists colleagues in accessing and using research to select appropriate strategies to improve student learning.

3.08(1)(b)(iii)(B): Element B: The master teacher models and facilitates analysis of student learning data, collaborative interpretation of results, and application of findings to improve teaching and learning.

3.08(1)(b)(iii)(C): Element C: The master teacher supports colleagues in collaborating with higher education institutions and other organizations engaged in researching critical education issues.

3.08(1)(b)(iii)(D): Element D: The master teacher teaches and supports colleagues to collect, analyze, and communicate data from their classrooms to improve teaching and learning.

3.08(1)(b)(iii)(E): Element E: The master teacher collaborates with colleagues to identify promising, innovative practices and conduct action research to determine effectiveness and expansion possibilities.

3.08(1)(b)(iv) Standard 4: The master teacher understands the evolving nature of teaching and learning, established and emerging technologies, and the school community. The master teacher uses this knowledge to promote, design, and facilitate job-embedded professional learning aligned with school improvement goals.

3.08(1)(b)(iv)(A) Element A: The master teacher collaborates with colleagues and school administrators to plan professional learning that is team-based, job-embedded, sustained over time, aligned with content standards, and linked to school/district improvement goals.

3.08(1)(b)(iv)(B) Element B: The master teacher uses information about adult learning to respond to the diverse learning needs of colleagues by identifying, promoting, and facilitating varied and personalized professional learning.

3.08(1)(b)(iv)(C) Element C: The master teacher identifies and uses appropriate technologies to promote collaborative and personalized professional learning.

3.08(1)(b)(iv)(D) Element D: The master teacher works with colleagues to collect, analyze, and disseminate data related to the quality of professional learning and its effect on teaching and student learning.

3.08(1)(b)(iv)(E) Element E: The master teacher advocates for sufficient preparation, time, and support for colleagues to work in teams to engage in job-embedded professional learning.

3.08(1)(b)(iv)(F) Element F: The master teacher provides constructive feedback to colleagues to strengthen teaching practice and improve student learning.

3.08(1)(b)(iv)(G) Element G: The master teacher uses information about emerging education, economic, and social trends in planning and facilitating professional learning.

3.08(1)(b)(v) Standard 5: The master teacher demonstrates a deep understanding of the teaching and learning processes and uses this knowledge to advance the professional skills of colleagues by being a continuous learner and modeling reflective practice based on student results. The master teacher works collaboratively with colleagues to ensure instructional practices are aligned to a shared vision, mission, and goals.

3.08(1)(b)(v)(A) Element A: The master teacher models, facilitates, and enhances the process for collection, analysis, and use of classroom-and school-based data to identify opportunities to improve curriculum, instruction, assessment, school organization, and school culture.

3.08(1)(b)(v)(B) Element B: The master teacher engages in reflective dialogue with colleagues based on student learning and helps make connections to research-based effective practices.

3.08(1)(b)(v)(C) Element C: The master teacher serves as a team leader to harness the skills, expertise, and knowledge of colleagues to address curricular expectations and student learning needs.

3.08(1)(b)(v)(D) Element D: The master teacher uses knowledge of existing and emerging learning innovations to guide colleagues in helping students skillfully and appropriately navigate the universe of knowledge available on the Internet, use social media to promote collaborative learning, and connect with people and resources around the globe.

3.08(1)(b)(v)(E) Element E: The master teacher supports instructional strategies that respect issues of diversity and equity in the classroom and that promote equitable outcomes for all students.

3.08(1)(b)(vi) Standard 6: The master teacher is knowledgeable about current research on classroom- and school-based data and the design and selection of appropriate formative and summative assessment methods. The master teacher shares this knowledge and collaborates with colleagues to use assessment and

other data to make informed decisions that improve learning for all students and to inform school and district improvement strategies.

3.08(1)(b)(vi)(A) Element A: The master teacher increases the capacity of colleagues to identify and use multiple assessment tools aligned to state and local standards.

3.08(1)(b)(vi)(B) Element B: The master teacher collaborates with colleagues in assessment design, implementation, scoring, and interpreting student data to improve educational practice and student learning.

3.08(1)(b)(vi)(C) Element C: The master teacher creates a climate of trust and critical reflection to engage colleagues in challenging conversations about student learning data that lead to solutions to identified issues.

3.08(1)(b)(vi)(D) Element D: The master teacher works with colleagues to use assessment and data findings at multiple levels to promote changes in instructional practices or organizational structures to improve student learning.

3.08(1)(b)(vi)(E) Element E: The master teacher collaborates with colleagues to design opportunities to collect, analyze, and use qualitative data to improve teaching and learning.

3.08(1)(b)(vi)(F) Element F: The master teacher collaborates with colleagues to lead students to evaluate their own data and set relevant goals.

3.08(1)(b)(vii) Standard 7: The master teacher understands that families, cultures, and communities have a significant impact on educational processes and student learning. The master teacher works with colleagues to promote ongoing systematic collaboration with families, community members, business and community leaders, and other stakeholders to improve the educational system and expand opportunities for student learning.

3.08(1)(b)(vii)(A) Element A: The master teacher uses knowledge and understanding of the different backgrounds, ethnicities, races, cultures and languages in the school community to promote effective interactions among colleagues, families and the larger community.

3.08(1)(b)(vii)(B) Element B: The master teacher models and teaches effective communication and collaboration skills with families and other stakeholders focused on attaining equitable achievement for students of all backgrounds and circumstances.

3.08(1)(b)(vii)(C) Element C: The master teacher facilitates colleagues' self-examination of their own biases and understandings of community culture and diversity and how they can develop an asset-oriented mindset along with culturally responsive strategies to enrich the educational experiences of students and achieve high levels of learning for all students.

3.08(1)(b)(vii)(D) Element D: The master teacher develops a shared understanding among colleagues of the diverse educational needs of families and the community.

3.08(1)(b)(vii)(E) Element E: The master teacher collaborates with families, communities, and colleagues to develop comprehensive strategies to address the diverse educational needs of families and the community.

3.08(1)(b)(viii) Standard 8: The master teacher understands how educational policy is made at the local, state, and national level, as well as the roles school leaders, boards of education, legislators, and other stakeholders have in formulating those policies.

3.08(1)(b)(viii)(A) Element A: The master teacher shares information with colleagues within and/or beyond the district regarding how local, state, and national trends and policies can impact classroom practices and expectations for student learning.

3.08(1)(b)(viii)(B) Element B: The master teacher works with colleagues to identify and use research to advocate for teaching and learning processes that meet the needs of all students.

3.08(1)(b)(viii)(C) Element C: The master teacher collaborates with colleagues to select appropriate opportunities to advocate for the rights and/or needs of students, to secure additional resources within the building or district that support student learning, and to communicate effectively with targeted audiences, such as parents and community members.

3.08(1)(b)(viii)(D) Element D: The master teacher advocates for access to professional resources, including financial support and human and other material resources, that allow colleagues to spend significant time learning about effective practices and developing a professional learning community focused on school improvement goals and student success.

3.08(1)(b)(viii)(E) Element E: The master teacher represents and advocates for the profession in contexts inside and outside of the classroom.

3.09 Master Certificate - Special Services

A master certificate represents achievements and contributions over and above expectations in the Special Services Provider Quality Standards outlined in section 5.0 of these rules. A master certificate is valid for the period of time for which the applicant's professional special services license is valid and is renewable as provided in section 7.02 of these rules.

3.09(1) A master certificate may be issued to an applicant who:

3.09(1)(a) holds a valid Colorado professional special services license and is employed in a school in the area of specialization;

3.09(1)(b) has been involved in ongoing professional development and training;

3.09(1)(c) has demonstrated advanced competencies or expertise as identified by the educator evaluation system employed in the district;

3.09(1)(d) has been recognized for outstanding achievements in the field of specialization; and

3.09(1)(e) meets the following requirements for the area(s) of specialization:

3.09(1)(e)(i) School Audiologist:

3.09(1)(e)(i)(A) holds national certification in audiology;

3.09(1)(e)(i)(B) has completed at least five years of full-time, continuous, successful, evaluated experience as a school audiologist;

3.09(1)(e)(i)(C) has completed graduate-level university training in school audiology and related areas;

3.09(1)(e)(i)(D) has been involved in at least four of the following areas: local, state, or national professional organizations; mentoring or supervision of peers; publication; professional presentations; funded grants; professional leadership; community activities and organizations; and

3.09(1)(e)(i)(E) has been granted an exemplary performance evaluation by a team of peers.

3.09(1)(e)(ii) School Counselor:

3.09(1)(e)(ii)(A) has held a Colorado professional special services license in school counseling for a minimum of five years;

3.09(1)(e)(ii)(B) has demonstrated professional growth through continuing education, professional leadership experiences, and exceptional program development;

3.09(1)(e)(ii)(C) has demonstrated commitment to the school counseling profession through professional organization involvement, supervision and training of other school counselors, publication of professional materials, and presentations at professional conferences; and

3.09(1)(e)(ii)(D) has demonstrated active community involvement, development of effective parent partnership programs, and promotion of cooperation with other professional educators.

3.09(1)(e)(iii) School Occupational Therapist:

3.09(1)(e)(iii)(A) holds a master's degree in occupational therapy from an accepted institution of higher education;

3.09(1)(e)(iii)(B) holds an active occupational therapy license from the Colorado Department of Regulatory Agencies;3.09 (1)(e)(iii)(C)has demonstrated outstanding contribution or accomplishments to the profession through at least three of the following: achieved certification or accreditation in an area of specialization of occupational therapy; supervised and mentored occupational therapy students; completed graduate-level professional coursework; completed research and/or publication in the area of school occupational therapy; made presentations at professional meetings; wrote grants; held or holds office in national, state, or local professional organizations or boards;

3.09(1)(e)(iii)(D) has received recognition for outstanding achievements in occupational therapy; and

3.09(1)(e)(iii)(E) is involved in community programs.

3.09(1)(e)(iv) School Orientation and Mobility Specialist:

3.09(1)(e)(iv)(A) has demonstrated outstanding professional activities in at least three of the following areas: authored professional publications; juried articles, newsletters or books; made presentations at professional meetings or conferences; mentored other professionals and supervised student practicum experiences; taught at the university or school district in service levels; served as a model for demonstrations; provided active community leadership by promoting disability education and participation; or wrote grant proposals which were funded; and

3.09(1)(e)(iv)(B) has received recognition for demonstrated leadership in the field.

3.09(1)(e)(v) School Physical Therapist:

3.09(1)(e)(v)(A) holds a master's degree in physical therapy;

3.09(1)(e)(v)(B) holds an active professional physical therapy license from the Colorado Department of Regulatory Agencies;3.09(1)(e)(v)(C) has demonstrated outstanding contributions or accomplishments to the profession through at least three of the following: achieved certification or accreditation in an area of specialization of physical therapy; supervised and mentored physical therapy students; completed graduate-level professional coursework; completed research and/or publication in the area of school physical therapy; presented at professional meetings; wrote grants; held or holds office in national, state or local professional organizations or boards;

3.09(1)(e)(v)(D) has received recognition for outstanding achievements in physical therapy; and

3.09 (1)(e)(v)(E) has been involved in community programs.

3.09(1)(e)(vi) School Nurse:

3.09(1)(e)(vi)(A) has completed additional preparation in advanced practice in nursing or specialties in school health-related fields or has earned additional certification in nursing administration, vocational education, or other certifications applicable to school nursing;

3.09(1)(e)(vi)(B) has demonstrated professional leadership experiences and exceptional program development;

3.09(1)(e)(vi)(C) has mentored school nurses and supervised practicum students;

3.09(1)(e)(vi)(D) has had active participation in school nurse professional organizations; and

3.09(1)(e)(vi)(E) has participated in teaching, research and/or publishing to further the specialty of school nursing.

3.09(1)(e)(vii) School Psychologist:

3.09(1)(e)(vii)(A) has demonstrated commitment to the profession of school psychology through active involvement and leadership in local, state, or national school psychology organizations;

3.09(1)(e)(vii)(B) has mentored school psychologists with an initial license and supervised school psychology interns;

3.09(1)(e)(vii)(C) has contributed to school and district program development;

3.09(1)(e)(vii)(D) has produced professional publications and presentations; and

3.09(1)(e)(vii)(E) has received recognition by peers for outstanding performance.

3.09(1)(e)(viii) School Social Worker:

3.09(1)(e)(viii)(A) has demonstrated leadership in state school social work organizations;

3.09(1)(e)(viii)(B) has actively participated in leadership roles in national social work organizations pr other community and human service organizations;

3.09(1)(e)(viii)(C) holds advanced credentials in the field (e.g., doctorate in social work, school social work specialist credential, diplomate in clinical social work, etc.);

3.09(1)(e)(viii)(D) has demonstrated outstanding skill in service to schools and children, such as the creation of innovative and successful programs and services to meet the needs of students and mentoring and supervising school social workers and other school professionals; and

3.09(1)(e)(viii)(E) has received recognition by peers for outstanding performance.

3.09(1)(e)(ix) Speech/Language Pathologist:

3.09(1)(e)(ix)(A) has demonstrated professional growth through professional leadership experiences and exceptional program development;

3.09(1)(e)(ix)(B) has demonstrated commitment through involvement in local, state, or national professional organizations;

3.09(1)(e)(ix)(C) has accepted additional responsibilities at the school, district, state, or national levels;

3.09(1)(e)(ix)(D) has published appropriate materials at the district, state, or national levels;

3.09(1)(e)(ix)(E) has presented original research and materials at professional conferences;

3.09(1)(e)(ix)(F) has supervised practicum and internship students; and

3.09(1)(e)(ix)(G) has mentored and supervised other speech/language pathologists.

3.10 Master Certificate - Principal

A master certificate represents achievements and contributions over and above the expectations in the Principal Quality Standards outlined in section 6.0 of these rules. A master certificate is valid for the period of time for which the applicant's professional principal license is valid and is renewable as provided in section 7.02 of these rules..

3.10(1) A master certificate may be issued to an applicant who:

3.10(1)(a) holds a valid Colorado professional principal license;

3.10(1)(b) has displayed excellence and depth in all of the content and performance standards required for the professional principal license;

3.10(1)(c) displays depth in all content knowledge; has modeled sustained commitment to improved student performance, to ongoing systemic renewal, and to strengthening the profession; and has demonstrated superior performance through accomplishments having significant impact on the school's educational community;

3.10(1)(c)(i) The master principal must possess knowledge in the following areas:

3.10(1)(c)(i)(A) systemic renewal strategies;

3.10(1)(c)(i)(B) multiple models for school and district management;

3.10(1)(c)(i)(C) dynamic political and policy movements in the state;

3.10(1)(c)(i)(D) promising practices in the professional development of educational leaders; and

3.10(1)(c)(i)(E) leading research and writing on instructional strategies, student learning, assessment methodology and supervisory techniques.

3.10(1)(c)(ii) The master principal must demonstrate the ability to:

3.10(1)(c)(ii)(A) create a community of learners who focus on student performance;

3.10(1)(c)(ii)(B) translate vision into program excellence;

3.10(1)(c)(ii)(C) provide value-added leadership to create an organization that has purpose, direction, and energy;

3.10(1)(c)(ii)(D) implement programs in schools that result in sustained improvement in student performance;

3.10(1)(c)(ii)(E) integrate multiple instructional models to meet diverse learning needs of both students and adults to enhance student performance;

3.10(1)(c)(ii)(F) imagine alternatives based on knowledge of best practices and create those alternatives as a model for others;

3.10(1)(c)(ii)(G) engage a diverse school community in sustained efforts for school improvement;

3.10(1)(c)(ii)(H) influence and provide a model for larger systems (e.g., the district, BOCES, or state);

3.10(1)(c)(ii)(I) contribute to the development of the profession through mentoring, teaching, writing, and other modalities; and

3.10(1)(c)(ii)(J) capitalize on opportunities presented by diverse stakeholders.

3.10(1)(d) has demonstrated evidence of positive impacts on student performance at the building level; and

3.10(1)(e) has contributed to the education community through service as a mentor, teacher, writer, researcher, or other service-oriented activity.

3.11 Master Certificate - Administrator

A master certificate represents achievements and contributions over and above expectations in the Administrator Quality Standards outlined in section 6.0 of these rules. A master certificate is valid for the period of time for which time the applicant's professional administrator license is valid and is renewable as provided in section 7.02 of these rules..

3.11(1) A master certificate may be issued to an applicant who:

3.11(1)(a) holds a valid Colorado professional administrator license;

3.11(1)(b) has displayed excellence and depth in all of the content and performance standards required for the professional license;

3.11(1)(c) has demonstrated excellence on all performance standards and displays depth in all content knowledge; has modeled sustained commitment to improved student performance, to ongoing systemic renewal, and to strengthening of profession; and has demonstrated superior performance through accomplishments having significant impact on an educational community;

3.11(1)(c)(i) The master administrator must possess knowledge in the following areas:

3.11(1)(c)(i)(A) systemic renewal strategies;

3.11(1)(c)(i)(B) multiple models for school and district management;

3.11(1)(c)(i)(C) dynamic political and policy movements in the state;

3.11(1)(c)(i)(D) promising practices in the professional development of educational leaders;

3.11(1)(c)(i)(E) leading research and writing on instructional strategies, student learning, assessment methodology, and supervisory techniques; and

3.11(1)(c)(ii) The master administrator must demonstrate the ability to:

3.11(1)(c)(ii)(A) initiate and sustain significant change in the district directed toward predetermined goals, themes, and needs;

3.11(1)(c)(ii)(B) create a community of learners who focus on student performance;

3.11(1)(c)(ii)(C) translate vision into program excellence;

3.11(1)(c)(ii)(D) provide value added leadership to create an organization that has shared purpose, direction, and energy;

3.11(1)(c)(ii)(E) provide incentives, direction, and motivation for development of programs that enhance student performance;

3.11(1)(c)(ii)(F) imagine alternatives based on knowledge of best practices and create those alternatives as a model for others;

3.11(1)(c)(ii)(G) engage a diverse community in sustained efforts for school improvement in the entire district;

3.11(1)(c)(ii)(H) influence and provide a model for the larger system (e.g., the district, BOCES, or state); and

3.11(1)(c)(ii)(I) contribute to the development of the profession through mentoring, teaching, writing, and other modalities.

3.11(1)(c)(ii)(J) capitalize on opportunities presented by diverse stakeholders.

3.11(1)(d) has demonstrated evidence of positive impacts on student performance throughout the district; and

3.11(1)(e) has contributed to the education community through service as a mentor, teacher, writer, researcher, or other service-oriented activity.

3.12 Alternative Teacher License

An alternative teacher license is valid for either a one-, two- or three-year period, as outlined below. An alternative teacher license authorizes the holder to be employed only as an alternative teacher while participating in an alternative teacher program, pursuant to the terms of an alternative teacher contract, as provided by 22-60.5-201(1)(a), C.R.S.

3.12(1) An alternative teacher license may be issued to an applicant who meets the following criteria:

3.12(1)(a) holds a bachelor's degree from an accepted institution of higher education;

3.12(1)(b) has submitted a complete application as defined in section 2.04 of these rules;

3.12(1)(c) has demonstrated subject matter knowledge in the endorsement area:

3.12(1)(c)(i) for elementary education teachers (grades K-6), early childhood educators (ages birth-8), early childhood special education (ages birth-8) and special education generalist teachers (ages 5-21), by passage of the approved content tests.

3.12(1)(c)(ii) for secondary teachers (grades 7-12) and all other endorsement areas not identified in Rule 3.12(1)(c)(i), :

3.12(1)(c)(ii)(A) holding an earned bachelor's or higher degree in the content area; or

3.12(1)(c)(ii)(B) 24 semester hours of specific coursework as demonstrated through transcript evaluation in the endorsement area; or

3.12(1)(c)(ii)(C) passage of the approved content test(s) relevant to the person's area of endorsement(s); and

3.12(1)(d) provides a statement of assurance signed by the human resources officer or other representative of the designated agency and the applicant verifying that the applicant is enrolled in an approved alternative teacher program, employed as a teacher or participating in a clinical experience, and that the placement is in the endorsement area for which the teacher has demonstrated appropriate subject matter knowledge.

3.12(2) An alternative teacher license is valid as follows:

3.12(2)(a) The alternative teacher license for a one-year program is valid for one year from date of issuance and may be renewed for one additional year, but only upon written evidence of: (1) unforeseen circumstances; and (2) that the employing school district, BOCES, charter school, or nonpublic school anticipates extending the alternative teacher's contract for one additional year pursuant to section 22-60.5-207(2), C.R.S.

3.12(2)(b) The alternative teacher license for a two-year program is valid for two years from date of issuance.

3.12(2)(c) A person may be employed as an alternative teacher for a total of three years for the purpose of receiving a special education generalist endorsement.

3.12(3) An alternative teacher license is valid in any school district, BOCES, nonpublic school, or charter school.

3.13 Teacher of Record License and Program

3.13(1) **Teacher of Record License.** A teacher of record license is valid for two years from the date of issuance and may be renewed once, but only if the holder did not complete a bachelor's degree due to unforeseen circumstances or hardship.

3.13(1)(a) A teacher of record license may be issued to an applicant who:

3.13(1)(a)(i) is enrolled in an accepted institution of higher education and has no more than 36 credit hours remaining for completion of a bachelor's degree that leads to a teacher license, but has not yet completed field-based experience requirements;

3.13(1)(a)(ii) is enrolled in a one- or two-year Teacher of Record Program pursuant to section 22-60.5-208.7, C.R.S.; and

3.13(1)(a)(iii) is or will be employed by an LEP ., in a position for which no other qualified licensed teacher has applied, and for which the LEP has determined that there is a critical teacher shortage as defined in Rule 2.01(17).

3.13(1)(b) The standards and competencies for an individual working under a teacher of record license are those set forth in section 5.0 of these rules.

3.13(1)(b) A teacher of record license may not be issued with an endorsement in special education.

3.13(2) **Teacher of Record Program.** An LEP is authorized to implement a one- or two-year teacher of record program and may employ a teacher of record only when the individual will fill a vacant position in a critical teacher shortage area and when no other qualified, licensed applicants applied for the posted vacant position.

3.13(2)(a) A teacher candidate employed in a teacher of record program established pursuant to this section shall hold a teacher of record license issued pursuant to section 22-60.5-201(1)(a.5), C.R.S., and section 3.13 of these rules.

3.13(2)(b) To assist the teacher of record in meeting the Teacher Quality Standards, established pursuant to section 22-2-109(3), C.R.S., and section 5.0 of these rules, the teacher of record program must include, at a minimum:

3.13(2)(b)(i) Course requirements and provided supports:

3.13(2)(b)(i)(1) identification of the courses and number of credit hours that a teacher candidate must complete before and while a teacher of record,

3.13(2)(b)(i)(2) identification of the time and support (e.g., financial resources, class coverage) the LEP will provide for the teacher of record to complete the course work;

3.13(2)(b)(i)(3) identification of accepted institution of higher education supports, including a description of how supports will be delivered (e.g., mentoring, professional development, evaluation, and LEP-identified supports); and

3.13(2)(b)(ii) professional development, teacher mentorship, the LEP's induction program, and other supports for the teacher of record over the course of the program.

3.13(2)(c) If the teacher of record successfully completes an induction program, the teacher of record may apply completion of the induction program toward meeting the requirements for a professional teacher license.

3.13(2)(d) An LEP shall treat a teacher of record as a first-year teacher for purposes of compensation and placement on a teacher salary schedule.

3.13(2)(e) The teacher of record program must be approved by the Department prior to submission of an application for the teacher of record license. At a minimum, the approval process will include review of:

3.13(2)(e)(i) the demonstration of need;

3.13(2)(e)(ii) proposed program details as outlined in section 3.13(2) of these rules;

3.13(2)(e)(iii) the teacher candidate's education, experience and demonstration of content-area competency; and

3.13(2)(e)(iv) assurances from the institution of higher education, LEP and teacher of record candidate.

4.00 Types of Authorizations

The Department is authorized to issue the following authorizations.

4.01 Adjunct Instructor Authorization (Grades K-12)

To address recruiting challenges and establish a diverse workforce, a school district, BOCES or charter school may employ as an adjunct instructor a specialist or content-area expert who is without formal educator training. The purpose of adjunct instruction is to provide students with highly specialized academic enrichment in support of required content areas.

4.01(1) An adjunct instructor authorization is issued for three years to an applicant who meets the following criteria:

4.01(1)(a) an applicant possesses outstanding talent or demonstrates specific abilities and knowledge in a particular area of specialization;

4.01(1)(b) a school district board of education or superintendent or the principal of a charter school or BOCES requests the applicant's services and provides evidence of the applicant's outstanding talent or specific abilities and particular knowledge for the assignment;

4.01(1)(c) the school district, BOCES, or charter school provides evidence that the applicant's services are required; and

4.01(1)(d) the applicant has been employed for at least five years in the area of specialization or holds an earned bachelor’s or higher degree in the area of specialization.

4.01(2) An adjunct instructor authorization may be renewed for succeeding three-year periods at the employing school district’s or charter school’s request when the school district or charter school provides documented evidence of ongoing need for the adjunct instructor’s services.

4.01(3) A person may be employed under an adjunct instructor authorization only by the school district or charter school that requested the person’s services.

4.01(4) A person who holds an adjunct instructor authorization and is employed by a school district may teach only under the general supervision of a licensed professional teacher. For the purposes of this provision, “general supervision” means support, mentorship, and supervision of an adjunct instructor, and does not require more than one teacher in a classroom at a time.

4.01(4)(a) A school district or charter school shall not employ a person under an adjunct instructor authorization as a full-time teacher; except

4.01(4)(a)(i) a rural school district may employ an adjunct instructor authorization-holder as a full-time teacher if there are no qualified, licensed applicants for the position.

4.02 Special Services Intern Authorization (Birth-21)

A special services intern works under the supervision of a Colorado licensed professional special services provider from the same discipline.

4.02(1) The special services intern authorization may be issued for one academic year. It may only be renewed if the special services intern is employed by a district or BOCES and the intern has not completed the approved program of preparation due to unforeseen circumstances or hardship.

4.02(2) The applicant must hold a bachelor's or higher degree from an accepted institution of higher education and be enrolled in an approved program of preparation for special services providers. The program of preparation must require an internship and offered by an accepted institution of higher education.

4.02(3) For the period of time while the authorization-holder serves as an intern, the authorization-holder may receive pay from the school district.

4.03 Emergency Authorization (Grades K-12, Ages Birth-21)

The applicant for an emergency authorization has not yet met the requirements for a Colorado initial teacher, principal, administrator or special services provider license or a school speech/language pathology assistant authorization but provides evidence of holding an earned bachelor's degree or higher from an accepted institution of higher education and of enrollment in an approved program of preparation.

4.03(1) An applicant for a school speech-language pathology assistant emergency authorization must hold a bachelor's degree in speech, language, and hearing sciences; communications disorders-speech sciences; or any other field with completion of 24 semester hours in speech, language, hearing sciences from an accepted institution of higher education, as determined by the Department's transcript review.

4.03(2) The emergency authorization may be issued for up to one year and may be renewed for up to one additional year when:

4.03(2)(a) a school district or BOCES requests the emergency authorization in order to employ a non-licensed teacher, principal, administrator, or special services provider;

4.03(2)(b) the district provides evidence of a need for specific and essential educational services which can be provided by the applicant, and which would otherwise be unavailable, due to a shortage of licensed educators with appropriate endorsements; and

4.03(2)(c) in the judgment of the State Board of Education,

4.03(2)(c)(i) the employment of the non-licensed applicant is essential to the preservation of the district's instructional program, and

4.03(2)(c)(ii) that the establishment of an alternative teacher program by the local board of education is not a practicable solution to resolve the demonstrated shortage.

4.03(3) The district may provide an induction program for an individual on an emergency authorization, as specified in sections 8.00 and 9.00 of these rules. Induction programs completed while holding an emergency authorization may count toward fulfilling requirements for a professional license.

4.04 Career and Technical Education Authorization (Grades 7-12)

4.04(1) An initial career and technical education (CTE) authorization may be issued for three years and may not be renewed. The applicant must meet the minimum qualifications adopted by the State Board for Community Colleges and Occupational Education under section 23-60-304(3)(a), C.R.S.

4.04(2) A professional career and technical education authorization may be issued for five years to an applicant who holds an initial career and technical education authorization and who meets the necessary requirements for holding a professional-level CTE authorization. It may be renewed for succeeding five-year periods. The applicant must meet the minimum qualifications or renewal requirements that the State Board for Community Colleges and Occupational Education adopts pursuant to section 23-60-304(3)(a), C.R.S.

4.04(4) Postsecondary career and technical education credentials are issued by the Colorado Community College System and are governed by the rules for the Administration of the Colorado Vocational Act, 8 CCR 1504-2.

4.05 Substitute Authorization (Grades K-12)

A substitute authorization may be issued to an applicant to serve as a substitute educator.

4.05(1) A substitute authorization is valid for one, three, or five years, as specified below. It may be renewed indefinitely upon application.

4.05(1)(a) A five-year substitute authorization may be issued when an applicant has completed an approved teacher preparation program (as indicated by a signed approved program verification form and conferred transcript) or holds or has held a Colorado initial or professional license or an equivalent out-of-state-issued license.:

4.05(1)(b) A three-year substitute authorization may be issued to an applicant who holds an earned bachelor's or higher degree from an accepted institution of higher education.

4.05(1)(c) A one-year substitute authorization may be issued when:

4.05(1)(c)(i) the applicant holds a high school diploma or its equivalent, and

4.05(1)(c)(ii) the applicant attests to having worked successfully with children.

4.06-4.08 Reserved

4.09 Interim Authorization (Grades K-12, Ages Birth-21)

An interim authorization may be issued to an out-of-state applicant who has not completely fulfilled Colorado educator licensure requirements.

4.09(1) An interim authorization is issued for one year and may be renewed upon application for one additional year.:

An applicant for interim authorization must meet the following criteria:4.09(1)(a) the applicant is certified, licensed, or eligible for certification or licensure as a teacher, principal, or administrator in another state; and

4.09(2)(b) the applicant has not successfully passed the approved content test(s) required for obtaining a Colorado initial license but otherwise meets the requirements for a Colorado initial license.4.09(3) The employing school district may provide an induction program for holders of interim authorizations as specified in sections 8.00 and 9.00 of these rules. Induction programs completed while holding interim authorizations may count toward fulfilling the requirements of a professional license.

4.10 Military Spouse Interim Authorization (Grades K-12, Ages Birth-21)

A military spouse interim authorization is valid for one year, and the Department of Education may renew the authorization for one additional year. A military spouse interim authorization may be issued to a military spouse when:

4.10(1)(a) the applicant is a spouse of an active-duty member of the United States armed forces who has been transferred to Colorado, is scheduled to be transferred to Colorado, is domiciled in Colorado or has moved to Colorado on a permanent change-of-station basis;

4.10(1)(b) the applicant is certified, licensed, or eligible for certification or licensure as a teacher special services provider, principal, or administrator in another state; and

4.10(1)(c) the applicant has not successfully passed the approved content test(s) required for obtaining an initial license but otherwise meets the requirements for an initial license.

4.10(3) The employing school district may provide an induction program for holders of military spouse interim authorization as specified in sections 8.00 and 9.00 of these rules. Induction programs completed while holding this authorization may count toward fulfilling the requirements of a professional license.

4.11 School Speech-Language Pathology Assistant Authorization (Ages Birth–21).

A school speech-language pathology assistant (SLPA) serves as a member of an educational team and is authorized to perform tasks prescribed, directed, and supervised by a licensed school speech-language pathologist (SLP) in implementing services for children/students with speech, language, cognitive, voice, and augmentative/alternative communication disorders and hearing impairments.

4.11(1) An SLPA authorization is valid for five years and may be renewed for succeeding five-year periods upon application and completion of content-related renewal requirements, including 50 contact hours of continuing education.

4.11(1(a) an applicant for SLPA authorization must: holds a bachelor's degree in speech communication, speech-language pathology, communication disorders-speech sciences or a bachelor's degree in any other field with completion of 24 semester hours in speech language hearing sciences from an accepted institution of higher education, as determined by the Department's transcript review;

4.11(1)(b) have successfully completed a speech-language pathology assistant program at a regionally or nationally accredited institution;

4.11(1)(c) have successfully completed a minimum 100 clock-hours of a school-based practicum under the supervision of an American Speech-Language-Hearing Association-certified and licensed school SLP, in accordance with the requirements of section 4.11(6) below; and

4.11(1)(d) have demonstrated through Department transcript review knowledge in the competencies specified in sections 4.11(3) and 4.11(4) below.

4.11(2) As determined by the Department of Higher Education, the SLPA applicant is knowledgeable about communication processes and basic human communication, and is able to articulate:

4.11(3)(a) the anatomical/physiological, psychological, developmental, linguistic, and cultural bases of communication processes;

4.11(3)(b) communication disorders, articulation, fluency, voice, and resonance, receptive and expressive language, and language-based learning disabilities;

4.11(3)(c) hearing disorders and their impact on speech and language;

4.11(3)(d) cognitive and social aspects of communication disorders;

4.11(3)(e) communication modalities including oral, written, manual, augmentative and alternative communication techniques, and assistive technologies;

4.11(3)(f) normal development of reading and writing in the context of the general education curriculum; and

4.11(3)(g) characteristics of exceptional students including categorical disabilities, learning differences, and developmental deficits.

4.11(4) The SLPA is knowledgeable about service delivery and must be able to:

4.11(4)(a) use appropriate verbal and written language in interactions with children/students, teachers, and related professionals;

4.11(4)(b) follow oral and written directions, including those in intervention plans:

4.11(4)(c) assist in the selection, preparation and presentation of instructional and other related materials;

4.11(4)(d) maintain accurate and concise documentation in a timely manner;

4.11(4)(e) implement documented intervention plans developed by the supervising speech-language pathologist;

4.11(4)(f) assist with clerical duties assigned by the supervising speech-language pathologist including, but not limited to, scheduling, safety/maintenance of supplies and equipment, and record keeping;

4.11(4)(g) collect data for quality improvement including child/student performance data in classrooms or individual therapy settings;

4.11(4)(h vi) record children's/students' each student's status with regard to progress towards established objectives as stated in the intervention plans, and report information to the supervising SLP;

4.11(4)(i) use constructive feedback from the supervising SLP to adapt or modify interaction and/or intervention with children/students;

4.11(4)(j) provide consistent, discriminating, and meaningful feedback and reinforcement to the children/students; and

4.11(4)(k) implement designated intervention goals/objectives in specified sequence.

4.11(5) The SLPA is knowledgeable about screening and assessment, but may not perform standardized or non-standardized diagnostic tests, including, but not limited to, feeding evaluations or interpreting test results, or counseling parents; and is able to:

4.11(5)(a) assist the SLP with speech-language and hearing screenings or assessments, without interpretation, and report results directly to the supervising SLP;

4.11(5)(b) assist with informal documentation as directed by the SLP.

4.11(5)(c) provide directly to the supervising SLP descriptive behavioral observations that contribute to screening/assessment results; and.

4.11(5)(d) support the SLP in research projects, in service training and public relations programs, including Child Find activities.

4.11(6) The SLPA is knowledgeable about ethical practice and maintaining appropriate relationships with children/students, families, teachers, and related service professionals, and must be able to:

4.11(6)(a) demonstrate respect for and maintain the confidentiality of information pertaining to students and their families;

4.11(6)(b) behave in accordance with educational facility guidelines;

4.11(6)(c) articulate an awareness of student needs and respect for cultural values;

4.11(6)(d) direct student, family, and educational professionals to the supervising SLP for information regarding testing, intervention, and referral;

4.11(6)(e) request assistance from the supervising SLP, as needed;

4.11(6)(f) manage time effectively and productively; and

4.11(6)(g) recognize personal professional limitations and perform within boundaries of training and job responsibilities.

4.12 Exchange Educator Interim Authorization (Grades K-12, Ages Birth-21)

An exchange educator interim authorization may be issued to a participant in a district-recognized educator exchange program who has not completely fulfilled Colorado educator licensure requirements.

4.12(1) An exchange educator interim authorization is valid for one year and may be renewed upon application for one additional year.

4.12(2) Applicants must:

4.12(2)(a) be a participant in a district-recognized educator exchange program; and

4.12(2)(b) be certified, licensed, or eligible for certification or licensure as a teacher, special services provider, principal, or administrator in another country.

4.13 Temporary Educator Eligibility Authorization (Grades K-12, Ages Birth-21)

The Department may issue a temporary educator eligibility (TEE) authorization to a person who is enrolled in an approved program of preparation for a special education educator or who is working to attain a special services provider initial license but who has not yet met the requirements for the applicable initial educator license or endorsement sought.

4.13(1) A TEE authorization is valid for one year. Renewal is contingent upon the applicant maintaining continuous progress toward completion of requirements for the license or endorsement sought. A TEE authorization may be renewed twice, for a total of three years.

4.13(2) A TEE authorization may be issued to an applicant when:

4.13(2)(a) a school district requests the TEE authorization in order to employ as a special education teacher, special services provider or special education administrator an applicant who does not yet meet licensing requirements but who meets the eligibility requirements specified below; and

4.13(2)(b) the district provides evidence of a demonstrated need for specific and essential educational services that can be provided by the applicant but that would be otherwise unavailable to students due to a shortage of licensed educators with appropriate endorsement(s).

4.13(3) In addition to the circumstances and criteria specified in 4.13(2)(a) and (b), a special services provider who has met the minimum degree requirement necessary to practice in the chosen profession but who has not completed a national content exam or school practicum may qualify for a TEE authorization under the supervision of a professionally licensed person in the same discipline.

4.13(4) TEE applicants seeking a special education teacher endorsement must:

4.13(4)(a) hold a bachelor's degree from an accepted institution of higher education; and

4.13(4)(b) be enrolled in an approved or alternative program of preparation or a special education director preparation program offered by an accepted institution of higher education. In the program, the teacher must:

4.13(4)(b)(i) receive high-quality professional development that is sustained, intensive, and classroom-focused;

4.13(4)(b)(ii) participate in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; and

4.13(4)(b)(ili) demonstrate satisfactory progress toward full licensure (e.g., transcripts demonstrating movement toward the completion of the educator preparation or degree program; attempting to pass the required content exam).

4.13(5) The employing school district may provide an induction program for an individual on a TEE authorization as specified in sections 8.00 and 9.00 of these rules. Induction programs completed while holding this authorization may count toward fulfilling the requirements of a professional license.

4.14 Educational Interpreter Authorization (Ages Birth-21)

The educational interpreter authorization allows a school district to employ a person to provide teaching and interpreting services for students who are deaf or hard of hearing.

4.14(1) An educational interpreter authorization is valid for five years and may be renewed for succeeding five-year periods upon application and submittal of evidence of completion of four (4) semester

hours of professional development or its equivalent of 60 contact/clock-hours in educational interpreter content.

4.14(2) The applicant must provide evidence of:

4.14(2)(a) an associate's or higher degree in educational interpreting or a related field;

4.14(2)(b) a certificate of completion for the Educational Interpreter Performance Assessment (EIPA) written exam;

4.14(2)(c) successful performance on one or more of the following professional skill assessments:

4.14(2)(c)(i) for sign language interpreters, a score of 3.5 or higher on the EIPA or current certification with the Registry of Interpreters for the Deaf (RID);

4.14(2)(c)(ii) for cued speech transliterators, a score of 4.0 or higher on the EIPA-Cued Speech exam or a passing score on the Cued Language Transliterator National Certification Exam; or

4.14(2)(c)(iii) for oral interpreters, a current Oral Transliteration Certificate from RID.

4.14(2)(d) demonstration of the following competencies:

4.14(2)(d)(i) effectively analyze communication for the speaker's style, affect, register, and overall prosodic and coherence markers;

4.14(2)(d)(ii) effectively manage the interpreting process in order to produce a linguistically appropriate representation of classroom communication, as based on student ability and the individualized education plan (IEP) goals;

4.14(2)(d)(iii) manage the process for effectively switching from one speaker and mode to another;

4.14(2)(d)(iv) utilize attending and interrupting techniques effectively, based on culturally appropriate methods and classroom protocol; and

4.14(2)(d)(v) effectively apply knowledge of:

4.14(2)(d)(v)(A) cognitive processes associated with consecutive and simultaneous interpreting, and the implication of each for interpreting classroom discourse;

4.14(2)(d)(v)(B) the differences between classroom discourse and conversational discourse, and the implication of those differences in the interpreting process;

4.14(2)(d)(v)(C) communication processes with inclusive students who are deaf or hard-of-hearing as related, but not limited to, issues of taking turns, avoiding overlap of speaking/signing processes, challenges associated with the use of multimedia and uncaptioned materials; and

4.14(2)(d)(v)(D) classroom subject matter concepts and associated vocabulary and terminology.

4.15 Junior Reserve Officer Training Corps (JROTC) Instructor Authorization (Grades 9-12)

A JROTC instructor authorization may be issued to allow a person to instruct a JROTC unit hosted by a school district.

4.15(1) The JROTC Instructor Authorization is valid for five years and may be renewed upon application and submittal of evidence of service-specific JROTC recertification.

4.15(2) Applicants must provide documented evidence of JROTC certification based upon successful acquisition of service-specific JROTC program director certification or completion of service-specific JROTC preparation program requirements.

4.16 Adult Basic Education Authorization

An adult basic education authorization allows a person to work as an adult basic education instructor in an adult education program operated by a school district before, during, or after regular school hours.

4.16(1) An adult basic education authorization is valid for five years and may be renewed for succeeding five-year periods upon application. To be eligible for renewal, the application must submit evidence of completion of 90 contact hours of adult education instructor professional development activities completed within the period of time for which the authorization was issued.

4.16(2) An adult basic education authorization may be issued to an applicant who:

4.16(2)(a) holds an associate's or higher degree from an accepted institution of higher education or accredited community, technical, or junior college; and

4.16(2)(b) has submitted an application for an adult basic education authorization, which includes:

4.16(2)(b)(i) a copy of an official degree-conferred transcript; and

4.16(2)(b)(ii) evidence of the completion of adult basic education coursework, including:

4.16(2)(b)(ii)(A) a copy of an official transcript from an accepted institution of higher education or accredited community, technical, or junior college showing the completion of adult basic education coursework within the seven years immediately preceding the date of application. Coursework must include: introduction to adult education; planning and delivering instruction to adult learners; teaching adult basic education/adult secondary education; and teaching English as a second language (ESL) to adults; or

4.16(2)(b)(ii)(B) evidence of completion of other adult basic education coursework in lieu of an official transcript showing completion of courses specified in section 4.16(1)(b)(ii)(A). The applicant must submit the Department's equivalency form and copies of official transcripts from an accepted institution of higher education or accredited community, technical, or junior college showing coursework completed within the seven years immediately preceding the date of application. The Department will determine whether the coursework is equivalent to that listed in section 4.16(1)(b)(ii)(A).

4.16(3)) Applicants who have not met the requirements as specified in section 4.16(2)(b)(ii)may submit evidence of experience, including:

4.16(3)(a) documentation illustrating 750 hours of performance of adult basic education instruction, adult secondary education instruction, or ESL instruction to adults; and

4.16(3)(b) the Department's observation form, which includes observations of the applicant's instruction and competencies in adult basic education. The observation form must be completed by a qualified observer as determined by the Department.

4.17 Principal Authorization (Grades K-12)

A principal authorization may be issued to a person who does not hold or may not qualify for an initial principal license but who holds a bachelor's or higher degree from an accepted institution of higher education and who will be employed by a district, charter school, or nonpublic school under an individualized alternative principal program or who participates in an alternative principal program through a designated agency. A school district may employ a person who holds a principal authorization to perform principal or assistant principal duties only when the authorization-holder is supervised by a professional principal license-holder.

4.17(1) A principal authorization is valid for three years and may not be renewed.

4.17(2) To submit a principal authorization application for an individualized alternative principal program, an applicant, in collaboration with a school district, charter school, nonpublic school or the institute, must submit to the Department documentation pursuant to section 13.01 of these rules.

4.17(3) To submit a principal authorization application for a person participating in an alternative principal program through a designated agency, the applicant must provide documentation of employment as an alternative principal or assistant principal and enrollment in an alternative principal program approved by the Colorado Department of Education pursuant to section 13.02 of these rules.

4.17(4) Upon successful completion of an individualized alternative principal program or alternative principal program, if the principal authorization-holder has three or more years of licensed experience in a school, that person may apply for an initial principal license.

4.17(5) The employer may provide an induction program for an individual working under a principal authorization as specified in section 9.00 of these rules. Induction programs completed while holding this authorization may count toward fulfilling requirements for a professional license.

4.18 Native American Language & Culture Instructor Authorization (Grades K-12)

A Native American language and culture instructor authorization may be issued to a person to provide instruction in the Native American language and culture in which the person has demonstrated expertise.

4.18(1) The Native American language and culture instructor authorization is valid for five years. It may be renewed for succeeding five-year periods upon application and at the request of the school district. The district must submit evidence of continuing need.

4.18(2) To receive a Native American language and culture instructor authorization, the applicant must:

4.18(2)(a) qualify for an adjunct instructor authorization as specified in section 4.01 of these rules; or

4.18(2)(b) demonstrate expertise in a Native American language of a federally recognized tribe by:

4.18(2)(b)(i) providing evidence of demonstrated expertise in a Native American language of a federally recognized tribe, as verified by the employing school district;

4.18(2)(b)(ii) identifying a partnering, licensed teacher, as verified by the employing school district; and

4.18(2)(b)(iii) meeting the following objective standards, as verified by the employing school district:

4.18(2)(b)(iii)(A) is able to listen, speak, read and write the Native American language identified at a proficient level for the purposes of interpersonal, interpretive, and presentational communication;

4.18(2)(b)(iii)(B) is knowledgeable about the language and related culture, can describe their interrelationships, and is able to articulate to students, other educators and interested stakeholders:

4.18(2)(b)(iii)(B)(I) perspectives related to historic and contemporary ideas, attitudes, and values of the Native American culture;

4.18(2)(b)(iii)(B)(II) the practices within the Native American culture that are based on historical, geographical, and sociological influences;

4.18(2)(b)(iii)(B)(III) the contributions and achievements of the culture to the fields of literature, the arts, science, mathematics, business, technology, and other areas; and

4.18(2)(b)(iii)(B)(IV) the geographic, economic, social, and political features of traditional and contemporary cultures associated with the Native American language being taught;

4.18(2)(b)(iii)(C) and is able to create a learning environment that accepts, encourages, and promotes the culture and language that Native American language speakers bring into the classroom.

4.18(3) A holder of a Native American language and culture instruction authorization is prohibited from teaching any subject other than the Native American language for which he or she has demonstrated expertise.

5.00 Teacher and Special Services Provider Licensure Standards (Teacher Quality Standards)

Teacher Quality Standards

In addition to a demonstrated understanding of the Colorado Academic Standards; the Colorado Reading To Ensure Academic Development Act (Colorado READ Act); strict data privacy and security practices; special education regulations as outlined in section 23-1-121(2)(c.7), C.R.S.; and professional practices to address multiple pathways for students to be postsecondary and workforce ready as outlined in sections 22-2-106, 22-2-136, 22-7-1003(15), and 22-32-109, C.R.S., the following serve as standards for

authorization of programming and content for educator preparation programs and licensing of all teacher candidates in Colorado.

5.01 Quality Standard I: Teachers demonstrate mastery of and pedagogical expertise in the content they teach. The elementary teacher is an expert in literacy and mathematics and is knowledgeable in all other content that he or she teaches (e.g., science, social studies, the arts, physical education or world languages). The secondary teacher has knowledge of literacy and mathematics and is an expert in the content area(s) in which the teacher is endorsed.

5.01(1) Element A: Teachers provide instruction that is aligned with the Colorado Academic Standards and their district's organized plan of instruction.

5.01(2) Element B: Teachers develop and implement lessons that connect to a variety of content areas/disciplines and emphasize literacy and mathematics.

5.01(3) Element C: Teachers demonstrate knowledge of the content, central concepts, inquiry, appropriate evidence-based instructional practices, and specialized characteristics of the disciplines they teach.

5.02 Quality Standard II: Teachers establish a safe, inclusive, and respectful learning environment for a diverse population of students.

5.02(1) Element A: Teachers foster a predictable learning environment characterized by acceptable student behavior and efficient use of time, in which each student has a positive, nurturing relationship with caring adults and peers.

5.02(2) Element B: Teachers demonstrate an awareness of, a commitment to, and a respect for multiple aspects of diversity, while working toward common goals as a community of learners.

5.02(3) Element C: Teachers engage students as individuals, including those with diverse needs and interests, across a range of ability levels by adapting their teaching for the benefit of all students.

5.02(4) Element D: Teachers work collaboratively with the families and/or significant adults for the benefit of students.

5.03 Quality Standard III: Teachers plan and deliver effective instruction and create an environment that facilitates learning for their students.

5.03(1) Element A: Teachers demonstrate knowledge about the ways in which learning takes place, including the levels of intellectual, physical, social, and emotional development of their students.

5.03(2) Element B: Teachers use formal and informal methods to assess student learning and provide feedback, and they use results to inform planning and instruction.

5.03(3) Element C: Teachers utilize appropriate, available technology to engage students in authentic learning experiences.

5.03(4) Element D: Teachers establish and communicate high expectations and support the development of critical-thinking and problem-solving skills.

5.03(5) Element E: Teachers provide students with opportunities to work in teams and develop leadership.

5.03(6) Element F: Teachers model and promote effective communication.

5.04 Quality Standard IV: Teachers demonstrate professionalism through ethical conduct, reflection, and leadership.

5.04(1) Element A: Teachers demonstrate high standards for professional conduct.

5.04(2) Element B: Teachers link professional growth to their professional goals.

5.04(3) Element C: Teachers respond to a complex, dynamic environment.

5.04(4) Element D: Teachers demonstrate leadership in their school, the community and the teaching profession.

Special Services Provider Quality Standards

The following must serve as standards for authorization of program content for educator preparation programs and licensing of all special services provider candidates. Colorado has identified nine categories of special services providers, referred to as "other licensed personnel" in law and State Board rules). 1 CCR 301-101 further outlines the quality standards and elements applicable to specific special services provider groups, including:

- School Audiologist
- School Occupational Therapist
- School Physical Therapist
- School Counselor
- School Nurse
- School Orientation and Mobility Specialist
- School Psychologist
- School Social Worker
- School Speech-Language Pathologist

5.05 Quality Standard I: Special services providers demonstrate mastery of and expertise in the domain for which they are responsible.

5.05(1) Element A: Special services providers provide services aligned with state and federal laws, local policies and procedures, Colorado Academic Standards, their district's organized plans of instruction, and the individual needs of their students.

5.05(2) Element B: Special services providers demonstrate knowledge of effective services that support learning.

5.05(3) Element C: Special services providers demonstrate knowledge of their professions and integrate evidence-based practices and research findings into their services.

5.06 Quality Standard II: Special services providers support or establish safe, inclusive, and respectful learning environments for a diverse population of students.

5.06(1) Element A: Special services providers foster a safe and accessible learning environment characterized by acceptable student behavior and efficient use of time, in which each student has a positive, nurturing relationship with caring adults and peers.

5.06(2) Element B: Special services providers understand and respond to diversity within the home, school, and community.

5.06(3) Element C: Special services providers engage students as individuals with diverse needs and interests, across a range of ability levels, by adapting services for the benefit of students.

5.06(4) Element D: Special services providers work collaboratively with the families and/or significant adults for the benefit of students.

5.07 Quality Standard III: Special services providers plan and deliver effective services in an environment that facilitates student learning.

5.07(1) Element A: Special services providers apply knowledge of the ways in which learning takes place, including the appropriate levels of intellectual, physical, social, and emotional development of their students.

5.07(2) Element B: Special services providers utilize formal and informal assessments to inform service delivery.

5.07(3) Element C: Special services providers utilize appropriate, available technology to engage students in authentic learning experiences.

5.07(4) Element D: Special services providers establish and communicate high expectations and support the development of critical-thinking, problem-solving, and self-advocacy skills.

5.07(5) Element E: Special services providers develop and implement services related to student needs, learning, and progress towards goals.

5.07(6) Element F: Special services providers model and promote effective communication.

5.08 Quality Standard IV: Special services providers demonstrate professionalism through ethical conduct, reflection, and leadership.

5.08(1) Element A: Special services providers demonstrate high standards for ethical and professional conduct.

5.08(2) Element B: Special services providers link professional growth to their professional goals.

5.08(3) Element C: Special services providers respond to a complex, dynamic environment.

5.08(4) Element D: Special services providers demonstrate leadership and advocacy in the school, the community, and their profession.

English Language Learner Quality Standards for Teachers and Special Services Providers

In order to ensure that all Colorado educators are well-equipped and able to teach Colorado's diverse student population, all educator pre-service programs, including approved programs of preparation at institutions of higher education and designated agencies providing alternative teacher programs, must ensure the following standards are fully taught and practiced in their programs. The following standards equate to approximately 6 semester hours or the equivalent of 90 clock-hours.

Note: The following standards are to supplement, not supplant, the culturally and linguistically diverse (CLD) endorsement. These standards can and should be aligned to the CLD endorsement standards as noted in 1 CCR 301-101 if the educator preparation entity is seeking to graduate students with dual endorsements in a content area and in CLD.

5.09 Quality Standard I: Educators are knowledgeable about CLD populations.

5.09(1) Element A: Educators are knowledgeable in and can apply the major theories, concepts, and research related to culture, diversity, and equity in order to support academic access and opportunity for CLD student populations.

5.09(2) Element B: Educators are knowledgeable in and can use progress monitoring, in conjunction with formative and summative assessments, to support student learning.

5.10 Quality Standard II: Educators should be knowledgeable in first and second language acquisition.

5.10(1) Element A: Educators understand and can implement strategies and select materials to aid in English language and content learning.

5.10(2) Element B: Educators are knowledgeable in and can apply the major theories, concepts and research related to culture, diversity and equity in order to support academic access and opportunity for CLD student populations.

5.11 Quality Standard III: Educators should understand literacy development for CLD students.

5.11(1) Element A: Educators are knowledgeable in and can apply the major theories, concepts, and research related to literacy development for CLD students.

5.11(2) Element B: Educators understand and can implement strategies and select materials to aid in English language and content learning.

5.12 Quality Standard IV: Educators are knowledgeable in the teaching strategies, including methods, materials, and assessment for CLD students.

5.12(1) Element A: Educators are knowledgeable in, understand and able to use the major theories, concepts, and research related to language acquisition and language development for CLD students.

5.12(2) Element B: Educators are knowledgeable in and can use progress monitoring, in conjunction with formative and summative assessments, to support student learning.

6.00 Principal and Administrator Licensure Standards (Principal Quality Standards)

Principal Quality Standards

A principal must demonstrate an understanding of the Colorado Academic Standards; the Colorado Reading To Ensure Academic Development Act (Colorado READ Act); strict data privacy and security practices; special education laws regulations, as outlined in section 23-1-121(2)(c.7), C.R.S.; and professional practices to address multiple pathways for students to be postsecondary and workforce ready, as outlined in sections 22-2-106, 22-2-136, 22-7-1003(15), and 22-32-109, C.R.S. The following standards must guide the development of the content of principal preparation programs offered by accepted institutions of higher education, designated agencies, and individualized alternative principal programs and must guide the ongoing professional development of these principals.

6.01 Quality Standard I: Principals demonstrate organizational leadership by strategically developing a vision and mission, leading change, enhancing the capacity of personnel, distributing resources, and aligning systems of communication for continuous school improvement.

6.01(1) Element A: Principals collaboratively develop the vision, mission, and strategic plan, based on a cycle of continuous improvement of student outcomes, and facilitate their integration into the school community.

6.01(2) Element B: Principals collaborate with staff and stakeholders to implement strategies for change to improve student outcomes.

6.01(3) Element C: Principals establish and effectively manage systems that ensure high-quality staff.

6.01(4) Element D: Principals establish systems and partnerships for managing all available school resources to facilitate improved student outcomes.

6.01(5) Element E: Principals facilitate the design and use of a variety of communication strategies with all stakeholders.

6.02 Quality Standard II: Principals demonstrate inclusive leadership practices that foster a positive school culture and promote safety and equity for all students, staff, and community members.

6.02(1) Element A: Principals create a professional school environment and foster relationships that promote staff and student success and well-being.

6.02(2) Element B: Principals ensure that the school provides an orderly and supportive environment that fosters a sense of safety and well-being.

6.02(3) Element C: Principals commit to an inclusive and positive school environment that meets the needs of all students and promotes the preparation of students to live productively and contribute to the diverse cultural contexts of a global society.

6.02(4) Element D: Principals create and utilize systems to share leadership and support collaborative efforts throughout the school.

6.02(5) Element E: Principals design and/or utilize structures and processes which result in family and community engagement and support.

6.03 Quality Standard III: Principals demonstrate instructional leadership by: aligning curriculum, instruction and assessment; supporting professional learning; conducting observations; providing actionable feedback; and holding staff accountable for student outcomes.

6.03(1) Element A: Principals establish, align and ensure implementation of a district/BOCES plan of instruction, instructional practice, assessments and use of student data that result in academic growth and achievement for all students.

6.03(2) Element B: Principals foster a collaborative culture of job-embedded professional learning.

6.03(3) Element C: Principals demonstrate knowledge of effective instructional practice and provide feedback to promote continuous improvement of teaching and learning.

6.03(4) Element D: Principals hold all staff accountable for setting and achieving measurable student outcomes.

6.04 Quality Standard IV: Principals demonstrate professionalism through ethical conduct, reflection and external leadership.

6.04(1) Element A: Principals demonstrate high standards for professional conduct.

6.04(2) Element B: Principals link professional growth to their professional goals.

6.04(3) Element C: Principals build and sustain productive partnerships with key community stakeholders, including public and private sectors, to promote school improvement, student learning and student well-being.

English Language Learner Quality Standards for Principals

6.05 English Language Learner Principal Quality Standards

In order to ensure that all Colorado school-based leaders are well-equipped and able to support Colorado educators in teaching the state's diverse student population, all principal pre-service programs including approved programs of preparation at Colorado institutions of higher education and individualized alternative principal programs must ensure the standards outlined in sections 5.09 to 5.12 of these rules are fully taught, addressed and practiced in their programs.

Administrator Quality Standards

6.06 Administrator Licensure Standards (Administrator Quality Standards)

An administrator applicant must hold an earned bachelor's or higher degree from an accepted institution of higher education, must have completed an approved administrator program, and must have demonstrated the competencies specified below:

6.06(1) In addition to knowledge of and the ability to demonstrate the requirements in sections 6.01- 6.05 (Principal Quality Standards) of these rules, the following administrator rules describe additional competencies required to lead at the district level.

6.06(1)(a) Administrators demonstrate organizational leadership, including responsibility for:

6.06(1)(a)(i) district/program vision, mission, and strategic plan;

6.06(1)(a)(ii) continual and sustainable district/program improvement;

6.06(1)(a)(iii) recruitment, development, supervision, evaluation, and retention of high-quality personnel;

6.06(1)(a)(iv) district and community partnerships;

6.06(1)(a)(v) communication with internal and external stakeholders;

6.06(1)(a)(vi) fiscal and resource management, as well as resource-development strategies; and

6.06(1)(a)(vii) compliance with policies, laws, rules, and regulations.

6.06(1)(b) Administrators demonstrate inclusive leadership practices and systems that include responsibility for:

6.06(1)(b)(i) coherent systems of teaching, learning, and leading, including curricular and extra-curricular activities;

6.06(1)(b)(ii) positive culture and climate for staff and student success and well-being;

6.06(1)(b)(iii) safe and orderly environments for the protection and welfare of all;

6.06(1)(b)(iv) equitable and inclusive practices to address diverse student populations and needs;

6.06(1)(b)(v) systems for collaborative and distributed leadership; and

6.06(1)(b)(vi) family and community engagement.

6.06(1)(c) Administrators demonstrate instructional leadership that includes responsibility for:

6.06(1)(c)(i) aligned systems of curriculum, instruction, and assessment;

6.06(1)(c)(ii) professional learning for all staff that supports student learning;

6.06(1)(c)(iii) student outcomes for growth, achievement, engagement, and post-secondary and workforce readiness; and

6.06(1)(c)(iv) continuous improvement accountability systems (e.g., goal setting, data-informed decisions, multi-tiered systems of support and research-based practices).

6.06(1)(d) Administrators demonstrate professionalism that includes responsibility for:

6.06(1)(d)(i) ethical behavior and professional norms;

6.06(1)(d)(ii) professional learning, continuous growth and ongoing reflection;

6.06(1)(d)(iii) conflict resolution, problem solving and decision making;

6.06(1)(d)(iv) board-administrator relationships;

6.06(1)(d)(v) partnerships with internal stakeholders and external organizations; and

6.06(1)(d)(vi) democratic and civic participation and advocacy.

English Language Learner Quality Standards for Administrators

6.07 English Language Learner Administrator Standards

In order to ensure that all school-based leaders are well equipped and able to support educators in teaching the state's diverse student population, all administrator pre-service programs, including approved programs of preparation at institutions of higher education, must ensure the standards outlined in sections 5.09-5.12 of these rules are fully taught, addressed, and practiced in their programs.

Standards for Professional Competencies for an Initial Administrator License with a Director of Special Education Endorsement

6.08 Standards for Professional Competencies for an Initial Administrator License with a Director of Special Education Endorsement

In addition to knowledge of and the ability to demonstrate the requirements in section 6.06 of these rules (Administrator Quality Standards), the following standards must be addressed by an accepted institution of higher education's director of special education initial preparation. They are also the standards for the ongoing professional development of these educators. The specific performance indicators for each of

these standards must be described in the Department's Performance Indicators for Professional Competency Standards.

6.09 Quality Standard I – Foundations for Leadership: The director of special education must have a solid foundation for leadership by: (a) demonstrating a comprehensive knowledge of special education organization, programs, laws and best practices; and (b) setting high standards and a positive direction for special education consistent with the values, mission, and vision of the state and administrative unit.

6.10 Quality Standard II – Special Education and School Systems: The director of special education must demonstrate knowledge of organizational culture, apply a systems approach to the development of special education programs and processes, and facilitate effective system change.

6.11 Quality Standard III – Law and Policy: The director of special education is knowledgeable about and able to apply relevant federal and state statutes, regulations, case law, and policies that impact all children, including those with disabilities.

6.12 Quality Standard IV – Instructional Leadership: The director of special education is able to integrate general education and special education, including curriculum, instructional strategies, assessments, and individualized instruction, in support of academic achievement for all children, including those with disabilities.

6.13 Quality Standard V – Program Planning and Organization: The director of special education is able to evaluate the efficacy and efficiency of special education programs, facilities, services, and monitoring systems. The director is able to use the evaluation data to improve the programs and services for all children, including those with disabilities.

6.14 Quality Standard VI – Human Resource Functions: The director of special education must have the knowledge and ability to recruit, retain, and evaluate qualified personnel.

6.15 Quality Standard VII – Parent, Family and Community Engagement: The director of special education is knowledgeable about and able to facilitate partnerships and engage parents, families, and communities in the implementation of special education programs.

6.16 Quality Standard VIII – Budget and Resources: The director of special education is knowledgeable about and able to demonstrate school district budgeting and resource allocation, including those related to special education.

Standards for Professional Competencies for an Initial Administrator License with a Director of Gifted Education Endorsement

6.17 Standards for Professional Competencies for an Initial Administrator License with a Director of Gifted Education Endorsement.

In addition to knowledge of and the ability to demonstrate the requirements in section 6.06 (Administrator Quality Standards) of these rules, the following standards must be addressed by the director of gifted education initial preparation program offered by accepted institutions of higher education. They must also guide the ongoing professional development of these educators. The director of gifted education must demonstrate the performance indicators specific to gifted education and the Department's Performance Indicators for Professional Competency Standards.

6.18 Quality Standard I - Foundations for Leadership: The director of gifted education is knowledgeable about professional, ethnical leadership and supports educators, students, family, and community members to effectively address outcomes for gifted learners. The director sets

high standards and a positive direction for gifted education consistent with values, mission, and vision of the state and administrative unit.

6.18(1) Element A: The director of gifted education demonstrates methods to develop vision, mission, goals, and design for gifted education programs.

6.18(2) Element B: The director brings together stakeholders to implement general program and gifted-student goals and best practices in gifted education.

6.89(3) Element C: The director implements collaborative decision-making strategies, as appropriate.

6.18(4) Element D: The director applies knowledge of models and practices in change theory for improvement efforts.

6.18(5) Element E: The director is able to define, advocate for, and make changes with regard to issues in gifted education.

6.19 Quality Standard II - Gifted Education and School Systems: The director of gifted education is knowledgeable about organizational culture, applies a systems approach to the development of gifted education programs, and implements processes in order to facilitate effective system change.

6.19(1) Element A: The director of gifted education understands how systems within a district or administrative unit influence gifted-student instruction and performance.

6.19(2) Element B: The director fosters a school and community culture that supports gifted-student programming within and outside the school setting.

6.19(3) Element C: The director applies a systems approach for developing gifted programs to enhance integrated support and service to gifted students and their families.

6.01 Quality Standard III - Law and Policy: The director of gifted education must have comprehensive knowledge and the ability to apply state and federal laws, regulations, case laws, and policies that impact all children, including those with exceptional academic and talent aptitude.

6.01(1) Element A: The director of gifted education demonstrates proficiency in gifted education policy, regulations, case law, and federal programs supporting key instructional needs of gifted students.

6.20(2) Element B: The director identifies needs and recommends and promotes new policies.

6.01(3) Element C: The director clarifies law and regulations for all stakeholders.

6.01(4) ELEMENT D: The director ensures implementation of privacy laws and district confidentiality and privacy policies.

6.20(5) Element E: The director develops, revises, and/or make recommendations to amend school board or administrative unit policy to align with laws and regulations.

6.12 Quality Standard IV - Instructional Leadership: The director of gifted education is able to blend the resources of general and gifted education for the positive benefit of gifted students. The director is knowledgeable about best practices for gifted learners, including specialized curriculum, effective instructional strategies, assessments, social-emotional/affective support, and individualized instruction.

6.21(1) Element A: The director of special education demonstrates knowledge of and support for identification methods and procedures.

6.21(2) Element B: The director interprets and shares data to increase the identification of under-identified, underserved populations and aligns professional development initiatives to needs.

6.21(3) Element C: The director understands models of differentiation, acceleration, and research-based instructional practices that support rigor, challenge, depth, and complexity in instruction and assessment for gifted students.

6.21(4) Element D: The director establishes high expectations for all gifted students and families, including underserved populations and twice-exceptional learners.

6.21(5) Element E: The director monitors standards-based advanced learning plans in order to ensure alignment of programming options to gifted students' needs.

6.21(6) Element F: The director blends the instructional needs of gifted students into the school system.

6.21(7) Element G: The director supports and defends gifted education initiatives within the general education setting.

6.22 Quality Standard V - Program Planning and Organization: The director of gifted education evaluates the efficacy and efficiency of gifted education programing, delivery settings, services, and monitoring systems and uses evaluation data to improve the programs and services for all children, including those with exceptional academic and talent aptitude.

6.22(1) Element A: The director of gifted education designs and implements needs-assessments and uses data to inform restructuring or adjustments to gifted programs.

6.22(2) Element B: The director develops and implements action plans for gifted education based upon student outcomes, challenges, root causes, improvement strategies, and benchmarks.

6.22(3) Element C: The director is knowledgeable about effective, research-based gifted education models and practices that have positive impacts on gifted students.

6.22(4) Element D: The director supports and/or builds gifted programs that effectively embed district and alternative pathways to college and career outcomes.

6.23 Quality Standard VI - Human resource functions: The director of gifted education is able to recruit, retain, supervise, and evaluate qualified personnel.

6.23(1) Element A: The director of gifted education understands educator effectiveness standards in order to observe and evaluate teachers of gifted students.

6.23(2) Element B: The director designs ongoing professional development that increases educators' capacity to understand and address the needs of gifted students.

6.34(3) Element C: The director promotes an understanding and sensitivity toward culture, ethnicity, and diversity of language within staff and student body.

6.23(4) Element D: The director understands the skills and knowledge necessary for educators to meet the specific needs of gifted and talented students.

6.24 Quality Standard VII - Parent, Family and Community Partnership: The director of gifted education is knowledgeable about effective communication, decision-making, problem-solving, and conflict-resolution strategies. The director must be able to facilitate partnerships and engage parents, families, educators, administrators, students, and communities in the implementation of gifted education programs.

6.24(1) Element A: The director of gifted education promotes understanding, resolves conflicts, and builds consensus for improving gifted programs.

6.24(2) Element B: The director develops the infrastructure to include parents, families, and the community in gifted education program.

6.24(3) Element C: The director applies methods and systems to maximize parent and family involvement.

6.45(4) Element D: The director implements family partnership practices that support gifted student achievement and school involvement.

6.24(5) Element D: The director cooperatively develops and shares a vision for the district or administrative unit that supports and promotes gifted education.

6.25 Quality Standard VIII - Budget and Resources: The director of gifted education must be able to budget and allocate resources related to gifted education.

6.56(1) Element A: The director of gifted education develops and manages a gifted education budget. The director facilitates stakeholders' involvement in a collaborative budget development process.

6.25(2) Element B: The director leverages resources for gifted education within school systems.

6.25(3) Element C: The director's gifted education budget addresses state requirements.

6.25(4) Element D: The director conducts research and needs assessments in order to accurately identify specific budget needs and promotes initiatives for gifted education funding through grants and other funding opportunities.

7.00 Renewal of Colorado Licenses

The following must serve as standards for the renewal of initial and professional licenses and master certificates and endorsements thereon.

7.01 Initial Licenses

An initial teacher, special services provider, principal, or administrator license and endorsements may be renewed once for a period of three years for applicants who have not completed the requirements for a professional license as specified in sections 3.05-3.07 of these rules. The State Board of Education may renew the license-holder's initial license for one or more additional three-year periods for good cause if the holder is unable to complete an approved induction program for reasons other than incompetence. A renewal request must include a complete application for renewal, payment of the required fee, and a statement concerning the circumstances related to the applicant's inability to complete the induction program.

7.02 Professional Licenses

A professional teacher, special services provider, principal, or administrator license and endorsements may be renewed for a period of seven years upon submission of a complete application for renewal, payment of the required fee, and completion of professional development activities that meet the requirements of this section 7.02. To be eligible to renew a professional license, the holder must complete such activities within the period of time for which the professional license is valid or, if expired, within the seven years immediately preceding the date of application. An applicant for renewal must meet the following requirements:

7.02(1) Professional development activities: An educator requesting license renewal must complete professional development activities equivalent to six semester hours or 90 contact hours. Applicants must electronically submit an affidavit attesting to the completion of applicable professional development. Such activities must be related to increasing the license-holder's competence in his or her existing or potential endorsement area; to increasing the license-holder's skills and competence in delivery of instruction in his or her existing or potential endorsement area; to evidence-based practices for teaching reading and literacy; or to culturally and linguistically diverse education. Professional development activities may be selected from one or more of the following:

7.02(1)(a) In-service education: A school district or BOCES are approved entities for in-service education programs. One semester hour of credit may be granted for every 15 contact hours of participation.

7.02(1)(b) College or university credit: College or university credit may be earned from accepted institutions of higher education or accepted community, technical, or junior colleges. Courses must be directly related to the standards for professional development as provided in section 7.02 of these rules. Copies of official transcripts may be submitted, in addition to the online affidavit form, as evidence of completion of college/university credit. Though submittal of official transcripts is not required, the Department may audit renewal applications to verify college or university credit.

7.02(1)(c) Educational travel: Educational travel must be directly applicable to the endorsement area of the license-holder as documented by the license-holder and accompanied by supervisor verification. One semester hour of credit may be granted for every 15 contact hours of involvement. Travel time to and from the intended destination must not be included in the hours accumulated.

7.02(1)(d) Involvement in school and/or district initiatives: One semester hour of credit may be granted for every 15 contact hours of participation. When verified by the license-holder's supervisor, activities may include but are not limited to:

7.02(1)(d)(i) membership on school site or district accountability or improvement committee(s);

7.02(1)(d)(ii) curriculum, standards, or assessment development or implementation in the license-holder's endorsement area;

7.02(1)(d)(iii) the implementation of standards;

7.02(1)(d)(iv) the development or implementation of evidence-based practices for teaching reading, literacy, or numeracy; and

7.02(1)(d)(v) professional development in the area of culturally and linguistically diverse education.

7.02(1)(e) Internships/Externships: Advanced field experiences offered as part of graduate study or other professional training and designed to acquire knowledge or enhance the skills of the educator may qualify as an internship. The internship must be directly related to the standards for professional development as provided in section 7.02 of these rules. One semester hour of credit may be accepted for every 15 contact hours of participation. Official transcripts or supervisor verification must be submitted, in addition to the online renewal summary form, as evidence of completion.

7.02(1)(f) Ongoing professional development and training experiences: Online or in-person professional development confirmed by certificate or documentation of completion or instructor verification, attendance or presentation at professional conferences; service on statewide or national educational task forces or boards; professional research and publication; supervision of student teachers or interns; mentorships; and the pursuit of national educator certification.

7.02(2) For renewal of a professional teacher license, at least 10 of the 90 contact hours of professional development activities required must be related to:

7.02(2)(a) behavioral health training that is culturally responsive and trauma- and evidence-informed; and

7.02(2)(b) increasing awareness of laws and practices relating to educating students with disabilities in the classroom.

7.02(2)(c) The behavioral health training required pursuant to section 7.02(2)(a) may include:

7.02(2)(c)(i) mental health first aid training, specific to youth and teens;

7.02(2)(c)(ii) training modules concerning teen suicide prevention;

7.02(2)(c)(iii) training on interconnected systems framework for positive behavioral interventions and supports and mental health;

7.02(2)(c)(iv) training approved or provided by the school district where the teacher is employed;

7.02(2)(c)(v) training concerning students with behavioral concerns or disabilities;

7.02(2)(c)(v) training modules concerning child traumatic stress; and

7.02(2)(c)(vi) any other program or training that meets the requirements of Rule 7.02(2)(a).

7.02(2)(d) The training regarding students with disabilities required pursuant to section 7.02(2)(b) must increase awareness of laws and practices relating to educating students with disabilities in the classroom, including but not limited to Child Find and inclusive learning environments.

7.02(3) A teacher may obtain the 10 hours required by section 7.02(2) through any combination of courses as long as that combination includes at least one hour of training in each area. A single professional development course or activity may satisfy both content requirements.

7.02(4) For renewal of a professional special services provider, principal, or administrator license, at least 10 of the 90 contact hours of professional development activities required for renewal must be in

professional development activities related to increasing awareness of laws and practices relating to educating students with disabilities in the classroom, as described in section 7.02(2)(b).

7.02(5) Professional license-holders must meet the requirement outlined in this section 7.02(2) or 7.02(4), as applicable, during the term of the license, each seven-year renewal cycle except that a professional license-holder who has less than three years left in the license renewal period on June 30, 2020 has until the end of the following applicable renewal period to satisfy the requirements.

7.02(6) Except for the activities undertaken to satisfy the requirements of Rule 7.02(2) and 7.02(4) above, activities completed for professional license renewal must be directly related to one or more of the following standards:

7.02(6)(a) knowledge of subject matter content and learning, including knowledge and application of the Colorado Academic Standards, special education laws and processes, post-secondary workforce readiness, career counseling, multi-tiered systems of support, and other appropriate student-based supports;

7.02(6)(b) knowledge of the Teacher and Special Services Provider Quality Standards, Principal Quality Standards, and Administrator Quality Standards as outlined in sections 5.00, 6.00, and 6.06 of these rules;

7.02(6)(c) knowledge of the English Language Learner Educator Standards as outlined in sections 5.09-5.12 of these rules;

7.02(6)(d) knowledge of content area endorsement standards as outlined in 1 CCR 301-101;

7.02(6)(e) knowledge of the standards for preparation of Special Education and Gifted Education as outlined in sections 6.08 and 6.17 of these rules;

7.02(6)(f) knowledge of the Colorado Reading to Ensure Academic Development (READ) Act as outlined in 1 CCR 301-92;

7.02(6)(g) effective organization, leadership and management of human and financial resources to create a safe and effective working and learning environment;

7.02(6)(h) awareness of warning signs of dangerous behavior in youth and situations that present a threat to themselves and to the health and safety of students and knowledge of the community resources available to enhance the health and safety of other students and the school community, youth mental health, safe de-escalation of crisis situations, recognition of signs of poor mental health and substance use, and support of students;

7.02(6)(i) effective teaching of the democratic ideal;

7.02(6)(j) recognition, appreciation, and support for ethnic, cultural, gender, economic, and human diversity to create inclusive learning environments that foster fair and equitable treatment and consideration for all;

7.02(6)(k) effective communication with students, colleagues, parents, and the community;

7.02(6)(l) effective modeling of appropriate behaviors to ensure quality learning experiences for students and for colleagues;

7.02(6)(m) consistently ethical behavior and creation of an environment that encourages and develops responsibility, ethics, and citizenship in self and others;

7.06(6)(n) achievement as a continuous learner who encourages and supports personal and professional development of self and others; or

7.06(6)(o) awareness of laws and practices relating to educating students with disabilities in the classroom, including but not limited to Child Find and inclusive learning environments.

7.02(7) Professional development activities completed by an applicant for license renewal must apply equally to renewal of any professional educator license or endorsement held by the applicant.

7.02(8) Upon completion of the professional development activities and within the six months prior to the expiration of the professional license(s) to be renewed, the applicant must submit:

7.02(8)(a) a complete application for license renewal, including a signed affidavit in which the license-holder affirms under oath that:

7.02(8)(a)(i) the license-holder satisfactorily completed the ongoing professional development activities specified in the affidavit;

7.02(8)(a)(ii) the activities were completed within the term of the professional license; and

7.02(8)(a)(iii) to the best of the license-holder's knowledge, the activities comply with the requirements of section 7.02 of these rules and section 22-60.5-110, C.R.S.;

7.02(8)(b) a statement of how the activities selected aided the license-holder in meeting the standards for professional educators;

7.02(8)(c) the required evaluation fee;

7.02(8)(d) the oath required in section 2.04(2)(f) of these rules; and

7.02(8)(e) a complete set of license-holder's fingerprints taken by a qualified law enforcement agency, an authorized employee of a school district or Board of Cooperative Services using fingerprinting equipment that meets the Federal Bureau of Investigation image quality standards, or any third party approved by the Colorado Bureau of Investigation, unless the applicant previously submitted a complete and approved set of fingerprints to the Colorado Bureau of Investigation and satisfactory record of this submission is on file with the Department.

7.02(9) The Department will evaluate the application and supporting evidence and renew the license, request additional information or explanation, or recommend denial of the license renewal if the requirements of section 7.02(4) of these rules are not met.

7.02(10) Master certificates. License-holders who hold master certificates in conjunction with professional licenses may renew the master certification by providing evidence that the license-holder continued to engage in professional development and leadership and continued to demonstrate advanced competencies and expertise during the period in which the master certificate was valid. Master certificates are valid for the period of time for which a professional license is valid and are renewable upon expiration of the license. .

7.02(10)(a) Professional development activities for the renewal of master certificates may include but need not be limited to: involvement in school reform efforts; service on state-

wide boards or commissions; supervision and mentorship of advanced-level practicum or internship students; advanced study appropriate to standards 5.00 or 6.00 of these rules; and original research and/or publication.

English Language Learner Professional Development

7.02(11) Effective beginning in the 2018-2019 school year and every year thereafter, educators endorsed in elementary, math, science, social studies, or English language arts, and seeking a renewal of their professional license, must complete professional development activities equivalent to 45 contact hours or three semester hours in Culturally and Linguistically Diverse (CLD) Education within the seven-year renewal period. The activities must meet or exceed the standards set forth in section 7.02 and in sections 5.09-5.12 of these rules. This requirement must only be completed once. Professional development activities completed to satisfy this requirement may also be counted toward the requirements in section 7.02(1).

7.02(11)(a) Educators may demonstrate knowledge of the standards outlined in sections 5.09-5.12 of these rules in one or in a combination of the following ways:

7.02(11)(a)(i) through a collection of professional development, in-service credit, college/university credit, and/or work experience that meet the standards as outlined;

7.02(11)(a)(ii) completion of any Department-approved English Language Learner pathway, which may include district, college or university, BOCES, or nonprofit programs;

7.02(11)(a)(ii)(A) Agencies wishing to become an approved pathway may submit an application for approval of an English Language Learner pathway to the Department's Educator Talent Division.

7.02(11)(a)(ii)(B) Approved pathways will be reviewed every three years to ensure consistency and alignment to the standards as noted.

7.02(11)(a)(iii) completion of a Colorado CLD or a related out-of-state endorsement (such as English as a Second Language); and/or

7.02(11)(a)(iv) completion of a Department-facilitated English Language Learner professional development pathway.

7.02(11)(b) A district superintendent annually may request a waiver from the English language learner professional development requirements for their educators endorsed in elementary, math, science, social studies, or English language arts if the district has had an average of 2% or fewer identified English language learners in the three years immediately preceding such request, as identified in the Department's annual Student October Pupil Enrollment data collection.

7.02(11)(c) The principal of a charter school authorized by the institute annually may request a waiver from the English language learner professional development requirements for educators in their charter school authorized by the institute endorsed in elementary, math, science, social studies, or English language arts if the charter school has had an average of 2% or fewer identified English language learners in the three years immediately preceding such request as identified in the Department's annual Student October Pupil Enrollment collection.

7.02(11)(d) Upon submission of an application for renewal, license-holders must also submit the superintendent's or institute's notice of request for waiver. The Department will evaluate the waiver request based on the average of the last three years of the English language learner population in the district.

7.03 Appeals Process

An applicant whose application for renewal of any license has been denied by the Department may submit an appeal to the State Board of Education. If the State Board of Education finds that the applicant has met the criteria for license renewal, the Department must approval the license renewal.

7.04 Reinstatement of Expired Licenses or Certificates

An applicant whose previous professional license or certificate was not renewed may reinstate his or her professional license or certificate by:

7.04(1) completing and submitting a renewal application including:

7.04(1)(a) evidence to satisfy the deficiencies that resulted in prior nonrenewal, including but not limited to, evidence of completion of professional development requirements as provided in section 7.02 of these rules. An applicant seeking reinstatement must have completed professional development activities totaling either six semester hours or 90 clock-hours within the seven-year period preceding the application for reinstatement; and

7.04(1)(b) the renewal fee set by the State Board of Education.

7.04(1)(c) In the event that a license or certificate is expired, the applicant must submit new fingerprints to the CBI and the results must be transferred to the Department, as provided by section 2.04(1) of these rules.

8.00 Approved Induction Programs for Teachers, Special Services Providers, and Authorization-Holders.

Initial licenses are valid only in school districts, nonpublic schools, BOCES, or charter schools that provide approved induction programs unless the State Board of Education has waived the induction program requirement as provided in section 15.00 of these rules. Colorado school districts, consortia of districts, BOCES, nonpublic schools, charter schools, the institute, or other educational entities that employ licensed educators may develop induction programs for initial license-holders and holders of authorizations. Induction programs must meet the criteria of these rules and be approved by the Department. The Department may grant initial or continuing approval to induction programs.

8.01 Criteria for Approval and Review of Induction Programs

The following must serve as criteria for the approval of induction programs. The Department must provide technical assistance in the development of induction programs and must disseminate information concerning successful programs.

8.01(1) Effective induction programs must include opportunities which:

8.01(1)(a) enhance educator performance according to the quality standards prescribed in section 5.00 of these rules by providing, through mentors and other professionals:

8.01(1)(a)(i) demonstrations of high-quality instructional practices;

8.01(1)(a)(ii) improvement of educational experiences for all students; and

8.01(1)(a)(iii) ways to adapt curriculum and instruction to accommodate diverse student populations.

8.01(1)(b) encourage professionalism and educator development by:

8.01(1)(b)(i) building a foundation for the continued study of teaching;

8.01(1)(b)(ii) encouraging collaborative relationships among administrators and teachers and partnerships between districts and universities;

8.01(1)(b)(iii) providing an orientation for new teachers to the culture of the school system, the district, the community, and the teaching profession;

8.01(1)(b)(iv) providing a thorough orientation to the district's educator effectiveness evaluation model; and

8.01(1)(b)(v) providing opportunities for professional growth and ongoing professional development and training, including ethics, for both new teachers and mentors.

8.01(2) Effective induction programs must:

8.01(2)(a) formalize the profiles of a successful educator at various career stages;

8.01(2)(b) provide training of site administrators in the Colorado Academic Standards and in the Teacher, Special Services Provider, and Principal Quality Standards and the educator induction process;

8.01(2)(c) establish standards for the selection, training, and release of mentors who work with new teachers and special services providers;

8.01(2)(d) establish an assessment model to review, evaluate, and guide the induction program;

8.01(2)(e) establish a process for the selection and training of mentors and for the matching of mentors with inductees;

8.01(2)(f) establish the primary role of the mentor as coach, advocate, support, guide, and nurturer of new educators ; and

8.01(2)(g) state whether mentors will be included in the evaluation of inductees. If mentors are to be involved in such evaluations, policies must state the specific roles and responsibilities of the mentor in evaluations.

8.01(3) Effective induction programs must include professional support for inductees that includes:

8.01(3)(a) information relating to the Colorado Academic Standards and Teacher, Special Services Provider and/or Principal Quality Standards;

8.01(3)(b) detailed information regarding the educator effectiveness evaluation model;

8.01(3)(c) information related to school and district policies and procedures;

8.01(3)(d) local district goals and local content standards;

8.01(3)(e) educator roles and responsibilities (including moral and ethical conduct);

8.01(3)(f) information about the school community;

8.01(3)(g) substantive feedback to the inductee about performance; and

8.01(3)(h) provisions for the extension of the induction program if deemed necessary by the district.

8.01(4) Effective induction programs should consider implementing the following recommendations:

8.01(4)(a) Develop plans and policies to encourage collaboration between higher education institutions, charter schools, the institute, school districts, and nonpublic schools in induction programs; provide release time for both mentors and inductees; and provide some form of compensation for mentors;

8.01(4)(b) Formalize commitments to:

8.01(4)(b)(i) place new educators in settings where they are likely to succeed;

8.01(4)(b)(ii) provide inductees with supervisors and mentors skilled in helping new employees;

8.01(4)(b)(iii) provide sufficient planning time for inductees; and

8.01(4)(b)(iv) clarify expectations for inductees and mentors.

8.01(4)(c) Adopt guidelines for mentor selection that include:

8.01(4)(c)(i) the mentor agrees to serve as a mentor;

8.01(4)(c)(ii) the mentor is an experienced professional who consistently models the quality standards as reflected in section 5.00 of these rules and who has demonstrated excellence in practice as measured by the district's educator effectiveness system;

8.01(4)(c)(iii) the mentor works well with adults and is sensitive to the viewpoints of others; and

8.01(4)(c)(iv) the mentor is an active and open learner and competent in interpersonal and public relations skills.

8.01(4)(d) Adopt guidelines for mentor assignment that include:

8.01(4)(d)(i) the mentor be closely matched to the inductee in terms of assignment;

8.01(4)(d)(ii) the mentor be located, when possible, in close proximity to the inductee; and

8.01(4)(d)(iii) the mentor and the inductee styles are not in conflict.

8.01(5) Effective induction programs should adopt best practices, including:

8.01(5)(a) promoting purposeful learning by inductees rather than learning through trial and error;

8.01(5)(b) encouraging the retention of capable, talented professionals;

8.01(5)(c) strengthening teacher leadership and enhancing the working conditions and job satisfaction of professionals to increase student learning;

8.01(5)(d) ensuring mentors are carefully selected and given release time to mentor their new educator and are provided with strong professional development and support for their mentoring activities;

8.01(5)(e) ensuring that mentors model professionalism and ethics, high academic standards, and high-quality teaching;

8.01(5)(f) providing a safe, risk-taking environment and a collegial atmosphere for teaching and learning; and

8.01(5)(g) promoting systemic change and continuous improvement.

8.02 Program Evaluation

Each induction program must conduct a self-evaluation every five years. The evaluation information must be submitted to the Department for use in evaluating renewal of the induction program. The Department may conduct visits to induction sites and survey participants regarding the effectiveness of the program.

9.00 Induction Programs for Principals and Administrators.

Initial licenses are valid only in school districts, nonpublic schools, BOCES, or charter schools which provide approved induction programs, unless the State Board of Education has waived the induction program requirements as provided in section 15.00 of these rules.

9.00(1) Induction programs for principals and/or administrators must be designed to meet four purposes: orientation, socialization and transition, technical skill development, and continuous formative assessment.

9.00(2) Induction programs must assign mentors to all initial license-holders. Mentors may be selected from a variety of sources, including school district personnel or personnel from other districts.

9.00(2)(a) Selection: Mentors must have experience as a school principal or district administrator, as appropriate, and should be regarded as effective by their peers:

9.00(2)(a)(i) mentors should be selected to match the experience of the inductee; and

9.00(2)(a)(ii) mentors must have demonstrated:

9.00(2)(a)(ii)(A) commitment to the quality standards prescribed in section 6.00 for principals or administrators, as appropriate;

9.00(2)(a)(ii)(B) well-developed interpersonal skills including the ability to listen and question effectively, explore multiple solutions to problems, and empathize with others;

9.00(2)(a)(ii)(C) effective oral and written communication skills; and

9.00(2)(a)(ii)(D) an awareness of the political, social, and practical context of the inductee.

9.00(2)(b) Induction programs must include a staff development program for mentors which includes, but is not limited to, orientation to mentoring; development of the knowledge

and skills contained in the standards for principals or administrators, as appropriate; cognitive coaching; and writing professional growth and improvement plans.

9.00(2)(c) At the inception of the induction period, the mentor and inductee must jointly develop a professional growth plan in consultation with the inductee's supervisor. The plan is to be based on the inductee's pre-service portfolio, the assessments required for the initial license, the Principal or Administrator Quality Standards, and other applicable data. Each inductee must maintain a portfolio of induction activities. The professional development plan may be modified and adjusted based on ongoing feedback from the mentor and supervisor and the inductee's personal analysis and reflection.

9.00(2)(d) Induction programs must include summative performance evaluations of inductees. The induction program must specify the role of the mentor in evaluation, such as conducting the evaluation, providing input to the evaluation, or having no involvement in the evaluation. Each evaluation must be designed to document growth and performance in relation to the inductee's assignment.

9.00(2)(e) The induction program must define a process for determining when an inductee has successfully completed the program. In no case must an induction program exceed three years.

9.00(2)(f) The district, districts, charter school, nonpublic school, or institute, or BOCES delivering the induction program must recommend an inductee for a professional license based on performance evaluations and ongoing evaluation of the candidate's capability for meeting the Principal or Administrator Quality Standards. Criteria for recommendation must include, but are not limited to, mentor and supervisor recommendation, summative evaluations, and growth documented by formative evaluations.

9.00(2)(g) Each induction program must conduct a self-evaluation every five years. The Department may conduct visits to induction sites and survey participants regarding the effectiveness of the program.

10.00 Denial, Suspension, Revocation, or Annulment of Licenses and School District Reporting Requirements

This section establishes a procedure for processing adverse information, which may result in the State Board seeking denial, suspension, revocation, or annulment of licenses, including lifetime certificates, endorsements and authorizations. It establishes standards against which said adverse information may be judged. This section also provides due process protections for license-holders and applicants and specifies requirements for school districts' reports to the Department on employee misconduct. For the purpose of this section, "license" means any license, certificate, authorization, or endorsement issued by the Department on or after July 1, 1994, pursuant to section 22-60.5-101, C.R.S., and any certificate, letter of authorization, or endorsement issued by the Department on or before June 30, 1994, pursuant to section 22-60-101, C.R.S.

10.00(1) A license may be denied, annulled, suspended, or revoked by the State Board of Education in accordance with the State Administrative Procedures Act, sections 24-4-101 through 107, C.R.S., in the following circumstances:

10.00(1)(a) If the applicant obtained or attempts to obtain the license through misrepresentation, fraud, misleading information, or an untruthful statement submitted with the intent to misrepresent, mislead, or conceal the truth;

10.00(1)(b) If the Department mistakenly issued the license and it is subsequently determined that the holder is not entitled to the license due to a failure to meet educational or non-educational requirements in effect when the license was issued;

10.00(1)(c) When the applicant or holder is or has ever been convicted of, pleads or has ever pled nolo contendere to, or receives or has ever received a deferred sentence for a violation of any one of the following offenses:

10.00(1)(c)(i) contributing to the delinquency of a minor, as described in section 18-6-701, C.R.S.;

10.00(1)(c)(ii) a misdemeanor, the underlying factual basis of which has been found by the court on the record to involve domestic violence, as defined in section 18-6-800.3 (1), C.R.S., and the conviction is a second or subsequent conviction for the same offense;

10.00(1)(c)(iii) misdemeanor sexual assault, as described in section 18-3-402, C.R.S.;

10.00(1)(c)(iv) misdemeanor unlawful sexual conduct, as described in section 18-3-404, C.R.S.;

10.00(1)(c)(v) misdemeanor sexual assault on a client by a psychotherapist, as described in section 18-3-405.5, C.R.S.;

10.00(1)(c)(vi) misdemeanor child abuse, as described in section 18-6-401, C.R.S.;

10.00(1)(c)(vii) a crime under the laws of the United States, another state, a municipality of this state or another state, or any territory subject to the jurisdiction of the United States, the elements of which are substantially similar to one of the offenses described in this paragraph (d); or

10.00(1)(c)(viii) a misdemeanor committed under the laws of the United States, another state, a municipality of another state, or any territory subject to the jurisdiction of the United States, the elements of which are substantially similar to sexual exploitation of children as described in section 18-6-403(3)(b.5), C.R.S.;

10.00(1)(d) When the applicant or holder is or has ever been found guilty of, or pleads or has ever pled guilty or nolo contendere to, a misdemeanor violation of any law of this state or another state, any municipality of this state or another state, or the United States or any territory subject to the jurisdiction of the United States involving the illegal sale of controlled substances, as defined in section 18-18-102(5), C.R.S.;

10.00(1)(e) When the applicant or holder is or has ever been found guilty of a felony, other than a felony described in section 10.00(2) of these rules, or upon the court's acceptance of a guilty plea or a plea of nolo contendere to a felony, other than a felony described in section 10.00(2) of these rules, in this state or under the laws of any other state, the United States or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, other than a felony described in section 10.00(2) of these rules, when the commission of said felony, in the judgment of the State Board of Education, renders the applicant or holder unfit to perform the services authorized by his or her license;

10.00(1)(f) When the applicant or holder has ever received a disposition or an adjudication for an offense involving what would constitute a physical assault, a battery, or a drug-

related offense if committed by an adult and if the offense was committed within the 10 years preceding the date of the license application;

10.00(1)(g) When the applicant or holder is or was charged with having committed a felony or misdemeanor and forfeits or has ever forfeited any bail, bond, or other security deposited to secure his or her appearance; pays or has ever paid a fine; enters or has ever entered a plea of nolo contendere; or receives or has ever received a deferred or suspended sentence imposed by the court for any offense described in sections 10.00(2)(a), (b), or (d) of these rules;

10.00(1)(h) Notwithstanding any provision of section 10.00(2) of these rules to the contrary, when the State Board of Education determines an applicant or holder who held a license prior to June 6, 1991, has ever been convicted of an offense described in sections 10.00(2)(a)-(c) of these rules, unless the applicant or holder was previously afforded the rights set forth in section 22-60.5-108, C.R.S., with respect to the offense and the applicant or holder received or retained his or her license as a result;

10.00(1)(i) When the holder, without good cause, resigns or abandons his or her contracted position with a school district without giving written notice to the employing local board of education of his or her intent to terminate his or her employment contract for the succeeding academic year at least 30 days prior to the commencement of the succeeding academic year or the commencement of services under his or her employment contract or without giving written notice to the employing local board of education of his or her intent to terminate his or her employment contract for the current academic year at least 30 days prior to the date he or she intends to stop performing the services required by the employment contract. In this case, the license may be suspended;

10.00(1)(j) When the State Board of Education finds and determines that the applicant or holder is or has ever been professionally incompetent as described in section 10.01 of these rules;

10.00(1)(k) When the State Board of Education finds and determines that the applicant or holder is or has ever been guilty of unethical behavior as described in section 10.02 of these rules; or

10.00(1)(l) When the State Board of Education finds and determines that the license-holder knowingly and intentionally failed to protect student data pursuant to section 22-1-123, C.R.S. In this case, the license may be suspended or revoked for a period not less than 90 days.

10.00(2) A license must be denied, annulled, suspended, or revoked by the State Board of Education in accordance with the State Administrative Procedures Act, sections 24-4-101 through 107, C.R.S., in the following circumstances:

10.00(2)(a) A license must be denied, suspended, or revoked when the applicant or holder is or has ever been convicted by a jury verdict, by entry of a verdict, by acceptance of a guilty plea or a plea of nolo contendere by a court of:

10.00(2)(a)(i) felony child abuse, as specified in section 18-6-401, C.R.S.;

10.00(2)(a)(ii) a crime of violence, as defined in section 18-1.3-406, C.R.S.;

10.00(2)(a)(iii) a felony offense involving unlawful sexual behavior, as defined in section 16-22-102(9), C.R.S.;

10.00(2)(a)(iv) a felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

10.00(2)(a)(iv)(A) This ground for mandatory denial, suspension, or revocation of a license only applies for a period of five years following the date the offense was committed, provided the applicant or holder has successfully completed any domestic violence treatment required by the court; or

10.00(2)(a)(v) a felony offense in another state, the United States, or territory subject to the jurisdiction of the United States, the elements of which are substantially similar to the elements of one of the offenses described in this section 10.00(2)(a).

10.00(2)(b) A license must be denied, suspended, or revoked when the applicant or holder is or has ever been convicted by a jury verdict, by entry of a verdict, or by acceptance of a guilty plea or a plea of nolo contendere by a court of indecent exposure, as described in section 18-7-302, C.R.S., or of a crime under the laws of another state, a municipality of this or another state, the United States, or a territory subject to the jurisdiction of the United States, the elements of which are substantially similar to the offense of indecent exposure described in this section 10.00(2)(b).

10.00(2)(c) A license must be denied, suspended, or revoked when the applicant or holder receives or has ever received a disposition or an adjudication for an offense that would constitute felony unlawful sexual behavior, as defined in section 16-22-102(9), C.R.S., if committed by an adult.

10.00(2)(d) A license must be denied, suspended, or revoked if the applicant or holder is or has ever been convicted by a jury verdict, by entry of a verdict, or by acceptance of a guilty plea or a plea of nolo contendere by a court of a felony drug offense described in section 18-18-401, et seq., C.R.S., and committed on or after August 25, 2012, or is convicted of an offense under the laws of another state, the United States, or any territory subject to the jurisdiction of the United States, committed on or after June 11, 2021, the elements of which are substantially similar to a felony drug offense described in part 4 of article 18 of title 18, C.R.S.

10.00(2)(d)(i) This requirement for denial, suspension or revocation of a license only applies for a period of five years following the date the offense was committed.10.00(2)(e) A license must be denied, suspended, or revoked when the applicant or holder fails to submit his or her fingerprints taken by a qualified law enforcement agency, an authorized employee of a school district or Board of Cooperative Services using fingerprinting equipment that meets the Federal Bureau of Investigation image quality standards, or any third party approved by the Colorado Bureau of Investigation to the Department within 30 days after receipt of the Department's written request for fingerprints, which fingerprint submission the Department required upon finding probable cause to believe that the applicant or holder had been convicted of a felony or misdemeanor, other than a misdemeanor traffic offense or traffic infraction, subsequent to his or her licensure.

10.00(2)(f) A license must be denied, suspended, or revoked when the applicant or holder is determined to be mentally incompetent by a court of competent jurisdiction and a court enters, pursuant to section 15-14-301, et seq.; 15-14-401, et seq.; 27-65-109(4); or 27-65-127, C.R.S., an order specifically finding that the mental incompetency is of such a degree that the applicant or holder is incapable of continuing to perform his or her job. In this circumstance, no hearing is required to deny, annul, suspend, or revoke the license, notwithstanding section 22-60.5-108, C.R.S.; denial, annulment, suspension, or

revocation happens by operation of law after the Department gives reasonable notice to the applicant or license-holder.

10.00(3) The State Board of Education may take immediate action to deny, annul, or suspend a license without a hearing, notwithstanding the provisions of section 22-60.5-108, C.R.S., upon receipt of a certified copy of the judgment of conviction, a deferred sentence, or the acceptance of a guilty plea or a plea of nolo contendere for any violation of sections 10.00(1)(c)-(e) of these rules or upon receipt of a certified copy of the judgment of conviction or the acceptance of a guilty plea or a plea of nolo contendere for any violation of sections 10.00(2)(a)-(d) of these rules. The State Board of Education may revoke a suspended license based on a violation of sections 10.00(1)(c)-(e) of these rules and must revoke a suspended license based on a violation of sections 10.00(2)(a)-(d) of these rules without a hearing and without any further action after the exhaustion of all appeals, if any, or after the time for seeking an appeal has elapsed and upon the entry of a final judgment. A certified copy of the judgment of a court of competent jurisdiction of a conviction, a deferred sentence, or the acceptance of a guilty plea or a plea of nolo contendere is conclusive evidence of such conviction or plea for the purposes of sections 10.00(1)(c)-(e) of these rules. A certified copy of the judgment of a court of competent jurisdiction of a conviction or the acceptance of a guilty plea or a plea of nolo contendere is conclusive evidence of such conviction or plea for the purposes of sections 10.00(2)(a)-(d) of these rules.

10.00(4) In cases where the State Board of Education deems summary suspension is appropriate, pursuant to section 24-4-104(4), C.R.S., proceedings for suspension or revocation may be instituted upon the Board's own motion without a proceeding pursuant to these regulations. The holder is entitled to a post-deprivation hearing consistent with section 24-4-105, C.R.S. At such hearing, the burden of proof rests with the license-holder.

10.01 Standards of Professional Incompetence

The following serve as standards against which charges of professional incompetence will be judged. To warrant denial, annulment, suspension, or revocation of the license, violations must be found to be substantial or continued, as well as related to services rendered within the scope of the license. It is considered professional incompetence for a license-holder or applicant to:

10.01(1) willfully depart or to have ever willfully departed from the quality standards described in sections 5.00 or 6.00 of these rules;

10.01(2) willfully fail or to have ever willfully failed to practice with reasonable skill and safety;

10.01(3) act or to have ever acted in a manner evidencing a clear and substantial lack of knowledge, ability, or fitness to perform the services rendered within the scope of the license;

10.01(4) refuse or to have ever refused to perform duties required by federal and state law and regulation;

10.01(5) recklessly disregard or to have ever recklessly disregarded duties required by federal and state law and regulation;

10.01(6) have or to have ever had a mental of physical condition, as diagnosed by a professional competent to make such a diagnosis, that results in the license-holder’s or applicant’s inability to satisfactorily perform required duties, subject to the American with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and other nondiscrimination law; or

10.01(7) habitually abuse or to have ever habitually abused alcoholic, narcotic, hypnotic, or other substances, the abuse of which results in the license-holder's or applicant's inability to satisfactorily perform required duties, subject to the American with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and other nondiscrimination law.

10.02 Standards of Unethical Behavior

The following serve as standards against which charges of unethical behavior will be judged. To warrant denial, annulment, suspension, or revocation of the license, violations must be found to be substantial or continued. It is considered unethical behavior for a license-holder or applicant to:

10.02(1) fail or to have ever failed to make reasonable effort to protect a minor from conditions harmful to health and safety;

10.02(2) provide or to have ever provided professional services in a discriminatory manner regarding age, gender, gender identity, sexual orientation, national origin, race, ethnicity, color, creed, religion, language, disability, socio-economic status, or marriage status;

10.02(3) fail or to have ever failed to keep in confidence information obtained in the course of professional services, unless disclosure serves to protect the child, other children, or school personnel or is required by law;

10.02(4) direct or to have ever directed a person to carry out professional responsibilities knowing that such person is not qualified for the responsibility given, except for assignments of short duration in emergency situations;

10.02(5) deliberately distort or suppress or to have ever deliberately distorted or suppressed curricular materials or educational information in order to promote their own personal view, interest, or goal;

10.02(6) falsify or misrepresent or to have ever falsified or misrepresented records or facts relating to the license-holder or applicant's qualifications, another educator's qualifications, or a student's records;

10.02(7) make or to have ever made false or malicious statements about students or school personnel;

10.02(8) using one's position for personal gain

10.02(9) fail or to have ever failed to conduct financial transactions relating to the school program in a manner consistent with applicable law, rule, or regulation;

10.02(10) engage or to have ever engaged in immoral conduct that affects the health, safety, or welfare of children; conduct that offends the morals of the community; or conduct that sets an inappropriate example for children or youth whose ideals the educator is expected to foster and elevate;

10.02(11) engage or to have ever engaged in unlawful distribution or sale of dangerous or unauthorized prescription drugs or other dangerous nonprescription substances, alcohol, or tobacco.; or

10.02.(12) engage or to have ever engaged in a sexual act, meaning sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S., with a student enrolled at the school where the license-holder or applicant is or was employed at the

time of the sexual act, including a student who is eighteen years of age or older, regardless of whether the student consented to the sexual act.

10.03 Filing of Adverse Information Regarding an Educator License

10.03(1) Filing of external complaints:

10.03(1)(a) A complaint regarding an educator is a formal statement, filed by an aggrieved party or a party in interest against an individual who holds or has applied for an educator license, of an alleged violation of conditions that, if found to be substantial or continued, and if found to be true, becomes grounds for denying, annulling, revoking, or suspending the license. The Department must supply necessary complaint forms and information for the filing of adverse information.

10.03(1)(b) The complainant must personally deliver, send by mail, or send in a secured electronic environment the complaint to the Department. The complainant must sign and swear to the complaint, regardless of delivery method. The complaint must allege actions serving as the basis of the complaint, and the alleged actions must be substantial or continued. The complaint must specify the statutory and regulatory violations.

10.03(2) Filing of notification by public district/school:

10.03(2)(a) The local board of education, charter school, BOCES, or its designee must notify the Department pursuant to the requirements of section 10.05 of these rules.

10.03(3) Conducting investigations and pursuing formal action by the State Board of Education:

10.03(3)(a) The Department conducts background investigations upon receipt of any adverse information. The purpose of this inquiry is to determine if there is probable cause to seek annulment, revocation, or suspension of the license or denial of the application. If the Department determines probable cause exists, the Department may ask the State Board of Education to direct the initiation of formal proceedings against the license-holder pursuant to section 22-60.5-108, C.R.S., or to deny the application pursuant to section 24-4-104(8), C.R.S.

10.03(3)(b) Except in cases of summary suspension, the Department must provide the license-holder or applicant notice of the allegations against him or her and an opportunity to respond prior to asking the State Board of Education to deny an application or initiate formal proceedings. The Department must provide such opportunity by sending a formal written letter of inquiry by first-class mail to the applicant or license holder, explaining the allegations, requesting a response within 20 days, and notifying them of their right to return a response within 20 days. If the Department knows that the person is an employee of a Colorado charter school, BOCES, or school district, the Department must notify the charter school, BOCES, or school district of the inquiry.

10.03(3)(c) After the expiration of the 20-day response period or upon receipt of the response, whichever is sooner, the Department will review the allegations and response and determine whether to pursue the charges for denial, revocation, or annulment of the license. In any case where, based on the response, the Department determines probable cause does not exist, the Department must withdraw or dismiss the complaint and notify the person complained against and the school district, charter school, or BOCES of the Department's action. Any handling of the complaint must be consistent with the laws on confidentiality unless contrary to statute.

10.03(3)(d) The Department is authorized to grant extensions to any of the processing deadline dates in sections 10.03(3)-(4) of these rules, based upon sufficient cause shown.

10.03(3)(e) The Department will present its findings and recommendations to the State Board of Education for action.

10.03(3)(e)(i) If the Department recommends revocation or annulment and the State Board of Education accepts that recommendation, the Board must refer the matter for a hearing in accordance with section 24-4-105, C.R.S. The Department must notify by first-class mail the person charged of the State Board of Education's decision to refer the matter for a hearing. If the State Board of Education rejects the Department's recommendation, the Department must dismiss the complaint and notify the person complained against and the complainant of the Department's action. Any handling of the complaint must be consistent with the laws on confidentiality unless contrary to statute.

10.03(3)(e)(ii) if the Department recommends denial and the State Board of Education accepts that recommendation, the Department must notify by first-class mail the applicant of the denial and the applicant's right to request a hearing conducted in accordance with section 24-4-105, C.R.S. If the State Board of Education rejects the Department's recommendation, the Department must clear the application and issue the credential to the applicant.

10.03(3)(f) If the State Board of Education refers the matter for a hearing and if the Department knows that the person charged is a current employee of a Colorado charter school, BOCES, or school district, the Department must notify such school, BOCES, or school district of the State Board of Education's decision.

10.03(3)(g) If the State Board of Education refers the matter for a hearing, or if the applicant timely requests a hearing concerning the Board's denial of his or her application, the hearing and subsequent proceedings must be conducted by an administrative law judge appointed by the Colorado Division of Administrative Hearings in accordance with section 24-4-105(3), C.R.S..

10.03(3)(h) Pursuant to section 24-4-105(14), C.R.S., the decision of the administrative law judge must include a statement of findings and conclusions and the appropriate order, sanction, relief, or denial thereof. If the administrative law judge sustains the charge, the decision must result in revocation or denial of the license.

10.04 Application for License Following Suspension, Revocation, Annulment, or Denial

10.04(1) A license-holder whose license has been suspended or revoked may submit an application for a new license, the renewal of the expired license, or the reinstatement of the license to the Department and for review by the State Board of Education. The application must include justification for license issuance, renewal, or reinstatement, with evidence as to rehabilitation appropriate to the basis for the prior suspension or revocation. The application must demonstrate the current fitness of the applicant to resume educational duties, in accordance with all laws and rules. The burden of proof rests with the applicant.

10.04(1)(a) The reinstated license will bear the same expiration date as had been originally issued.

10.04(1)(b) In the event the original license expired during the period of suspension or revocation, the applicant will be required to meet all requirements for the renewal of the license.

10.04(2) An applicant whose license application has been denied or annulled by the State Board of Education may apply for a license to the Department and for review by the State Board. The application will include justification for issuance, with appropriate supporting documentation as to the current fitness of the applicant to resume educational duties, in accordance with all laws and rules. The burden of proof must rest with the applicant.

10.05 Mandatory Reporting of Misconduct

10.05(1) The local board of education, charter school, BOCES, or designee must notify the Department within 10 business days of any employee's dismissal or resignation if the dismissal or resignation is based on an allegation of unlawful behavior involving a child, including unlawful sexual behavior or allegation of a sexual act (meaning sexual contact, sexual intrusion, or sexual penetration as those terms are defined in section 18-3-401, C.R.S.) involving a student who is eighteen years of age or older, regardless of whether the student consented to the sexual act, that is supported by a preponderance of the evidence. The local board, charter school, BOCES, or designee must provide any information requested by the Department concerning the circumstances of the dismissal or resignation.

10.05(2) The local board of education, charter school, BOCES, or designee must immediately notify the Department when any employee's resignation or dismissal is based upon a conviction, guilty plea, plea of nolo contendere, or deferred sentence as set forth in sections 10.00(1)(d)-(g) and 10.00(2)(a)-(c) of these rules. The local board, charter school, BOCES, or designee must provide any information requested by the Department concerning the circumstances of the employee's dismissal or resignation.

10.05(3) The local board of education, charter school, BOCES, or designee must notify the Department when the county department of social services or local law enforcement agency reasonably believes that an incident of abuse or neglect has occurred and an employee of the district, charter school, or BOCES is the suspected perpetrator and was acting in his or her official capacity as an employee. The local board, charter school, BOCES, or its designee must provide any information requested by the Department concerning the employee's alleged abuse or neglect.

10.05(4) The local board of education, charter school, BOCES, or designee must notify the Department when it reasonably believes that one of its employees is guilty of unethical behavior or professional incompetence as set forth in sections 10.01 and 10.02 of these rules. The local board, charter school, BOCES or its designee must provide any information requested by the Department concerning the employee's behavior or competence.

10.05(5) The local board of education, charter school, BOCES, or designee must notify the Department when it learns from a source other than the Department that a current or past employee has been convicted of, has pled nolo contendere to, or has received a deferred sentence or deferred prosecution for a felony or a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children.

10.06 Mandatory Disclosure of Attempts to Seal Criminal Records

10.06(1) An applicant or license-holder who files a petition to seal a criminal record under § 24-72-701, et seq., C.R.S., must notify the Department of the pending petition to seal. The Department may inquire into the facts of the criminal offense(s) for which the petition to seal is pending under § 24-72-703(2)(d)(III), C.R.S. The applicant or license-holder does not have any right to privilege

or privilege that justifies refusal to answer the Department's questions about the criminal offense(s) at issue in the petition to seal.

11.00 Standards for the Approval of Educator Preparation Programs

The Department will work with the Colorado Department of Higher Education to review and approve educator preparation programs at Colorado public, private, and proprietary institutions of higher education based on the identified requirements for approval under section 23-1-121(2) & (3), C.R.S.

Pursuant to 22-2-109, C.R.S and the standards set forth in sections 5.00 and 6.00 of these rules and sections 4.00 through 7.00 of 1 CCR 301-101,the State Board of Education will review the content of educator preparation programs. Such review will evaluate the program's content, delivery, and outcomes, including whether the program effectively enables a candidate to meet the requirements for licensure. For educator preparation programs located at institutions of higher education, the State Board will recommend to the Colorado commission on higher education that a program will be approved, be placed on conditional approval, probation, or not be approved.

Authorization of alternative teacher programs, alternative principal programs, and individualized alternative principal programs is solely the Department's responsibility as outlined in sections 22-60.5-205(3), 22-60.5-305.5(6), and 22-60.5-111(14), C.R.S. Section 12.00 of these rules provides the requirements for these programs.

11.01 Design of the Educator Preparation Programs

The Department's Educator Talent Division promotes high-quality programs that meet the requirements, policies, and the best practices identified by Colorado Commission of Higher Education, Department of Higher Education, and Department of Education pursuant to sections 22-2-109, C.R.S. and 23-78-104, C.R.S.

11.01(1) Endorsement standards in sections 5.00 and 6.00 of these rules and sections 4.00 through 7.00 of 1 CCR 301-101 outline the competencies candidates need to attain during preparation. In addition, each program's instructional content must include the following components:

11.01(1)(a) for all teacher candidates in elementary, early childhood and all special education programs, concentrated focus on foundational reading skills—specifically phonemic awareness, phonics, vocabulary, fluency, and comprehension, per 23-1-121(2)(c.5), C.R.S.;

11.01(1)(b) for all teacher candidates in an initial licensure program, behavioral health training including culturally responsive and trauma-informed practices.

11.01(1)(c) for all educator candidates, education and training on federal and state regulations and policies related to students with exceptional needs, including, but not limited to, Americans With Disabilities Act of 1990, Rehabilitation Act of 1973, and Individuals With Disabilities Education Act; and

11.01(1)(d) for all educator candidates, pedagogical instruction in high-quality practices for face-to-face, blended and online learning.

11.02 Program Review by the Department's Educator Talent Division

The Department's Educator Talent Division will evaluate all new and established educator preparation programs for consistency with these rules and with the State Board of Education-approved rules 1 CCR 301-101. The Division will assess the content of these programs based on sections 22-2-109(5) and 23-1-121, C.R.S. The purpose of the evaluation and approval process is to assure the public that educators who complete educator preparation programs in the state of Colorado are well-prepared to educate PreK-

12 students according to the Colorado Revised Statutes, the rules set forth by the State Board of Education, and the Colorado Academic Standards. Educator preparation programs must prepare candidates to meet or exceed the standards for licensure specified in sections 5.00 and 6.00 of these rules and the corresponding standards in sections 4.00 through 7.00 of 1 CCR 301-101, including any approved content tests required by state board rule.

11.02(1) The Educator Talent Division's review of program content must ensure that each program is designed and implemented in a manner that will enable a candidate to meet licensure and endorsement requirements.

11.02(2) For the reauthorization of educator preparation programs at public, private, or proprietary postsecondary institutions of higher education recognized by the Colorado Department of Higher Education, the Educator Talent Division will provide the State Board of Education information for its consideration as to whether the Board should recommend to CCHE approval, conditional approval, probation or termination..11.02(3) For alternative teacher programs and alternative principal programs, the State Board of Education will determine full reauthorization, conditional reauthorization, probationary reauthorization, or termination of the program.

11.02(3)(a) An on-site evaluation for the reauthorization of alternative preparation programs will occur no more frequently than once every five years.

11.02(3)(b) An initial site visit and review will be conducted 12 to 24 months after approval for all newly authorized alternative preparation programs.

12.00 Alternative Teacher Programs

The following must serve as standards for the initial and continuing approval of alternative teacher preparation programs. School districts, BOCES, accepted institutions of higher education, non-profit organizations, nonpublic schools, charter schools, the institute or any combination thereof may apply to the State Board of Education for approval as a designated agency of an alternative teacher program under section 22-60.5-205, C.R.S.

12.00(1) An alternative teacher program must:

12.00(1)(a) be a one-year or two-year teacher preparation program for persons of demonstrated knowledge and ability who hold an alternative teacher license:

12.00(1)(a)(i) a one-year program shall be designed to be completed in one year. The program may be extended for one additional year based on documentation of unforeseen circumstances, as demonstrated by the applicant and the designated agency and approved by the Department;

12.00(1)(a)(ii) a two-year program shall be designed to be completed in two years;

12.00(1)(a)(iii) for the purpose of preparing a special education generalist, an alternative preparation program may be designed to be completed in a maximum of three years.

12.00(1)(b) be the responsibility of a designated agency. The agency's duties include the organization, management, and operation of the program as follows:

12.00(1)(b)(i) the designated agency must establish an advisory council, which must include, at a minimum, representatives from participating school districts, charter schools, nonpublic schools, the institute, or BOCES; at least one qualified mentor teacher; and a representative from any accepted institution of higher education

cooperating with the designated agency, if applicable. Representatives on the advisory council must reflect the geographic make-up of the designated agency if the agency is composed on more than one entity.

12.00(1)(c) require alternative teachers to be employed by or have a clinical agreement in place with a school district, a licensed nonpublic childcare or other preschool facility, charter school, the Charter School Institute, nonpublic school, or BOCES to teach, receive training, and be supervised by a qualified mentor teacher and an appropriate support team as follows:

12.00(1)(c)(i) alternative teachers must demonstrate competency in their subject area endorsement and/or assignment pursuant to section 3.00 of these rules including:

12.00(1)(c)(i)(A) if the alternative teacher is asked to teach in any content area(s) outside of his/her assessed content area, the school or school district is required to keep on file documented evidence that the alternatively licensed teacher has completed 24 semester hours of applicable coursework in the additional content area(s) or the equivalent thereof, or has passed the related approved content area test(s);

12.00(1)(c)(ii) training of alternative teachers must include 225 clock-hours of planned instruction, and activities must include, but not be limited to, teacher preparation courses that meet the Teacher Quality Standards and English Language Learner Quality Standards.

12.00(1)(c)(ii)(A) The 225-clock-hours must, at a minimum, include professional development that addresses dropout prevention and the standards as outlined in section 5.00 of these rules;

12.00(1)(c)(ii)(B) The hours of required instruction and activities may be modified by the alternative teacher's support team, but only after a documented and performance-based evaluation of the candidate's proficiency determines that one or more of the program's requirements has already been met by the alternative teacher's proven knowledge or past experience;

12.00(1)(c)(ii)(C) Evaluations of alternative teachers must be conducted and documented in accordance with section 22-9-106, C.R.S.;

12.00(1)(c)(ii)(D) Early childhood education programs must align to the standards outlined in section 4.01 of 1 CCR 301-101, and elementary and special education programs must align to the standards outlined in section 4.02 of 1 CCR 301-101; and

12.00(1)(c)(ii)(E) The training must address special education regulations as outlined in 22-60.5-205, C.R.S.

12.00(2) Proposals submitted by entities for authorization as designated agencies of alternative teacher preparation must include, but not be limited to:

12.00(2)(a) demonstrated evidence of a need for the proposed program;

12.00(2)(b) evidence of the establishment of an advisory council by the designated agency;

12.00(2)(c) a listing of the advisory council's duties, which must include but need not be limited to: providing the designated agency with information regarding the organization and management and operation of the approved alternative teacher program;

12.00(2)(d) criteria for the selection of mentor teachers which must include but need not be limited to: evidence of exemplary teaching and school leadership; the ability to model and counsel the alternative teacher; relevant coursework; and a valid license and endorsement in the alternatively-licensed teacher's content area if available. A mentor teacher endorsement is not required.

12.00(2)(d)(i) Mentor teachers may evaluate alternative teachers if trained in accordance with 22-9-106(4), C.R.S., except that mentor teachers are not required to hold a principal or administrator license.

12.00(2)(d)(ii) If a mentor teacher is not available, the designated agency may submit a plan for mentor support that provides that same level of mentorship to the alternative teacher.

12.00(2)(e) an articulated, mandatory, and intensive supervision training program for mentors that provides direction with regard to structured guidance, the provision of regular ongoing support to new teachers, and teacher performance evaluation;

12.00(2)(f) identification of the duties of the mentor teacher including: serving as a member of the support team; providing ongoing observation, counseling and supervision of the alternative teacher; and representing the support team for purposes of making recommendations about the alternative teacher's licensing;

12.00(2)(g) a checklist of the duties of the mentor teacher and the time required of that teacher to mentor the alternative teacher. The designated agency must keep this checklist on file.

12.00(2)(h) provisions made by the designated agency to assist the mentor teacher in properly discharging his/her regular duties. Such provisions may include:

12.00(2)(h)(i) providing a substitute teacher for the mentor teacher, as necessary and appropriate; and

12.00(2)(h)(ii) allowing for adequate compensatory time and/or other compensation for the mentor teacher's required planning and observation schedule and ongoing regular conferences with the alternative teacher.

12.00(2)(i) the composition of an alternative teacher's support team. The team must include, at a minimum, the alternative teacher's mentor, the building principal, and a representative of the approved designated agency;

12.00(2)(j) identification of the duties of the support team including:

12.00(2)(j)(i) meeting on a regular schedule with an agenda. Documentation of such regularly scheduled meetings must include evidence of the alternative teacher's progress toward meeting the program's objectives;

12.00(2)(j)(ii) evaluating the related prior education and experience of the alternative teacher to determine the appropriate program elements which will prepare the candidate for full licensure;

12.00(2)(j)(iii) developing the instruction plans and activities for the alternative teacher's preparation. The programming must meet the State Board of Education-approved standards, as prescribed in section 5.00 of these rules; and

12.00(2)(j)(iv) prior to the beginning of the program, providing the alternative teacher with an orientation to the school, its student population, the policies and procedures which affect teaching, classroom management strategies, and the teacher's responsibilities, as prescribed by section 12.00(1)(c) of these rules.

12.00(2)(k) an assurance that the major portion of the alternative teacher's assignment will be in the content area in which the alternative teacher has been approved by the state under section 3.12(1)(c);

12.00(2)(l) explanation of how the entity employing the alternative teacher meets the requirements in section 12.00(1)(c)(i)(A) of these rules if it asks the alternative teacher to teach outside of his/her approved content area;

12.00(2)(m) the method of evaluation of the alternative teacher's proficiencies using performance evaluations, as based on the Teacher Quality Standards and as prescribed by section 5.00 of these rules;12.00(2)(n) an inventory of Teacher Quality Standards for each alternative teacher in its program that documents how the alternative teacher demonstrates proficient knowledge and understanding of the standards and the English Language Leader Quality Standards;

12.00(2)(o) a schedule of mentor and principal observations, including a minimum of four alternative teacher observations by program leaders;

12.00(2)(p) the process by which performance evaluations of alternative teachers will be conducted, which must be consistent with the provisions of section 22-9-106, C.R.S.; and

12.00(2)(q) measurable objectives for the alternative teacher's preparation program.

12.00(3) When an entity is approved and offers a new educator preparation program, the Department may review the new educator preparation program no sooner than twelve months but not more than twenty-four months after the new preparation program is initially approved. The alternative teacher program may be approved for up to five years. An onsite evaluation will be conducted no more than once every five years for purposes of reauthorization.

13.00 Individualized Alternative Principal Programs and Alternative Principal Programs

The following will serve as standards for the initial and continuing approval of individualized alternative principal programs and alternative principal programs.

13.01 In designing an individualized alternative principal program, the school district, charter school, or nonpublic school shall, at a minimum, submit to the State Board:

13.01(1) documentation of the coursework, practicum and other educational requirements identified by the school district, charter school, or nonpublic school that will comprise the individualized alternative principal program plan and that will be completed while the applicant is employed under the principal authorization; and

13.01(2) a letter from the district, charter school, or nonpublic school stating its intention to employ the applicant as a principal or assistant principal upon issuance of the principal authorization;

13.01(3) At a minimum, an individualized alternative principal program must ensure that:

13.01(3)(a) the applicant will attain the information, experience, training, and skills comparable to those possessed by a person who qualifies for an initial principal license as provided in section 22-60.5-301(1)(a), C.R.S.;

13.01(3)(b) upon completion, the candidate will be able to provide documented evidence of having met or surpassed the Principal Quality Standards cited in section 6.00 of these rules;

13.01(3)(c) the candidate will receive coaching and mentoring from one or more licensed principals and administrators, as well as continuing performance-based assessment of the candidate's skills development;

13.01(3)(d) except that, if the candidate participates in a nonpublic school's individualized alternative principal program approved by the State Board of Education, the candidate must receive coaching and mentoring from one or more principals and administrators who have three or more years of experience in a nonpublic school;

13.01(3)(e) the candidate demonstrates professional competencies using the assessment of quality standard measures in subject matter areas as specified by rule of the State Board pursuant to section 22-60.5-303, C.R.S.; and

13.01(3)(f) the candidate receives information and training on special education laws and regulations, as outlined in section 22-60.5-111(14)(c)(IV), C.R.S.

13.02 A school district or districts, BOCES, accepted institution of higher education, nonprofit organization, charter school, the institute, nonpublic school, or any combination thereof may apply to the State Board for approval as a designated agency of alternative principal programs under section 22-60.5-305.5, C.R.S.

13.02(2) In designing an alternative principal program, the designated agency must, at a minimum, demonstrate that:

13.02(2)(a) the applicant will attain the information, experience, training, and skills comparable to those possessed by a person who qualifies for an initial principal license as provided in section 22-60.5-301(1)(a), C.R.S.;

13.02(2)(b) the program content meets or exceeds the Principal Quality Standards cited in section 6.00 of these rules;

13.02(2)(c) training of alternative principals will include a minimum of 225 clock-hours of planned instruction, and activities must include, but not be limited to, principal preparation courses that meet the Principal Quality Standards and English Language Learner Quality Standards.

13.02(2)(d) the candidate will receive coaching and mentoring from one or more licensed principals and administrators, as well as continuing performance-based assessment of the candidate's skills development;

13.02(2)(e) the candidate will be required to demonstrate professional competencies using the assessment of quality standard measures in subject matter areas as specified by rule of the State Board pursuant to section 22-60.5-303, C.R.S.;

13.02(2)(f) the candidate will receive information and training on special education laws and regulations, as outlined in section 22-60.5-111(14)(c)(IV), C.R.S.;

13.02(2)(g) the alternative principal program will be designed to be completed in three years or less..

13.02(2)(f)(i) School districts may only employ a person under a principal authorization for three years, after which time, the person must obtain an initial or professional license in order to continue working as a principal.

13.02(3) Proposals submitted by entities for authorization as designated agencies of alternative principal programs must include, but not be limited to:

13.02(3)(a) demonstrated evidence of a need for the proposed program;

13.02(3)(b) evidence of the establishment of an advisory council by the designated agency;

13.02(3)(c) a listing of the advisory council's duties, which must include but need not be limited to: providing the designated agency with information regarding the organization, management, and operation of the approved alternative principal program;

13.02(3)(d) criteria for the selection of mentor principals which must include but need not be limited to: evidence of exemplary school leadership; the ability to model and counsel the alternative principal; relevant coursework; and a valid license and endorsement as a professional principal.

13.02(4) When a new designated agency is approved to offer a new alternative principal program, the department may review the new program no sooner than twelve months but not more than twenty-four months after the new program is initially approved. The designated agency that operates an alternative principal program will be reauthorized not more than once every five years.

14.00 Colorado Teacher of the Year Program

14.01 Administration

14.01(1) The Colorado Teacher of the Year is selected in accordance with the National Teacher of the Year selection criteria as articulated by the Council of Chief State School Officers.

14.01(2) The Department may reward the educator with gifts, services, and opportunities that may include:

14.01(2)(a) a sabbatical from teaching responsibilities that includes moneys awarded to the recipient's employer for the purpose of hiring a substitute teacher during the award recipient's sabbatical;

14.01(2)(b) a cash gift;

14.01(2)(c) travel and lodging expenses;

14.01(2)(d) a computer;

14.01(2)(e) supplies and equipment for the award recipient's classroom or school; and

14.01(2)(f) the opportunity to receive additional training or education.

14.01(3) During tenure as Colorado Teacher of the Year, the award recipient may participate in activities such as:

14.01(3)(a) attending local, regional, and national events related to the award recipient's designation as Colorado Teacher of the Year;

14.01(3)(b) promoting the teaching profession;

14.01(3)(c) teaching best practices to other teachers;

14.01(3)(d) teaching temporarily in other public schools or school districts;

14.01(3)(e) mentoring students in teacher preparation programs and supporting newer teachers in Colorado;

14.01(3)(f) collaborating with institutions of higher education in scholarly research and teaching; and

14.01(3)(g) participating in special projects relating to education that are important to the award recipient.

15.00 Inactive Status of Licenses

15.00(1) Holders of professional licenses may choose to place their licenses in inactive status by:

15.00(1)(a) notifying the Department, via an online application, of their intent to place a professional license on inactive status.

15.00(2) While on inactive status, the expiration date of a professional license is suspended and the individual is deemed as not holding the credential.

15.00(3) A person may return a professional license to active status at any time upon application.
15.00(4) Upon application to return to active status, the Department must reissue the professional license with a new expiration date reflecting the period remaining on the professional license as of the date the license-holder placed the license in inactive status.

15.00(4)(a) The Department may, upon request of a license-holder, and with evidence of the license-holder's active military service, reissue the license with a new expiration date reflecting the amount of time which remained on the license prior to the license-holder's active military service, plus the amount of time during which the license-holder served in active military service.

15.00(5) Renewal of licenses previously inactive:

15.00(5)(a) Any person who placed a license on inactive status may, but is not required, to complete professional development activities which meet the requirements of section 7.02 of these rules. Such activities completed while on inactive status must apply to renewal of the person's professional license after the person returns to active status.

15.00(5)(b) At the time of renewal, the license-holder must provide to the Department evidence of completion of the professional development activities which meet the requirements for license renewal as provided in section 7.02 of these rules and which

were completed within the seven years preceding the date on which the professional license will expire after its return to active status.

16.00 Waivers

16.01 A written request for a waiver must be received by the State Board of Education at least 120 days prior to proposed implementation. The State Board is authorized to waive any requirement regarding alternative teacher programs or approved induction programs. Waiver applications must include:

16.01(1) the specific portion of these rules to be waived;

16.01(2) the rationale for the request;

16.01(3) detailed information on the innovative programs or plans to be instituted;

16.01(4) financial impact of the proposed waiver, if applicable;

16.01(5) reasons why these innovative programs or plans cannot be implemented under the applicable rule; and

16.01(6) a detailed plan for the evaluation of the innovative programs or plans to show their effectiveness in improving the quality of the affected educators.

Editor's Notes

History

Rules 2260.5-R-1.00, 15.00, 15.05 emer. rules eff. 08/14/2008.

Rules 2260.5-R-1.00, 15.00, 15.05 eff. 10/31/2008.

Rules 2260.5-R-1.16, 4.04 eff. 10/30/2009.

Rules 2260.5-R-1.00-2.04, 3.01, 3.03, 3.12, 4.03, 4.12, 4.17, 7.02, 13.00, 18.00-19.00 eff. 07/30/2010.

Rules 2260.5-R-1.19, 4.11, 4.14(11)(d-e) emer. rules eff. 09/16/2010.

Rules 2260.5-R-1.17, 4.11, 6.13, 10.05 eff. 12/31/2010.

Rules 2260.5-R-1.20, 8.22-8.23 eff. 01/31/2011.

Rules 2260.5-R-1.21, 4.16, 15.00-15.00(5) eff. 09/30/2012.

Rules 2260.5-R-2.01, 2.03, 3.01, 3.03, 3.05-3.07, 3.12, 4.02-4.04, 4.11, 4.13, 4.17, 8.02, 8.04, 8.14, 12.02,
15.03, 18.00, 23.01 eff. 01/30/2013.

Rules 2260.5-R-1.23, 3.01(2)(e)(ii)(3), 3.06(1), 3.12(3)(b)(i), 4.13(3), 4.13(5), 4.17 eff. 05/15/2014.

Rule 2260.5-R-8.20 eff. 07/30/2014.

Rule 2260.5-R-4.18 eff. 08/14/2014.

Entire rule eff. 03/30/2016.

Rules 2260.5-R-1.24, 2.01(26), 3.02(1), 3.05-3.07, 4.02(1), 4.09, 4.12-4.14, 4.17, 4.18, 7.02(1), 8.14, 9.01, 9.05-9.07, 10.02, 10.04-10.06, 11.09, 12.00, 12.02, 13.00, 13.01, 15.00, 15.01 eff. 06/14/2017.

Rules 2260.5-R-1.25, 2.01, 12.02(1), 13.00, 15.00, 18.00, 18.01 eff. 01/30/2018.

Entire rule eff. 08/14/2018.

Entire rule eff. 05/30/2019.

Entire rule eff. 07/30/2020.

Entire rule eff. 04/30/2021.

Annotations

Introductory paragraph of Rule 2260.5-R-23.00 (adopted 11/10/2005) was not extended by House Bill 07-1167 and therefore expired 05/15/2007.

Rules 2260.5-R-3.03(2)(a), 3.06(1)(a), 3.06(1)(c), 3.07(1)(d), 4.13(4)(c), 4.17(7), 15.00(2)(d), 15.00(2)(j) (adopted 12/14/2006) were not extended by Senate Bill 08-075 and therefore expired 05/15/2008.

Rules 2260.5-R-3.07(1), 4.17(1), 4.17(2), 4.17(3) were repealed by Senate Bill 08-075, eff. 05/15/2008.

Rules 4.11(6)-4.11(6)(d) (adopted 08/08/2012) were not extended by Senate Bill 13-079 and therefore expired 05/15/2013.

Rule 4.04 (adopted 12/05/2012) was not extended by Senate Bill 15-100 and therefore expired 05/15/2015.

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

Colorado State Board of Education

on 11/10/2021

1 CCR 301-37

RULES FOR THE ADMINISTRATION OF THE EDUCATOR LICENSING ACT OF 1991

The above-referenced rules were submitted to this office on 11/11/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:41:10

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

Permanent Rules Adopted

Department

Department of Education

Agency

Colorado State Board of Education

CCR number

1 CCR 301-110

Rule title

1 CCR 301-110 RULES FOR THE ADMINISTRATION OF THE HIGH SCHOOL INNOVATIVE LEARNING PILOT PROGRAM 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF EDUCATION

Colorado State Board of Education

1 CCR 301-110

RULES FOR THE ADMINISTRATION OF THE HIGH SCHOOL INNOVATIVE LEARNING PILOT PROGRAM

1.00 STATEMENT AND BASIS OF PURPOSE

The statutory basis for these rules is found in section 22-35.6-101, et. seq. C.R.S. The High School Innovative Learning Pilot Program is intended to allow selected Local Education Providers (LEP) to offer learning experiences for their students that usually occur outside of the classroom.

The statute also allows selected LEPs to count their students that are enrolled in grades nine through twelve and are participating in innovative learning opportunities as full-time pupils, regardless of the actual number of teacher-pupil instruction hours and teacher-pupil contact hours for each pupil.

2.0 DEFINITIONS

2.1 "Department" means the Department of Education created and operating pursuant to Section 24-1-115, C.R.S.

2.2 "Education Leadership Council" means the council convened by Executive Order B 2017-001 in 2017 to identify the vision and strategic plan for education in Colorado.

2.3 "Innovative Learning Opportunities" means learning experiences that usually occur outside of the classroom. Innovative learning opportunities may include work-based learning, such as registered or unregistered apprenticeships, internships, technical training or skills programs through an industry provider, teacher training opportunities, concurrent enrollment, and programs leading to industry-recognized certificates, competency-based learning projects, capstone projects, and other learning experiences that are designed to support students in developing and demonstrating essential skills as described by the Department.

2.4 "Innovative Learning Plan" or "Plan" means a Local Education Provider's plan to provide a variety of innovative learning opportunities to students enrolled in grades nine through twelve.

2.5 "Local Education Provider" (LEP) means a school district organized pursuant to Article 30 of Title 22, a school that is part of a school district, a Board of Cooperative Services created pursuant to Article 5 of Title 22, a charter school authorized by a school district pursuant to Part 1 of Article 30.5 of Title 22, or an institute charter school authorized by the state Charter School Institute pursuant to Part 5 of Article 30.5 of Title 22.

2.6 "Pilot Program" means the High School Innovative Learning Pilot Program created in Section 22-35.6-103.

2.7 "Rural Local Education Provider" means: a school district in Colorado that is determined to be rural based on the size of the district, the distance from the nearest large urban/urbanized area, and having a student enrollment of approximately 6,500 students or fewer. Small rural districts are those districts meeting these same criteria and having a student population of fewer than 1,000 students.

2.07(1) A rural local education provider also includes a district charter school authorized by a school district described in Rule 2.08 or an institute charter school that is located within the geographic boundaries of a school district described in Rule 2.07.

2.8 "Small Suburban School District" means a school district that is located in a suburban area, as identified by the Department, and that enrolls fewer than two thousand students.

2.9 "State Board" means the State Board of Education created pursuant to Section 1 Article IX of the State Constitution

3.0 APPLICATION INFORMATION

3.1 Application Timeline

3.01(1) The Department will make the program application available on the Department's webpage by November 1st of the preceding budget year for each budget year for which program funding is available

3.01(2) An LEP or a group of LEPs must submit a completed program application to the Department by January 15th for each program year.

3.01(3) The State Board will select the participating LEP applicants no later than March 1st of each program year.

3.2 Application

The department will implement the program and develop an application form. Each application must specify:

3.02(1) The number of students enrolled in grades nine through twelve who were counted as full-time pupils and part-time pupils in the preceding three budget years, expressed as numerals and percentages;

3.02(2) The number of students enrolled in grades nine through twelve who participated in innovative learning opportunities the in preceding four budget years, expressed as numerals and percentages;

3.02(3) The number of students who are expected to participate in the innovative learning opportunities and the participation capacity of the innovative learning opportunities proposed in the innovative learning plan;

3.02(4) A description of the innovative learning plan that the applicant expects to implement, including an explanation of how it aligns with at least two principles for student learning and transition specified under section 22-35.6-104 (2), C.R.S and Rule 3.02(4)(a) of these rules and why those principles were selected; or an explanation of how it meets the research-based design principles under section 22-35.6-104 (3), C.R.S and Rule 3.02(4)(b) of these rules; and how the plan disproportionally benefits underserved students.

3.02(4)(a) Education Leadership Council principles

i. Intentionally inclusive and culturally responsive educational opportunities that prepare learners of all backgrounds to thrive at every critical transition from early childhood and through careers;

ii. Multiple viable postsecondary pathways that are explored and valued by all;

iii. The opportunity, supported by adults, to direct their own learning experiences to develop essential skills; and

iv. Robust career and workforce readiness opportunities, in and out of school, including during the summer break, that are informed by industry and community to ensure alignment for transitional beyond high school

3.02(4)(b) Research-based design principles

i. Impacts a large percentage of the students enrolled by the LEP in grades nine through twelve and significantly improves student outcomes;

ii. Builds public trust through transparency, local partnerships, and shared learning as evidenced by:

1. The number and variety of community partnerships that exist at the time of application and the demonstrated expectation and capacity to create additional partnerships;

2. The continuing role that community partners, including institutions of higher education, business, industry, and agricultural enterprises, will play in developing the innovative learning opportunity;

3. The mechanisms that the LEP uses and will use to solicit and share input from teachers, students, parents, and other community members; and

4. The mechanisms that the LEP uses and will use to share learning with community members;

iii. Identifies a strong theory of change that justifies why and explains how the proposed innovative learning plan is likely to result in a greater number of students participating in effective, meaningful innovative learning opportunities;

iv. Describes thoroughly and clearly the plan for collecting the evidence that the LEP will use to evaluate the effectiveness of the theory of change; and

v. Creates a schedule and mechanism for evaluating the collected evidence and committing to adapt in response to trends in the evidence to improve the innovative learning plan.

3.02(5) Information that demonstrates that the applicant has capacity and willingness to implement the innovative learning plan with integrity;

3.02(6) An explanation of the goals of the innovative learning plan and how the applicant intends to measure attainment of the goals, the data the applicant will collect to measure attainment of the goals, and the schedule and method for collecting data and assessing attainment of the goals; and

3.02(7) If applicable to the innovative learning plan, the partnerships between community, business, or other organizations and the applicant that relate to the innovative learning opportunities included in the plan that are in place at the time of application, or that the applicant expects to enter into in implementing the plan.

3.3 Simplified Application for Small Districts

The State Board shall ensure that, for school districts, schools of a district or BOCES, or a charter schools that enroll fewer than 2,000 students, the Department will simplify the application using existing Department data for as many elements as possible. Department staff cannot waive statutoryrequirements.

4.0 Application Review Criteria

4.1 The Department and the State Board shall consider the following in recommending and selecting the LEPs to participate in the pilot program:

4.01(1) The percentage of students enrolled by the LEP in grades nine through twelve who are reasonably expected to participate in innovative learning opportunities;

4.01(2) The quality of the innovative learning plan and the likelihood that it will result in meaningful innovative learning opportunities that will significantlysupport students in their transition from high school to postsecondary education or the workforce; and

4.01(3) The degree to which the innovative learning plan aligns with at least two principles for student learning and transition specified in section 22-35.6-104 (2), C.R.S. or meets the research-based design principles described in section 22-35.6-104 (3), C.R.S.

4.01(4) The degree to which the innovative learning plan includes opportunities for students to participate in registered or unregistered apprenticeships, internships, technical training or skills programs through an industry provider, teacher training opportunities, concurrent enrollment, and programs leading to industry-recognized certificates.

4.01(5) How the applicant's innovative learning plan disproportionately benefits underserved students.

5.0 Applicant Selection and Funding

5.1 The State Board shall select applicants to participate in the pilot program as follows:

5.01(1) Of those applicants in which all of the students enrolled in grades nine throughtwelve in the preceding budget year were enrolled as full-time students, the State Board shall select each applicant that adopts an innovative learning plan that the State Board determines:

5.01(1)(a) Is likely to result in meaningful innovative learning opportunities that will significantly support students in their transition from high school to postsecondary education or the workforce; and

5.01(1)(b) Aligns with at least two of the principles for student learning and transition specified by the Education Leadership Council, or meets the research-based design principles.

5.01(2) For the 2021-22 budget year and each subsequent budget year until budget year 2025-26, the State Board will endeavor to select up to twenty applicants per year based on funding provided by the General Assembly.

6.0 Reports

The Department will prepare and submit the following reports in compliance with Section 22 35.6-106:

6.1 , Participating LEPs must submit a report to the Department by May 15th of each school year which includes the following information:

6.01(1) The types of innovative learning opportunities provided through implementation of the Plan;

6.01(2) The number and percentage of students enrolled in grades nine through twelve who participate in innovative learning opportunities, in total and disaggregated by student group, as defined in Section 22-11-103, where possible;

6.01(3) The number and percentage of students enrolled in grades nine through twelve who participate in innovative learning opportunities as compared to the number and percentage who participated before the LEP implemented the Plan, and as compared to the number and percentage who participated in the preceding reporting period if applicable;

6.01(4) A summary description of the outcomes achieved by students who participate in the innovative learning opportunity, that does not contain student personally identifiable Information, as defined in section 22-16-103(13), C.R.S.; and

6.01(5) A summary description of the challenges encountered in implementing the innovative learning opportunities and the manner in which the LEP addressed the challenges, including explanation of the strategies and programs that were successful and those that were not.

6.2 The Department, with assistance from the contract entity described in C.R.S. 22-35.6-105(5), shall submit to the State Board no later than July 1, 2022, and no later than July 1 each year thereafter, an annual summary report of the LEP information in Rule 6.01, and an evaluation of the effectiveness and success of the pilot program in increasing the number of students enrolled in grades nine through twelve who participated in meaningful innovative learning opportunities.

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1 CCR 301-110

RULES FOR THE ADMINISTRATION OF THE HIGH SCHOOL INNOVATIVE LEARNING PILOT PROGRAM

The above-referenced rules were submitted to this office on 11/11/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:47:33

Philip J. Weiser
Attorney General
by Eric R. Olson
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Permanent Rules Adopted

Department

Department of Education

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1 CCR 301-113

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1 CCR 301-113 RULES FOR THE ADMINISTRATION OF THE EDUCATOR RECRUITMENT AND RETENTION PROGRAM 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE EDUCATOR RECRUITMENT AND RETENTION PROGRAM

1 CCR 301-113

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

1.0 STATEMENT AND BASIS OF PURPOSE

Section 22-60.3-202, et seq. C.R.S., creates the Educator Recruitment and Retention Program. The purpose of the program is to provide support to members of the armed forces, nonmilitary-affiliated educator candidates, and local education providers to recruit, select, train, and retain highly qualified educators across the state.

The statutory authority for these rules is found in section 22-60.3-202(5), C.R.S., which permits the State Board to adopt rules as necessary to implement the program.

2.0 DEFINITIONS

2.1 "Alternative teacher" means a teacher who has been issued an alternative teacher license as defined in 22-605.5-201(a).

2.2 "CTE credential" means Career and Technical Education authorization as defined in 22-60.5-111(9) C.R.S.

2.3 "Department" means the Department of Education created and existing pursuant to section 24-1-115, C.R.S.

2.4 "Educator preparation program" means an approved program of preparation, as defined in section 22-60.5-102(8), or an alternative teacher program, as defined in section 22-60.5-102(5), or other organization that provides educator preparation for a qualified program participant and is approved by the Department.

2.5 "Program" means the Educator Recruitment and Retention Program created in section 22-60.3-202, C.R.S.

2.6 "Local Education Provider" means a school district, a charter school authorized by a school district pursuant to part 1 of article 30.5 of title 22, a charter school authorized by the State Charter School Institute pursuant to part 5 of article 30.5 of title 22, or a Board of Cooperative Services created and operating pursuant to article 5 of title 22 that operates one or more public schools.

2.7 "Member of the armed forces" means a member of the Army, Air Force, Navy, Marine Corps, Coast Guard, Space Force, or any of the armed forces' active reserve components, or of the National Guard.

2.8 "Qualified program participant" means an individual who meets the program criteria and is either a member of the armed forces or a nonmilitary-affiliated educator candidate.

2.9 "Rural School District" means a school district in Colorado that the Department determines is rural, based on the geographic size of the school district and the distance of the school district from the nearest large, urbanized area, and the total student enrollment is six thousand five hundred or fewer students.

2.10 "Separation" means honorable discharge, release from active duty, release from custody and control of the armed forces, or a similar change in active or reserve status.

2.11 "Small rural school district" means a school district in Colorado that the Department determines is rural, based on the geographic size of the school district and the distance of the school district from the nearest large, urbanized area, and that enrolls fewer than one thousand students in pre-kindergarten through twelfth grade.

2.12 "State Board" means the State Board of Education created and existing pursuant to section 1 of article IX of the state constitution.

2.13 "Temporary educator eligibility (TEE) educator" means an educator who has been issued a temporary educator eligibility authorization as defined in 22-60.5-11(5).

3.0 FINANCIAL ASSISTANCE

3.01 A member of the armed forces with honorable discharge status or currently serving, or a nonmilitary-affiliated educator candidate may apply to the program to receive financial assistance of up to $10,000 for the tuition cost of an educator preparation program in which the applicant is enrolled.

3.02 The department shall review each application and determine whether the applicant meets the following criteria for participation in the program:

3.02(1) Is enrolled in a Colorado-approved traditional or alternative educator preparation program or institute of higher education for applicants pursuing a CTE credential;

3.02(2) Meets one of the following:

3.02(2)(a) Has earned bachelor's or higher degree from a regionally accredited college or university and has secured employment as an alternative teacher or temporary educator eligibility (TEE) educator in a rural or small rural district; or

3.02(2)(b) Is currently employed as a paraprofessional in a school district, charter school or BOCES and is working toward a baccalaureate degree as required to pursue a professional teaching license; or

3.02(2)(c) Has secured a position as a CTE instructor in a rural or small rural district and meets state CTE requirements:

3.02(3)(c)(i) as outlined in 23-60-304(3)(a) and section 4.04 of 1 CCR 301-37; or

3.02(3)(c)(ii) has the equivalent of eighteen (18) semester hours of postsecondary enrollment and six (6) years of military experience that are applicable to a CTE credential.

3.03 Subject to available appropriations, upon determination of qualification, the Department shall provide to the educator preparation program in which the qualified program participant is enrolled one-time financial assistance of up to $10,000 for the tuition cost of the educator preparation program.

3.03(1) As a condition of receiving financial assistance, applicants must agree to serve for a minimum of three years in a rural or small rural district. Residency year(s) in an approved alternative preparation program can count towards the years of teaching in a rural school district.

3.03(1)(c) For programs that are more than one year in length, payments may be made to the Educator Preparation Program in multiple installments throughout the duration of the program.

3.03(1)(c)(i) The Department will enter into a memorandum of understanding (MOU) with any educator preparation program that is not part of an institute of higher education and an inter-agency agreement with any institute of higher education that is not an approved Educator Preparation Program, such as those community colleges who may provide required courses for applicants seeking a CTE credential and teaching position.

3.04 If the qualified program participant does not fulfill the service condition outlined in Rule 3.03(1), and without documentation of good cause (such as illness, death, spouse military transfer, etc.), the participant shall repay the awarded financial assistance to the Department within 90 days of leaving their employment in a rural or small rural school district.

3.04(1) Program participants must sign an agreement acknowledging the commitment to teach in a rural or small rural district for three years as a condition of funding and agreeing to pay back the funds if they do not complete the service obligation.

3.04(2) Program participants must also annually certify their continued employment in a rural or small rural district for the entire three-year service period.

4.0 APPLICATIONS

Qualified program participants who wish to receive financial assistance must submit an application to the Department.

4.1 Application timeline

4.01(1) The Department will make the application form available to applicants by February 1, 2022, and annually every year after that.

4.01(2) Applications will be accepted on a rolling basis.

4.01(3) The Department will notify applicants of the decision on their application within 30 days of receipt of the application.

4.2 Application contents

4.02(1) The Department will develop a program application form. Each application, at a minimum, must specify:

4.02(1)(a) Applicant name

4.02(1)(b) Race

4.02(1)(c) Gender

4.02(1)(d) Educator preparation program in which the applicant is currently enrolled

4.02(1)(e) Military status

4.02(1)(f) Highest level of education attained

4.02(1)(g) Applicable employment as a paraprofessional

4.02(1)(h) Documentation of relevant coursework, military experience, or other professional experience which meets the eligibility criteria for a CTE credential

4.02(1)(i) Relevant employment documentation:

4.02(1)(i)(i) Current verification of employment as a CTE instructor, alternative teacher, or paraprofessional; or

4.02(1)(i)(ii) Executed intent to hire form

4.02(1)(k) Agreement to teach for three years in a rural or small rural school district and agreement to provide the Department with annual certification of such employment on a form provided by the Department.

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1 CCR 301-113

RULES FOR THE ADMINISTRATION OF THE EDUCATOR RECRUITMENT AND RETENTION PROGRAM

The above-referenced rules were submitted to this office on 11/11/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:42:14

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (405 Series, Parks)

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2 CCR 405-7 CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS 1 - eff 01/01/2022

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FINAL REGULATIONS - CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

ARTICLE I - GENERAL PROVISIONS AND FEES RELATING TO PASSES, PERMITS AND REGISTRATIONS

VEHICLE PASSES

 # 700 - VEHICLE PASS

1. Except as otherwise provided in these regulations or by Colorado Revised Statutes, no motor vehicle shall be brought onto any state recreation area or state park unless a valid parks pass issued by the Division is properly attached or displayed in the vehicle. Passes that are designed to be affixed to the windshield shall be attached to the extreme lower right-hand corner of the vehicle's windshield in a position so that the pass may be observed and identified. For an annual affixed vehicle pass, including an aspen leaf annual pass to be properly attached to a windshield, it must be permanently affixed. A state parks annual transferable pass must be hung from the rear-view mirror so that the pass may be observed and identified. Any vehicle whereby a pass cannot be secured inside the passenger compartment or hung from a rear-view mirror shall be treated as a special case, but evidence of a pass shall be required on the person or in the vehicle.

    (A) As referenced in this chapter, "veteran" means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

2. No vehicle pass shall be required for:

    a. Any snowmobile as defined in section 33-14-101, C.R.S.;

    b. Any off-highway vehicle as defined in section 33-14.5-101(3), C.R.S.;

    c. Any government-owned vehicle, emergency vehicle, or law enforcement vehicle on official business;

    d. Any commercial delivery vehicle delivering goods to the park or a park concessionaire when the goods are directly related to the operation of the park or concession;

    e. Any resident's vehicle displaying a Colorado disabled veteran's license plate pursuant to section 42-3-213(5)(a), C.R.S. or a purple heart special license plate pursuant to section 42-3-213(2), and as provided for in section 33-12-106(1), C.R.S.;

    f. Any vehicle bringing a holder of a Columbine, Centennial, Blue Spruce, Independence, Volunteer or Military Pass issued pursuant to # 701 into a state recreation area or state park;

    g. Any vehicle that is not required to have a vehicle pass pursuant to the special activity regulation # 703;

    h. Any vehicle entering a state recreation area or state park pursuant to # 712-4;

    i. Any vehicle that is exclusively towed;

j. Any vehicle occupied by a veteran or current or reserve member of any branch of the armed forces of the United States, on the State observance of Veteran's Day. At least one form of past or present military identification shall be presented at the Park entrance. Acceptable forms of military identification include:

(1) DD214;

(2) DD Form 2;

(3) DD Form 2765;

(4) Active, retired or veteran military identification cards;

(5) A current Colorado Driver's License or state issued identification card with the word 'Veteran' printed on it as specified in 42-2-303 (5)(a), C.R.S.;

(6) VA medical card;

(7) The display of military license plates.

k. Any Division employee, volunteer or hired contractor vehicle when such vehicle is used for the purposes of accomplishing work duties;

l. Any vehicle owned by a concession owner or employee or any contractor working for a concession when such vehicle is used for the purposes of accomplishing work duties;

m. Any vehicle entering the Cameo Shooting and Education Complex.

3. The types of annual vehicle passes available from the Division are as follows:

a. An Aspen Leaf annual vehicle pass as provided for in section 33-12-103, C.R.S.; and

b. An annual affixed vehicle pass, which is available for any vehicle except passenger vans and buses operated by a commercial business, and

c. A state parks annual transferable pass, which can be used for any vehicle except passenger vans and buses operated by a commercial business. State parks annual transferable passes are issued to individuals, not vehicles. Only one vehicle at a time can use an annual transferable pass.

(1) Commercial passenger vans and buses are eligible to purchase daily, but not annual, vehicle passes.

(2) School buses on official school outings, passenger vans and buses operated by a nonprofit corporation or organization as defined in 13-21-115.5 (3), C.R.S., and passenger vans and buses operated by any government agency are eligible for either daily or annual affixed vehicle passes.

(3) An annual transferable pass may be shared with the original pass holder's household. For the purpose of this regulation, "household" is defined as persons living at the same address.

4. Daily vehicle passes are as follows:

a. A fee of $9.00 per vehicle for any vehicle except for:

(1) Passenger vans and buses operated by a commercial business;

(2) A $1.00 per vehicle high-use fee will be added to the cost of daily vehicle passes at Cherry Creek, Chatfield, and Boyd Lake State Recreation Areas, and Castlewood Canyon, Eldorado Canyon, Golden Gate Canyon, Highline Lake, Lake Pueblo, Roxborough and Staunton State Parks.

b. School buses on official school outings, passenger vans and buses operated by a nonprofit corporation or organization as defined in 13-21-115.5 (3), C.R.S., and passenger vans and buses operated by any government agency are eligible to purchase a daily vehicle pass.

c. For passenger vans and buses operated by a commercial business, the daily vehicle pass fee will be based upon the number of passengers on-board. The fee shall be $10.00 for up to fifteen passengers on-board, $40.00 for sixteen to thirty passengers on-board, and $50.00 for more than thirty passengers on-board.

5. An annual affixed vehicle pass or state parks annual transferable pass shall be issued and, by appropriate language, authorize entrance by motor vehicle to all state recreation areas and state parks during the period beginning on the date of purchase through the last day of the same month in the following year. Such authorization shall apply to the user and all passengers in the motor vehicle to which the pass is affixed or displayed. One pass shall cover all state recreation areas and state parks.

6. Additional affixed annual vehicle passes may be issued to an owner or to the owner's household. Additional annual affixed vehicle passes authorize entrance by motor vehicle to all state recreation areas and state parks during the period beginning on the date of purchase of the additional pass through the expiration date of the associated original full-priced annual affixed pass or state parks annual transferable pass. Owners of school buses, passenger vans and buses owned by a nonprofit corporation or organization as defined in 13-21-115.5 (3), C.R.S., and passenger vans and buses owned by any government agency are limited to purchasing no more than two additional annual affixed vehicle passes at a reduced fee per each annual affixed vehicle pass purchased at the full fee. For the purpose of this regulation, "household" is defined as persons living at the same address. "Owner" is defined as the person whose name appears on the registration of both the original vehicle for which an annual affixed pass was purchased and the additional vehicle, or a person who can provide proof of ownership of the original and the additional vehicle at a designated Division office.

7. If the motor vehicle for which an annual affixed vehicle pass, additional affixed vehicle pass, Aspen Leaf annual pass, or additional Aspen Leaf annual pass was issued is sold or traded, or if the pass is lost or destroyed during the period in which it is valid, the person to whom the pass was issued may obtain a duplicate thereof, upon signing an affidavit reciting where and by whom it was issued and the circumstances under which it was lost or traded. Customers who provide proof of necessary replacement shall be issued a replacement annual affixed vehicle pass, additional affixed vehicle pass, Aspen Leaf annual pass, or additional Aspen Leaf annual pass for the remainder of the period that the lost or destroyed pass would have been valid at no cost. Customers without proof of necessary replacement shall be provided a replacement annual affixed vehicle pass, additional affixed vehicle pass, Aspen Leaf annual pass, or additional Aspen Leaf annual pass effective for the remainder of the period that the lost or destroyed pass would have been valid upon payment of a fee pursuant to regulation #708.1.e..

8. If a state parks annual transferable pass is lost or destroyed during the period for which it is valid, the person whom the pass was issued may obtain a duplicate thereof, upon signing an affidavit

where and by whom it was issued and the circumstances under which it was lost or destroyed. Upon payment of a fee of $60.00, a new pass effective for the remainder of the period the lost or destroyed pass would have been valid may be issued only by the Division to the original owner of such pass. Only one duplicate state parks annual transferable pass will be issued per period for which the original pass was valid.

9. A daily park pass, valid for one day only, shall authorize entrance by motor vehicle to the state recreation areas and state parks by the user and all passengers in the motor vehicle to which the pass is affixed during the day used and until 12:00 P.M. (noon) the following day.

10. A no fee pass shall be issued to any vehicle towed or carried in by a motor home if a camping permit or proof of a campsite reservation is presented at an attended visitor center, office or entrance station. The no fee pass, valid for the same time period as the camping permit or camping reservation, shall authorize entrance by motor vehicle to the state recreation areas and state parks by the user and all passengers in the motor vehicle to which the pass is affixed. For the purpose of this regulation, motor home means a vehicle designed to provide temporary living quarters and which is built into, as an integral part of or a permanent attachment to, a motor vehicle chassis or van.

CAMPGROUND USE PERMITS

 # 704 - CAMPGROUND USE PERMITS AND GROUP CAMPGROUND USE PERMITS

1 No person shall camp in designated campgrounds or use any campground facilities of any park or recreation area unless such use is by authority of a valid campground-use permit issued by the Colorado Parks and Wildlife.

2. In order to obtain a campground-use permit, a member of the camping party must be present with the camping unit, ready to make immediate occupancy of the campsite, or a reservation must be made through the approved campsite reservation system. Except as follows, no person may reserve or hold a campsite for another party by purchasing a campground-use permit for an additional site:

    a. A primary occupant must be identified for each campsite reserved. The primary occupant identified at the time of making the reservation is responsible for any fees, damages or law enforcement issues that arise from the occupants of the site.

    b. If an individual or organization wishes to reserve a campsite or group of campsites without identifying a primary occupant, the individual making the reservation is the responsible party for any damages or law enforcement issues that arise from the occupants of the site or sites.

3. Possession of a valid campground-use permit visibly displayed at a place provided at each campsite shall authorize a single camping unit (tent, camper, etc.) occupied by a single family unit, or a maximum of six (6) persons to camp in a campsite for a single night until 12:00 P.M. (noon) the following day, unless the camping permit was purchased before 5:00 A.M., in which case it expires at noon the day of purchase. No person shall remove a valid campground-use permit or reservation card from the place provided for display prior to the expiration of such permit or card and/or occupy any campsite displaying such a permit or card or otherwise posted as already occupied by another party in accordance with these regulations.

4. A valid vehicle or individual pass, as required by regulations # 700 and # 701 respectively, shall be required for each motor vehicle for each night of camping.

5. Definitions as used in these regulations, unless the context requires otherwise:

a. “Full-Hookup Campground” means those with highly developed facilities. Individual campsites will be designated and include a high-use pad with table, grill and/or fire ring and individual pressurized water, sewer and/or electrical connections. Flush toilets, lavatory and shower facilities, and trash receptacles will be available. Grocery store, food-service facilities, sanitary dump station, laundry facilities, or other developed amenities may be available.

b. “Electrical Campground” means those with fairly developed facilities. Individual campsites will be designated and include a high-use pad, picnic table, grill and/or fire ring and individual electrical connections.

c. “Tent-Only Campground” means those allowing only tents as the camping equipment. Individual campsites may have amenities similar to “Electrical Campgrounds” or “Basic Campgrounds” depending on the facility.

d. “Basic Campground” includes those campgrounds providing basic facilities and improvements. Individual campsites shall be designated and include a table, grill and/or fire ring.

e. “Primitive Campground” includes those campgrounds where only limited facilities or improvements are provided. Individual campsites may not be designated and may not include individual tables, grills or fire rings. Centrally located vault toilets and trash receptacles may be provided; however, drinking water generally will not be available.

f. “Camping/To Camp” means either:

(1) To occupy a campsite; or

(2) To erect or use a tent or shelter of natural or man-made material, the placing or use of a sleeping bag or other bedding material, the parking of a motor vehicle, motor home, travel trailer, or any combination for the apparent purpose of occupancy overnight or use outside regular park use hours (5:00 A.M. to 10:00 P.M.) or as posted.

g. “Camping Unit” is defined as one of the following:

(1) Two tents and a passenger vehicle; or

(2) One tent plus one motor home (Class A, B, C), motor vehicle, vehicle, trailer, slide-in truck camper, pop-up camper/trailer, boat, or other equipment of any description manufactured and/or used for the purposes of overnight occupancy.

(3) A camping unit may include additional tents only in a campsite with a tent pad; provided the tents are contained on the pad and other camping unit and camping group limits are observed.

(4) One passenger vehicle in addition to the above descriptions is authorized only if available parking space exists.

h. “Passenger Vehicle” means a motor vehicle not designed or used for overnight occupancy.

 # 708 - PASS AND PERMIT FEE SCHEDULE

1. The fees for the types of vehicle passes issued by the Division are as follows.

   a. Aspen leaf annual pass.....$70.00

   b. Annual affixed vehicle pass.....$80.00

   c. State parks annual transferable pass ……$120.00

   d. Each additional annual affixed vehicle pass for noncommercial vehicles……...$40.00

      (1) Each additional Aspen Leaf vehicle pass for noncommercial vehicles..…$35.00

   e. Each replacement annual affixed vehicle pass, without proof of necessary replacement ……..$40.00

      (1) Each replacement additional annual affixed vehicle pass, without proof of necessary replacement ……..$20.00

      (2) Each replacement Aspen Leaf vehicle pass, without proof of necessary replacement ……..$35.00

      (3) Each replacement additional Aspen Leaf vehicle pass, without proof of necessary replacement ……..…$17.50

      (4) Customers with proof of necessary replacement shall be issued a replacement annual affixed vehicle pass, additional annual affixed vehicle pass, or Aspen Leaf vehicle pass at no cost. Circumstances for necessary replacement include vehicle stolen, destroyed, traded, or sold; windshield replaced; pass damaged or faded; new legal name or address; or Division error. Other circumstances will be considered by the Division on a case-by-case basis.

   f. Each replacement state parks annual transferable vehicle pass ……..$60.00

   g. Each daily vehicle pass (exceptions follow)…….$9.00

      (1) At Cherry Creek, Chatfield, and Boyd Lake State Recreation Areas, and Castlewood Canyon, Eldorado Canyon, Golden Gate Canyon, Highline Lake, Lake Pueblo, Roxborough and Staunton State Parks.....$10.00

   h. Each daily vehicle pass for a passenger van or bus operated by a commercial business:

      (1) carrying up to fifteen passengers…….....$10.00

      (2) carrying sixteen to thirty passengers……..…….....$40.00

      (3) carrying more than thirty passengers……..…….....$50.00

2. The fees for the types of individual passes issued by the Division are as follows. Eligibility requirements are stated in regulation # 701.

   a. Columbine or Centennial annual pass……..$14.00

b. Each replacement Columbine or Centennial annual pass shall be provided at no cost.

c. Individual daily passes (applies to persons sixteen years of age or older) for Barr Lake, Castlewood Canyon, Crawford, Colorado State Forest, Eldorado Canyon, Eleven Mile, Elkhead Reservoir, Fishers Peak, Golden Gate Canyon, Harvey Gap, Highline Lake, Jackson Lake, James M. Robb - Colorado River, John Martin Reservoir, Lathrop, Lory, Mancos, Mueller, Navajo, North Sterling, Paonia, Pearl Lake, Rifle Gap, Rifle Falls, Roxborough, Spinney Mountain, St Vrain, Stagecoach, Staunton, Steamboat Lake, Sweitzer Lake, Sylvan Lake, Trinidad Lake, Vega and Yampa River State Parks and Arkansas Headwaters Recreation Area.....$4.00

3. The fees associated with special activities, as provided for in regulation # 703 are:

a. Special activity alternate individual fee (applies to groups of twenty or more people in size).....$4.00

b. Special activity application filing fee.....$30.00

c. Arkansas Headwaters Recreation Area special activity application filing fees:

1. Standard…….$30.00

2. Commercial boating…….$400.00

3. Other commercial activities, such as walk and wade fishing, shuttle services, imaging, vendor services, hiking, mountain biking and rock climbing……..$250.00

4. The fees for the type of campground-use permits issued by the Division are as follows. Campground classes are defined in regulation # 704. These fees do not include any applicable accommodations tax.

a. Campground-use permit for "Full Hookup Campgrounds" ……..…….$41.00/night

b. Campground-use permit for "Electrical Campgrounds" ……..$36.00/night

c. Campground-use permit for “Tent-Only Campgrounds”…….$36.00/night

d. Campground-use permit for "Basic Campgrounds" ……..…….$28.00/night

e. Campground-use permit for "Primitive Campgrounds" ……..……..$18.00/night

5. The fees for reduced rate Aspen Leaf and senior Columbine, Centennial, Independence, Blue Spruce or Volunteer park pass campground-use permits issued by the Division are as follows. Eligibility requirements are stated in regulation # 701, # 705 and # 712. Reduced rates are offered all days of the year when the campground is open, except weekends and holidays. These fees do not include any applicable accommodations tax.

a. Campground-use permit for "Full Hookup Campgrounds" ……..…….$38.00/night

b. Campground-use permit for "Electrical Campgrounds" ……..……..$33.00/night

c. Campground-use permit for “Tent-Only Campgrounds”…….$36.00/night

d. Campground-use permit for "Basic Campgrounds" ……...….$25.00/night

e. Campground-use permit for "Primitive Campgrounds" ……$15.00/night

6. The fees for types of campground-use areas are as follows. Campground classes are defined in regulation # 704. These fees do not include any applicable accommodations tax.

a. In group camp areas of “Full Hookup Campgrounds,” the fee shall be $41.00 per night per campsite assigned to such group area.

b. In group camp areas of “Electrical Campgrounds,” the fee shall be $36.00 per night per campsite assigned to such group area.

c. In group camp areas of Tent-Only Campgrounds,” the fee shall be $36.00 per night per campsite assigned to such group area.

d. In group camp areas of “Basic Campgrounds,” the fee shall be $28.00 per night per campsite assigned to such group area.

e. In group camp areas of “Primitive Campgrounds,” the fee shall be $18.00 per night per campsite assigned to such group area.

7. The fees for types of tipis, cabins and yurts are as follows. These fees do not include any applicable accommodations tax:

a. For tipis.....$50.00/night

b. For small cabins and yurts that may accommodate a maximum of six people:

(1) Standard……$90.00/night

(2) Premium……$120.00/night

c. For large cabins and yurts that may accommodate seven or more people:

(1) Standard……...$120.00/night

(2) Premium two bedroom.....$150.00/night

(3) Premium three bedroom…….....$190.00/night

(4) Premium four bedroom……$250.00/night

(5) Each additional premium bedroom over four bedrooms……...$60.00/night

d. For Mueller State Park Cabins and Harmsen Ranch at Golden Gate Canyon State Park:

(1) Premium two bedroom……$150.00/night

(2) Premium three bedroom.……$210.00/night

(3) Premium four bedroom.……...$270.00/night

e. The maximum occupancy shall be posted in each cabin and yurt.

f. There shall be an additional fee of $10.00/night for pets where pets are allowed. For barn and corral facilities, there shall be a boarding fee of $10.00/animal/night.

g. Premium facilities contain showers and flush toilets.

8. The group picnic area permit fees for the permits issued by the Division are as follows. Group picnic area classes are defined in regulation # 706.

a. Permit for “Class A - Deluxe Group Picnic Area” …….$150.00

b. Permit for “Class B - Improved Group Picnic Area” ……$100.00

c. Permit for “Class C - Basic Group Picnic Area” ……...$50.00

9. Event facility permit fees are as follows.

a. For Bridge Canyon Overlook and Pikes Peak Amphitheater at Castlewood Canyon State Park, Prairie Falcon Amphitheater at Cheyenne Mountain State Park, Panorama Point at Golden Gate Canyon State Park, Soldier Canyon Shelter at Lory State Park, and Lyons Overlook at Roxborough State Park:

(1) Monday through Friday……$150.00/2 HOURS

(2) Saturday and Sunday……$300.00/2 HOURS

b. For event facilities numbers 1 and 3 at Castlewood Canyon State Park and Timber Event Facility at Lory State Park:

(1) Monday through Friday……..$100.00

(2) Saturday and Sunday……$150.00

c. For event facility number 2 at Castlewood Canyon State Park, Fountain Valley Overlook at Roxborough State Park and South Eltuck Event Facility at Lory State Park:

(1) Monday through Friday……..$75.00

(2) Saturday and Sunday……..$125.00

d. For the Red Barn at Golden Gate Canyon State Park:

(1) Monday through Friday……$150.00

(2) Saturday and Sunday……..$200.00

e. For Mariner Point at Boyd Lake State Park:

(1) Monday through Friday……..$90.00

(2) Saturday, Sunday, and holidays……$180.00

f. For Prairie Skipper event facility at Cheyenne Mountain State Park:

(1) Monday through Friday ……$150.00/DAY

(2) Saturday and Sunday……..…….$200.00/DAY

g. For PA-CO-CHU-PUK event facilities at Ridgway State Park:

(1) Single event shelter A or B:

(a) Monday through Thursday……$125.00 plus $10 non-refundable reservation fee/DAY

(b) Friday through Sunday and holidays ….$190.00 plus $10 non-refundable reservation fee/DAY

h. For Overlook event facility at Ridgway State Park:

(1) Monday through Thursday…….$190 plus $10 non-refundable reservation fee/ 4 HOURS

(2) Friday through Sunday and holidays….$240 plus $10 non-refundable reservation fee/ 4 HOURS

i. Conference and/or meeting rooms……..……...$100.00/DAY

j. The maximum occupancy and hours of operation shall be posted at each event facility.

10. The fees associated with dog off leash areas at Chatfield State Park and Cherry Creek State Park, as provided for in regulation # 100 are:

a. Dog off-leash annual pass……..$25.00

b. Dog off-leash daily pass……...$3.00

11. The fee associated with the mandatory youth education course for motorboat operators…$15.00

12. The fees associated with the Cheyenne Mountain State Park Field/3D Archery Range are as follows:

a. Daily individual archery range permit…….$3.00

b. Annual individual archery range permit…….$30.00

13. The fees associated with the Cameo Shooting and Education Complex are as follows:

a. Individual passes:

(1) Individual day use pass (single day) …….$12.00

(2) Individual day use pass (5 consecutive days) …..……..$48.00

(3) Individual day use pass (10 consecutive days) ..…….$84.00

(4) Individual annual pass ……$150.00

(5) Individual three-year pass …….$400.00

b. Youth (ages 7-17) individual passes:

(1) Youth individual day use pass (single day) ……$3.00

(2) Youth individual day use pass (5 consecutive days) …….. $12.00

(3) Youth individual day use pass (10 consecutive days)..……$21.00

(4) Youth individual annual pass …….. $50.00

c. Two adult (Buddy) passes:

(1) Two adult day use passes (single day) ……..$20.00

(2) Two adult day use passes (5 consecutive days) ……..…..$80.00

(3) Two adult day use passes (10 consecutive days) ……..$140.00

(4) Both adult passes must be used on the same day(s).

d. Family passes (Two adults and all children (ages 7-17) that live at the same address):

(1) Family annual pass ……$300.00

(2) Family three-year pass ……..$600.00

e. Group day use passes:

(1) Day use passes for 10 to 19 individuals ……$9.00/person

(2) Day use passes for 20 to 29 individuals ……$7.00/person

(3) Day use passes for 30 or more individuals ……..$3.00/person

f. Corporate passes:

(1) Annual corporate pass (10 unassigned passes per day) ...$3,000.00

g. All annual passes for the Cameo Shooting and Education Complex are valid 365 days from the date of purchase.

14. It is unlawful for any person to transfer, sell, or assign any pass or permit issued by the Division, including special activity permits, campground use permits, and group picnic area permits, unless otherwise permitted by these regulations.

ARTICLE II - DIVISION AGENTS

#720 – AGENT COMMISSION RATES

See also §33-4-101 C.R.S. relative to CPW agents and §33-4-102(1.6)(b) C.R.S. for price indexing information for nonresident big game licenses.

A. Commission Rates for Retail Agents:

1. Division agents shall be paid a 4.75% commission for each license sold electronically, except for those licenses with commissions as shown below in Table A.4.

2. Division agents shall be paid a 5% commission for each pass sold electronically.

3. Division agents who sell registrations shall be paid a flat rate of $1.00 per registration issued.

4. Other Commission Rates:

Table A.4: Division Product Type	**2021 Commission**	**% of license price in 2021**	**2022 Commission**	**% of license price in 2022**
Second Rod Stamp	$0.63	6.7%	$0.64	6.7%
Resident Fishing - 1 day	$0.84	6.7%	$0.85	6.7%
Nonresident Fishing – 1 day	$1.05	6.7%	$1.06	6.7%
Fishing - 5 day	$2.09	6.7%	$2.13	6.7%
Resident Small Game - 1 day	$0.84	6.7%	$0.85	6.7%
Nonresident Small Game – 1 day	$1.05	6.7%	$1.06	6.7%
Nonresident Deer	$14.79	3.6%	$15.07	3.6%
Nonresident Pronghorn	$14.79	3.6%	$15.07	3.6%
Nonresident Bear	$3.60	3.6%	$3.67	3.6%
Nonresident Mountain Lion	$12.60	3.6%	$12.83	3.6%
Nonresident Antlerless Elk	$18.54	3.6%	$18.88	3.6%
Nonresident Either-sex Elk	$24.71	3.6%	$25.17	3.6%
Nonresident Antlered Elk	$24.71	3.6%	$25.17	3.6%
Nonresident Rocky Mtn Bighorn Sheep	$82.76	3.6%	$84.29	3.6%
Nonresident Desert Bighorn Sheep	$82.76	3.6%	$84.29	3.6%
Nonresident Goat	$82.76	3.6%	$84.29	3.6%
Nonresident Moose	$82.76	3.6%	$84.29	3.6%

All 2021 licenses sold through March 2022 shall be sold at the 2021 license fee and commission rates.

B. Commission Rates for the System Agent: The system agent shall be paid the commissions shown in the Table B.1 below for each license sold through the system:

1. Commission pricing for any CPW Commissionable Product sold through IPAWS

Table B.1: Commission Rates	**IPAWS Products**
a. Contractor Commission Fee percent commission rate to cover AWO System operation and maintenance cost for those products less than $100 and not listed below in c.	3.7%
b. Contractor Commission Fee flat fee commission rate to cover AWO System operation and maintenance cost for those products $100 or greater and not listed below in c.	$4.25
c.1. All Wildlife Applications, regardless of Product Cost.	$4.25
c.2. Parks variable cost products, regardless of actual Product Cost.	3.7%
Breakout Costs	
Contractor credit card fee	2.2%
Contractor fulfillment fee	$1.45

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Tracking number: 2021-00628

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

Colorado Parks and Wildlife (405 Series, Parks)

on 11/19/2021

2 CCR 405-7

CHAPTER P-7 - PASSES, PERMITS AND REGISTRATIONS

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:09:59

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-0

Rule title

2 CCR 406-0 CHAPTER W-0 - GENERAL PROVISIONS 1 - eff 01/01/2022

Effective date

01/01/2022

FINAL REGULATIONS - CHAPTER W-0 - GENERAL PROVISIONS

Appendix F - Wildlife License and Pass Prices

(1) Resident and nonresident licenses

License	Residency	Fees
3-year possession/hunting raptor license	Resident	$ 158.92***
Annual possession/hunting raptor license	Nonresident	$ 84.75***
Peregrine falcon capture license	Resident	$ 317.83***
Extra rod stamp	Resident	$ 9.53**
Extra rod stamp	Nonresident	$ 9.53**
Fishing - 1 day	Resident	$ 12.71**
Fishing - 1 day	Nonresident	$ 15.89**
Fishing - additional day	Resident	$ 5.30**
Fishing - additional day	Nonresident	$ 5.30**
Fishing - 5 day	Nonresident	$ 31.78**
Fishing- annual	Resident	$ 34.96**
Fishing - annual	Nonresident	$ 100.65**
Youth (ages 16-17) annual fishing	Resident	$ 8.48**
Senior annual fishing	Resident	$ 8.48**
Small game hunting	Resident	$ 29.66**
Senior lifetime fishing upgrade to annual combination fishing and small game hunting^	Resident	$ 20.81**
Small game hunting	Nonresident	$ 84.75**
Small game - 1 day	Resident	$ 12.71**
Small game - 1 day	Nonresident	$ 15.89**
Small game - additional day	Resident	$ 5.30**
Small game - additional day	Nonresident	$ 5.30**
Furbearer license	Resident	$ 29.66**
Furbearer license	Nonresident	$ 84.75**
Turkey, fall	Resident	$ 24.37**
Turkey, fall	Nonresident	$ 158.92**
Turkey, spring	Resident	$ 29.66**
Turkey, spring	Nonresident	$ 158.92**
Turkey (youth)	Resident	$ 14.83**
Turkey (youth)	Nonresident	$ 105.94**
Combination fishing and small game hunting	Resident	$ 50.85**
Senior (ages 65 and older) combination fishing and small game hunting	Resident	$ 29.28**
Pronghorn	Resident	$ 40.26**
Pronghorn	Nonresident	$ 418.48**
Bear, fall	Resident	$ 38.70**
Bear, fall	Nonresident	$ 101.85**
Bear, fall (youth)	Resident	$ 14.26*
Bear, fall (youth)	Nonresident	$ 50.93*
Deer	Resident	$ 40.26**
Deer	Nonresident	$ 418.48**
Elk	Resident	$ 56.15**
Elk (antlered or either sex)	Nonresident	$ 699.23**
Elk (antlerless)	Nonresident	$ 524.42**
Mountain goat	Resident	$ 317.83**
Mountain goat	Nonresident	$ 2,341.35**
Moose	Resident	$ 317.83**

Moose	Nonresident	$ 2,341.35**
Mountain lion	Resident	$ 50.85**
Mountain lion	Nonresident	$ 356.48**
Rocky mountain bighorn sheep	Resident	$ 317.83**
Rocky mountain bighorn sheep	Nonresident	$ 2,341.35**
Desert bighorn sheep	Resident	$ 317.83**
Desert bighorn sheep	Nonresident	$ 2,341.35**

Resident low-income senior lifetime fishing	Resident	$ 8.25**
Youth big game (deer, elk, pronghorn)	Resident	$ 14.82 each*
Youth big game (deer, elk, pronghorn)	Nonresident	$ 105.93 each*
Youth small game hunting	Resident	$ 1.31
Youth small game hunting	Nonresident	$ 1.31
Colorado wildlife habitat stamp, purchased in conjunction with the purchase of a hunting or fishing license	Resident	$ 10.59
Colorado wildlife habitat stamp, purchased in conjunction with the purchase of a hunting or fishing license	Nonresident	$ 10.59
“Lifetime” Colorado wildlife habitat stamp	Resident	$ 317.83***
“Lifetime” Colorado wildlife habitat stamp	Nonresident	$ 317.83***

*Plus additional surcharge of $1.50 for the Wildlife Management Public Education Fund.
**Plus additional surcharge of $1.50 for the Wildlife Management Public Education Fund and $0.25 for the Search and Rescue Fund.
***Plus additional surcharge of $0.25 for the Search and Rescue Fund.
^Valid only for resident senior Lifetime Disability and Low Income Fishing license holders.

License prices established in this table are the actual license price. Some license prices have discounts applied from the statutory maximum price as provided for in Chapters W-2 and W-3.

(2) Special licenses

License	**Fees**
Scientific collecting license	$ 29.66
Importation license	$ 79.46
Field trial license	$ 24.37
Commercial lake license	$ 211.89
Private lake license	$ 14.83
Commercial wildlife park license	$ 158.92
Noncommercial park license	$ 29.66
Wildlife sanctuary license	$ 158.92
Zoological park license	$ 158.92

(3) The fee for each migratory waterfowl stamp is $10.59.

(4) The fee for each Federal Waterfowl Stamp is $31.00.

(5) The nonrefundable application-processing fee for each limited license is $7.13 for resident applications and $9.17 for nonresident applications.

(6) Colorado State Wildlife Area passes

Pass	**Fees**

Colorado State Wildlife Area Pass - annual	$ 35.21**
Colorado State Wildlife Area Pass - 1 day	$ 7.50*
Youth (ages 16-17) annual Colorado State Wildlife Area Pass	$ 8.73*
Senior (ages 65 and older) annual Colorado State Wildlife Area Pass	$ 8.73*
Low-income annual Colorado State Wildlife Area Pass	$ 8.73*

*Plus a surcharge of $1.50 for the wildlife management public education fund.
**Plus a surcharge of $1.50 for the wildlife management public education fund and a fee of $10.40 for a Colorado wildlife habitat stamp.

In order to qualify for an annual low-income Colorado State Wildlife Area Pass, an individual must show photo identification and provide written proof, in the form of a federal or state income tax return from the immediately preceding calendar year, that the federal taxable income of such individual is at or below one hundred percent of the official poverty line for an individual or a family, as appropriate to the applicant, defined by the federal office of management and budget based on federal bureau of the census data. If said tax return is not available, a return for the year immediately preceding such year shall suffice. If a person's income is at a level where such person is not required to file an income tax return, such individual shall sign a statement under penalty of perjury in the second degree to such effect. No such affidavit shall be required to be notarized.

The federal taxable income of such individual cannot be greater than the applicable guideline set forth in the Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732-01 (February 1, 2021) issued by the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Room 422F.5, Humphrey Building, Department of Health and Human Services, Washington, DC 20201. This federal guideline, but not later amendments to or editions thereof, has been incorporated by reference. Information regarding how and where the incorporated materials may be examined, or copies obtained, is available from:

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Office of the Attorney General

Tracking number: 2021-00617

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/18/2021

2 CCR 406-0

CHAPTER W-0 - GENERAL PROVISIONS

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:03:12

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-1

Rule title

2 CCR 406-1 CHAPTER W-1 - FISHING 1 - eff 04/01/2022

Effective date

04/01/2022

FILING - 11/30/2021

FINAL REGULATIONS - CHAPTER W-1 FISHING

ARTICLE I - GENERAL PROVISIONS

#100 – DEFINITIONS
See also 33-1-102, C.R.S and Chapter 0 of these regulations for other applicable definitions.

A. **"Artificial flies and lures"** means devices made entirely of, or a combination of, natural or synthetic non-edible, non-scented (regardless if the scent is added in the manufacturing process or applied afterward), materials such as wood, plastic, silicone, rubber, epoxy, glass, hair, metal, feathers, or fiber, designed to attract fish. This definition does not include anything defined as bait in #100.B below.

B. **"Bait"** means any hand-moldable material designed to attract fish by the sense of taste or smell; those devices to which scents or smell attractants have been added or externally applied (regardless if the scent is added in the manufacturing process or applied afterward); scented manufactured fish eggs and traditional organic baits, including but not limited to worms, grubs, crickets, leeches, dough baits or stink baits, insects, crayfish, human food, fish, fish parts or fish eggs.

C. **"Chumming"** means placing fish, parts of fish, or other material upon which fish might feed in the waters of this state for the purpose of attracting fish to a particular area in order that they might be taken, but such term shall not include fishing with baited hooks or live traps.

D. **"Game fish**" means all species of fish except unregulated species, prohibited nongame, endangered and threatened species, which currently exist or may be introduced into the state and which are classified as game fish by the Commission. This includes, but is not limited to brown, brook, cutthroat, golden, lake (mackinaw), and rainbow trout; cutbow (rainbow trout x cutthroat trout hybrids), splake (lake trout x brook trout hybrids), and tiger trout (brown trout x brook trout hybrids); arctic char; grayling; kokanee salmon; whitefish; sculpin; smallmouth, largemouth, spotted, striped, and white bass; wipers (striped bass x white bass hybrids); carp; bullhead, blue, channel, and flathead catfish; black and white crappie; drum; northern pike; tiger muskie; sacramento and yellow perch; sauger; saugeye (walleye x sauger hybrids); speckled dace; rainbow smelt; tench; walleye; bluegill; bluegill hybrids (bluegill x green sunfish); green, redear and pumpkin-seed sunfish; gizzard shad; longnose and white suckers; and minnows.

E. **"Float tube"** means a floating device which suspends a single occupant in the water from the seat down and is not propelled by oars, paddles or motors.

F. **"Gig"** means a barbed fork with one or more tines which is attached to a handle.

G. **"Jugs"** means floats to which are attached a line and common hook.

H. **"Minnow"** means all members of the families of fish classified Cyprinidae (which includes but is not limited to Carp, Chub, Dace, Fathead Minnow, Shiner, Stoneroller, and Tench) Cyprinodontidae (including but not limited to Killifish) and Clupeidae (Gizzard Shad), except those designated as nongame, threatened, or endangered in Chapter 10 of these regulations, or those designated as Unregulated Wildlife in Chapter 11 of these regulations.

I. **"Natural stream"** means an existing stream course where water naturally flows regularly or intermittently for at least part of the year. Ditches or other water conveyance channels which are man-made are not considered natural streams.

J. **"Net"** means seine, dip net, gill net, cast net, trap net, hoop net or similar devices used to take or as an aid in taking fish, amphibians or crustaceans.

K. **"Personally attended line"** means a rod and line, hand line, or tip up that is used for fishing and which is under the personal control of a person who is in proximity to it.

L. **"Common hook"** means any hook or multiple hooks having a common shank. All hooks attached to a manufactured artificial lure shall be considered a common hook.

M. **"Size" or "Length"** means the total length of a fish with head and tail attached measured from the tip of the snout to the tip of the tail.

N. **"Seining"** means the capture of live fish with the use of a net that hangs vertically in the water and is used to enclose fish when its ends are pulled together, or are drawn ashore.

O. **"Snagging"** means the taking of fish by snatching with hooks, gang hooks, artificial flies or lures, or similar devices where the fish is hooked in a part of the body other than the mouth.

P. **"Trotline"** means a single, anchored line with a float at each end from which droplines are attached.

#101 - SEASON DATES AND HOURS

A. Except as otherwise provided in these regulations, all waters of the state shall be open to fishing using all manners of take day and night, year around.

#102 - LICENSE AND STAMP REQUIREMENTS
See also 33-6-107 C.R.S. for general fishing license requirements

A. A valid commercial fishing license is required to take or possess bait fish, amphibians, or crustaceans for commercial purposes.

1. Commercial fishing licenses shall be available from the Division at a cost of forty dollars ($40.00). Applications for licenses are available from the Division. Licenses issued by the Division can be restricted to specific waters, specific bag limits and times designated by the Division on the basis of the following criteria:

    a. Negative impacts on sport fishing opportunity.
    b. Effects of commercial harvest on populations of target species.
    c. Detrimental effects of transplanting a species outside its current range.
    d. Presence of threatened or endangered species and species of special concern.

2. All commercial fishing license holders shall submit an annual report as specified on the commercial fishing license application to the Division within thirty (30) days of the expiration date of the license.

3. All commercial fishing license holders shall be required to provide each purchaser of live fish with a written receipt stating the seller’s name, the date of sale, the species, and the number sold.

4. The taking of mollusks listed in Chapter 10 is prohibited.

B. Free fishing dates - The following dates are open to fishing without a license or Habitat Stamp in all waters of the state: The first full weekend of the month of June.

C. Second rod stamp – Any person may use one additional (second) personally attended line statewide when a second rod stamp is purchased, as identified on the user's fishing license.

1. Any person under 16 years of age who is not required to have a fishing license must have a second rod stamp with their signature in possession in order to use a second personally attended line.

2 Second rod stamps are not transferable to any other person, nor do they confer fishing privileges to any person other than the license-holder.

3. A second rod stamp is not required when fishing with a trotline or jugs only.

#103 - MANNER OF TAKE

A. The following are legal methods of take for species listed in this chapter. Any method of take not listed herein shall be prohibited, except as otherwise provided by statute or these regulations:

1. One personally attended line, except as otherwise authorized in these regulations.
   a. Each line shall have no more than 3 common hooks attached.

2. Trotlines

   a. Trotlines may only be used on waters specified in regulation #108.
   b. No one may use more than one trotline.
   c. Trotlines shall be anchored, marked at each end by floats, be no more than 150 feet in length, have no more than 25 droplines, and shall be weighted to place the line a minimum of 3 feet beneath the surface of the water.
   d. There shall be no more than 3 barbed hooks on a common hook on each dropline.
   e. Trotlines shall be tagged with the user's customer identification number and date set. If the user does not have a customer identification number, trotlines must be tagged with the user's name.
   f. All trotlines shall be personally checked at least once in each 24-hour period.

3. Jugs

   a. Jugs shall only be used only on waters specified in regulation #108.
   b. No one may use more than 10 jugs, each of which shall not have more than a single line with one common hook attached.
   c. Jugs shall be tagged with the user's customer identification number. If the user does not have a customer identification number, jugs must be tagged with the user's name.
   d. Jugs shall be personally checked at least once every hour.

4. Underwater spearfishing, archery, slingbows and gigs

a. Underwater spearfishing, archery, slingbows and gigs may be used statewide for the taking of carp and northern pike, except as otherwise prohibited by these regulations or land management agencies. East of the Continental Divide, gizzard shad, and white or long-nose suckers may also be taken, unless otherwise prohibited in regulation #108. Other game fish species may only be taken when authorized in regulation #108 for a specific water.
b. The following additional restrictions apply to underwater spearfishing:
    1. CO_2 guns or cartridge-powered spears are prohibited.
    2. Guns must be loaded and unloaded while the gun is submerged.
    3. Divers must stay within a radius of 100 feet of a float bearing the National Divers' Symbol.
    4. Spears must be attached by a safety line.
c. Archery and slingbows may be used for the taking of kokanee salmon during times and in locations otherwise open to snagging of salmon, as established in #108 of these regulations.
d. Archery, slingbows and gigs may be used for the taking of bullfrogs.
e. The following additional restrictions apply to fishing with archery hand-held bows and slingbows:
    1. All archery hand-held bows and slingbows must have a reel, fishing line and arrow attached to the bow.
    2. All archery hand-held bows must have an arrow safety slide mechanism, which maintains the fishing line in front of the arrow rest at all times.

5. Snagging
    a. Snagging shall be used for the taking of kokanee salmon only, and only where specifically authorized in regulation #108.
    b. Snagged fish species other than kokanee salmon must be returned to the water immediately upon catch.

6. Seines and cast-nets
    a. Seines shall be used only for fish taken in accordance with regulation #104(H), the gilled form aquatic tiger salamander larvae, and crayfish; or when authorized for emergency salvage.
    b. Seines shall be made of one-fourth (1/4) inch or less non-metallic square mesh.
    c. Seines shall not exceed 20 feet in length by 4 feet in depth

7. By hand or with the aid of dip nets
    a. Bullfrogs, crayfish, and the gilled form aquatic tiger salamander larvae may be taken by hand or with the aid of dip nets.
    b. Fish may be taken by hand or with the aid of dip nets or any other method approved by the Director, when emergency public salvage of fish has been approved in accordance with regulation #104(G).
    c. Hand held dip nets may be used for fish taken in accordance with regulation #104(H).

8. Livetraps
    a. Cage or box traps, including set pots, shall be used only for the taking of crayfish, snapping turtles, and fish taken in accordance with regulation #104(H). All cage or box traps, including set pots, shall be tagged with the user's customer identification number. If the user does not have a customer identification number, traps must be tagged with the user's name.

9. Artificial light
    a. Artificial light may be used as an aid in taking.

10. Bait
    a. Bait may be used as an aid in taking, except by chumming, in accordance with regulation #104(H).

#104 - SPECIAL CONDITIONS AND RESTRICTIONS

A. Any fish released upon catch must be released alive and into the same body of water from which it was taken. Transfer or transport of live fish is prohibited, except as otherwise permitted in the provisions of Article VII, #010 and Article I #104(H).

B. When fishing through the ice, the following additional restrictions apply:

1. Ice fishing holes shall not exceed 10 inches in diameter, or 10 inches on any side.
2. All fires on the ice must be enclosed in a container.
3. No litter may be left on the ice.
4. On waters where only portable shelters are permitted, all ice fishing shelters must be removed from the ice at the end of the day.
5. On waters where permanent ice fishing shelters are permitted; the name and customer identification number of the owner or user must be displayed on the outside, shore side, of the shelter, in legible, contrasting color letters at least 2 inches high.

C. Only those persons designated by the United States Fish and Wildlife Service may take fish, amphibians, mollusks or crustaceans within the boundaries of any Federal fish hatchery or rearing unit.

D. Molesting, disturbing, or damaging gill nets, traps, seines or trot-lines set by the Division is prohibited.

E. Fishing may be prohibited as posted pending the adoption of water-specific regulations when necessary to:

1. Protect threatened or endangered species.
2. Protect spawning areas.
3. Protect waters being used in Division research projects.
4. Protect newly acquired access to fishing waters.
5. Protect the integrity of sport fish, native fish or other aquatic wildlife populations.

F. Emergency Closure of Fishing Waters

1. The Director may authorize emergency closure of fishing waters in the state for a period of up to 9 months when it is determined that environmental conditions in these waters are such that fishing could result in unacceptable levels of fish mortality. Such closures **may** be enacted when any one of the following criteria are met:

    a. Daily maximum water temperature exceeds 71 º F;
    b. Measured stream flows are 50% or less of the daily average flow;
    c. Fish condition is deteriorating such that fungus and other visible signs of deterioration and/or stress may be present;
    d. Daily minimum dissolved oxygen levels are below six (6) parts per million (ppm).
    e. When a natural or man-caused environmental event such as wildfire, mudslides, oil spills or other similar event has occurred, resulting in the need for recovery time or remedial action for a fish population

When such determination has been made, public notice will be given, including posting at the site.

G. Emergency Public Salvage of fish

1. The Director may authorize emergency public salvage when substantial numbers of fish in waters of the state are found to be in imminent danger of being lost. Such loss is deemed to be imminent when the volume and depth of water, water temperature and/or oxygen content are such that fish cannot survive. Measurements shall be made of these criteria as a basis for making a judgment on the total loss of fish and when such loss will occur, and will include:

    a. Water storage levels in lakes, reservoirs, or ponds of less than twenty-five (25) percent of total capacity or,
    b. River or stream flow essentially eliminated with only pools left standing or,
    c. Visual evidence of substantial numbers of sick or dying fish, or
    d. Reclamation projects.

2. When such determination has been made; public notice will be given, including posting at the site, that fish may be taken by hand or by dip net, or any other method authorized by the Director. When practical the Director shall exercise this authority within fourteen (14) days of receipt of the information or at such earlier time as the emergency necessitates.

3. Numbers of fish to be salvaged and possessed by an individual shall be determined by Division personnel at the site.

4. Emergency salvage shall be permitted only during daylight hours.

H. Take, Possession and Use of Fish, Amphibians, and Crustaceans for bait, personal or commercial use

1. The seining, netting, trapping, and dipping of fish is prohibited statewide in all natural streams, springs, all waters in Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Denver, Douglas, Gilpin, Elbert, Jefferson, and Park counties, and all public standing waters in Rio Grande, Saguache, Conejos, Costilla, Alamosa, Mineral and Hinsdale counties in the Rio Grande drainage.

    a. Fish handled or produced on commercially licensed aquaculture facilities are exempt from this regulation.

2. The only fish species allowed to be taken and used for personal use as bait (either alive or dead) by fishing, seining, netting, trapping, or dipping are minnows, bluegill, hybrid bluegill, carp, sunfish, gizzard shad, sculpin, white and longnose suckers, yellow perch and rainbow smelt. Statewide bag limits apply to sunfish, bluegill, hybrid bluegills and yellow perch.

    a. Restrictions on Live Fish Used as Bait.

        1. The collection, use, or possession of live fish for use as bait is prohibited in the following waters:
            a. All waters east of the Continental Divide above 7,000 feet elevation
            b. The Arkansas River above Parkdale – Fremont and Chaffee counties
            c. Watson Lake - Larimer County
            d. All waters west of the Continental Divide, except in Navajo Reservoir.

2. Except as otherwise provided by these regulations, live fish collected for use as bait may only be used in the same body of water from which they were collected. In addition, collection and use is allowed in any man-made ditches and canals within one-half mile of the adjoining lake or reservoir. Use of any baitfish collected in those ditches and canals is restricted to only the water from which it was collected and the adjoining lake or reservoir. Baitfish collected under this provision may not be otherwise transported or stored for later use.

3. In Baca, Bent, Crowley, Kiowa, Otero and Prowers Counties, live fish collected for personal use as bait may be transported, stored or used anywhere within the listed counties. Transportation to or use of any such baitfish in any other county is prohibited,

4. All live baitfish acquired from a commercial source and transported by anglers must at all times be accompanied by a receipt from the source.

3. The only fish species allowed to be taken for commercial use are minnows, gizzard shad, white and longnose suckers and carp.

4. Bullfrogs and Salamanders. The taking, possession and use of bullfrogs and the aquatic gilled form of the tiger salamander for private and commercial use is permitted. Statewide bag limits apply.

5. Crustaceans.

   a. The taking, possession and use of any crustacean under the authority of a commercial fishing license is subject to the following restrictions:
      1. The minimum size for crayfish taken for commercial food purposes shall be three (3) inches. (Measured from the tip of the acumen (bony spike between the eye) to the telson (last bony plate in the tail)).
      2. All crayfish taken with eggs attached must be returned to the water immediately.
      3. All set pots and traps shall be labeled with the user's customer identification number. If the user does not have a customer identification number, all set pots and traps must be labeled with the user's name.

   b. In all waters west of the Continental Divide - All crayfish must be returned to the water of origin immediately or killed and taken into possession immediately upon catch with kill being effected by separating the abdomen from the cephalothorax (tail from body).

6. Mollusks. The taking of mollusks is prohibited.

#105 – VACANT

#106 - FISHING CONTESTS AND RELEASE OF TAGGED FISH

A. Fishing Contests using tagged or marked released fish

1. No person shall advertise, promote, conduct or offer to conduct any fishing contest where the object of such contest is to take marked or tagged fish released in any waters open to public fishing, except licensed commercial and private lakes, or release marked or tagged fish for this purpose, unless such contest is first approved by the Director.

a. Application shall be made on a form provided by the Division at least sixty (60) days prior to the proposed contest date. Such application shall be accompanied by a nonrefundable fee of forty dollars ($40.00).

b. Approval shall be granted to any person meeting the requirements of this regulation unless the Director determines the proposed contest would be significantly detrimental to the wildlife resource. In such cases, approval may be granted if conditions can be placed on the conduct of the contest which will avoid such detrimental effects. When an application for a contest is denied the applicant shall be promptly notified with a written notice stating the reason(s) for such denial.

2. Contests involving tagged or marked trout will be permitted only on lakes and reservoirs greater than 200 surface acres and managed primarily as a catchable fishery by Colorado Parks and Wildlife. "Catchable fishery" means any lake or reservoir which is annually stocked with hatchery reared trout averaging eight (8) to ten (10) inches in length.

3. No tagged or marked fish contest shall be permitted on any stream, river or other flowing water or any water designated as a Gold Medal or Wild Trout water.

4 Written approval shall be obtained from the person(s) or agency(s) who owns or controls the land and water area involved prior to making application to the Division

5. All statutes and regulations including license provisions, manner of taking, size restrictions and daily bag and possession limits for fish shall remain in effect during any contest.

6 Any public fishing area shall remain open to public fishing without charge, regardless of any special contest fee or changes, during a fishing contest.

7. All fish obtained for use in any contest shall be certified disease free in accordance with #009, prior to release.

8. Contest sponsor(s) shall provide a written report to the appropriate Parks and Wildlife office within twenty (20) days of the close of such contest. Said report shall include an estimate of the number of participants, the average time spent by participants in fishing and the estimated total fish catch by species.

#107 - STATEWIDE DAILY BAG AND POSSESSION LIMITS AND SPECIAL SEASONS

A. Daily Bag, Possession Limits and size limits:

1. Daily bag and possession limits **– except as otherwise provided in these regulations for certain waters,** the daily bag and possession limits will be as follows:

Species	Daily Bag and Possession Limit (except as otherwise noted)	Special Conditions
a. Trout (Brook, Brown, Cutbow, Cutthroat, Golden, Lake, Rainbow, Splake, and Tiger); Arctic Char; Salmon (except kokanee); Grayling; and Mountain Whitefish:	Daily Bag: 4 fish in the aggregate Possession Limit: 8 fish in the aggregate	Brook Trout - additional daily bag and possession limit: 10 fish, 8 inches or less in length
b. Kokanee salmon:	10 fish	
c. Walleye, Saugeye, Sauger:	5 fish in the aggregate	Arkansas and South Fork of the Republican River drainages - bag and possession limit: 10 fish in the aggregate
d. Largemouth Bass, Spotted Bass, and Smallmouth Bass:	5 fish in the aggregate	West of the Continental Divide- for Smallmouth Bass only: Unlimited bag and possession limit.
e. White Bass, Striped Bass, Wiper:	10 fish in the aggregate	Arkansas and South Fork of the Republican River drainages - bag and possession limit: 20 fish in the aggregate
f. Channel Catfish, Blue Catfish, Flathead Catfish:	10 fish in the aggregate	
g. White Crappie, Black Crappie:	20 fish in the aggregate	
h. Bluegill, Hybrid Bluegill, Green Sunfish, Redear Sunfish, Pumpkinseed Sunfish:	20 fish in the aggregate	
i. Yellow Perch:	20 fish	West of the Continental Divide: Unlimited
j. Tiger Muskie:	1 fish, at least 36 inches in length	
k. Northern Pike and Bullhead:	Unlimited	
l. Speckled Dace, and Sculpin:	Unlimited	West of the Continental Divide - bag and possession limit: 20 fish in the aggregate
m. Bullfrogs	Unlimited	
n. Crayfish (crawdads)	Unlimited	
o. Aquatic Tiger Salamander larvae (gilled form)	50, less than 5 inches in length	

2. Any fish caught and placed on a stringer, in a container or in a live well, or not returned to the water immediately, will be counted as part of the established daily bag or possession limit. Any fish taken and subsequently smoked, canned, frozen or otherwise preserved for consumption is considered part of the established possession limit until it is consumed.

3. There are no daily bag or possession limits for game species not specifically listed.

ARTICLE II - SPECIAL REGULATION WATERS

#108 – Special Daily Bag and Possession Limits, Size Restrictions, and Other Water-Specific Provisions

A. Various cutthroat waters, specifically those considered Cutthroat Conservation and Recreation waters, are protected throughout the state as listed below. In those waters:

1. Fishing is by artificial flies and lures only. All cutthroat trout must be returned to the water immediately upon catch.

Note: This is to accommodate the growing number of cutthroat trout streams and lakes that are being included in conservation and recovery actions according to management plans.

B. In place of or in addition to regulations # 101, 103, 104, 105, 106, 107 (bag and possession limits, manner of take, fishing dates, fishing hours, special conditions and restrictions, or other fishing activities), and 108 A, the following regulations apply to the named waters:

Note: Additional conditions and restrictions for state wildlife areas are found in Chapter 9

1. **Abrams Creek - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

2. **Adams County Fairgrounds Lakes (Public Works and Mann-Nyholt Lakes) - Adams County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

3. **Adobe Creek Reservoir (Blue Lake) - Bent and Kiowa Counties**

a. Trotlines and jugs are permitted.

4. **Agnes Lakes (Upper and Lower Lakes) - Jackson County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

5. **Akron City Lake - Washington County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

6. **Alberta Park Reservoir - Mineral County**

a. Fishing is by artificial flies and lures only.

b. The bag and possession limit for trout is two fish.

7. **American Lakes (Snow and Michigan Lakes) - Jackson County.**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

8. **Animas River - La Plata County**

a. From the confluence with Lightner Creek to the Rivera Crossing Bridge:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
b. From the confluence with Hermosa Creek downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

9. **Antelope Creek, West - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

10. **Antero Reservoir - Park County**

a. Ice fishing shelters must be portable.
b. The bag and possession limit for trout is two fish.

11. **Anthracite Creek, North Fork - Gunnison County**

a. From the headwaters downstream to the confluence with Hell Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

12. **Apache Creek, North and South Forks - Huerfano County**

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

13. **Arapahoe Bend Natural Area (Bass, Beaver, Cormorant, and Snapper Ponds) - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

14. **Arapaho Creek - Grand County**

a. From Monarch Lake downstream to USFS 125:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

15. **Archuleta Creek - Saguache County**

a. On that portion within the Cochetopa State Wildlife Area (Snyder Ranch) downstream from Dome Lakes State Wildlife Area:

1. Fishing is by artificial flies and lures only.
2. All trout must be returned to the water immediately upon catch.

16. **Arkansas River - Chaffee, Fremont, Lake and Pueblo Counties**

a. From the US 24 river overpass downstream to the lower boundary of the Hayden Ranch, as posted:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit and maximum size for trout is one fish, 12 inches in length.
b. From the Stockyard Bridge (Chaffee Co Rd 102) below Salida downstream 7 ½ miles to the confluence with Badger Creek:
   1. Fishing is by artificial flies and lures only.
   2. All rainbow trout and cutbows must be returned to the water immediately upon catch.
c. Within the Pueblo Reservoir State Wildlife Area:
   1. The bag and possession limit and minimum size for walleye and saugeye is five fish in the aggregate, 18 inches in length.
   2. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
d. From the bridge at Valco Ponds downstream to Pueblo Boulevard (except at the Pueblo Nature Center as posted):
   1. Fishing is by artificial flies and lures only.
   2. All trout 16 inches in length or greater must be returned to the water immediately upon catch.

17. **Arkansas River, Middle Fork of the South Arkansas - Chaffee County**

a. From the headwaters downstream to Boss Lake:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

18. **Augustora Creek - Archuleta County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

19. **Aurora (Senac) Reservoir - Arapahoe County**

a. The bag and possession limit for trout is two fish.
b. The minimum size for largemouth and smallmouth bass is 15 inches in length.
c. The minimum size for walleye is 18 inches in length.
d. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

20. **Bard Creek - Clear Creek County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

21. **Barker Reservoir - Boulder County**

a. Ice fishing is prohibited.

b. Snagging of kokanee salmon is permitted from October 1 through December 1.

22. **Barr Lake - Adams County**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

23. **Basin Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

24. **Bear Creek - Conejos County**

a. From the headwaters downstream to the confluence with the Conejos River:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

25. **Bear Creek - El Paso County**

a. From the headwaters downstream to Gold Camp Road:
   1. Fishing is prohibited

26. **Bear Creek - Jefferson County**

a. From the base of Evergreen Lake dam downstream to Bear Creek Reservoir:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout (except rainbow trout and cutbows) is two fish.
   3. All rainbow trout and cutbows must be returned to the water immediately upon catch.

27. **Bear Creek - Montezuma County**

a. From the headwaters downstream to the confluence with the Dolores River:
   1 Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

28. **Bear Creek Reservoir - Jefferson County**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

29. **Beaver Creek - Garfield County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

30. **Beaver Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

31. **Beaver Creek - Mineral County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

32. **Beaver Creek Reservoir - Rio Grande County**

a. Snagging of kokanee salmon is permitted from October 1 through December 31.

33. **Beaver Creek, West - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

34. **Beaver Dams Creek - Ouray County**

a. From the headwaters and unnamed tributary stream downstream to the US Forest Service boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

35. **Berthoud Reservoir - Larimer County**

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. The bag and possession limit and minimum size for crappie and redear sunfish is 10 fish in the aggregate, 10 inches in length.

36. **Beswick Pond - Mesa County**

a. Fishing is prohibited.

37. **Big Bend Creek - La Plata County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

38. **Big Creek Lake (Lower) - Jackson County**

a. The bag and possession limit for lake trout and/or splake is three fish, only one of which may be greater than 26 inches in length.

39. **Big Hole Creek - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

40. **Big Lake - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

41. **Big Thompson Ponds - Larimer County**

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

42. **Big Thompson River - Larimer County**

a. From the base of Olympus Dam at Lake Estes downstream to the bridge at Waltonia:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

43. **Black Canyon - San Juan County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

44. **Black Hollow Creek - Larimer County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

45. **Blanca Wildlife Habitat Area (BLM Ponds) - Alamosa County**

a. The minimum size for largemouth bass is 15 inches in length.
b. Fishing is prohibited from February 15 through July 15.

46. **Blue Mesa Reservoir - Gunnison County**

a. Ice fishing shelters must be portable.
b. There is no bag or possession limit for lake trout.
c. No more than one lake trout greater than 32 inches in length may be taken per day.
d. Snagging of kokanee salmon is permitted from November 1 through December 31.
e. The bag limit for kokanee salmon is 5 fish.
f. The possession limit for kokanee salmon is 10 fish.

47. **Blue River - Grand and Summit Counties**

a. From the north inlet at Summit Co Rd 3 (Coyne Valley Rd. 3 miles north of Breckenridge) downstream to Dillon Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
b. From Dillon Dam downstream to the north city limits of the town of Silverthorne:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the north city limits of the town of Silverthorne downstream to the Colo 9 bridge over the Blue River at Blue River State Wildlife Area:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

d. From the Colo 9 bridge over the Blue River at Blue River State Wildlife Area downstream to the Green Mountain Reservoir inlet:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.
e. From Green Mountain Reservoir dam downstream to the Colorado River:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

48. **Bobtail Creek - Grand County**

a. From the headwaters downstream to the Denver Water Board Diversion:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

49. **Boedecker Reservoir - Larimer County**

a. The minimum size for crappie is 10 inches in length.

50. **Bonny Reservoir - Yuma County**

a. There is no bag or possession limit for any game fish species.
b. Trotlines and jugs are allowed.

51. **Boss Lake - Chaffee County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

52. **Boulder Creek - Boulder County**

a. From the upper end of Eben Fine Park (within the City Limits of Boulder) downstream to 55th St:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

53. **Boyd Lake - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The minimum size for walleye and saugeye is 15 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

54. **Brush Creek - Eagle County**

a. From the confluence with the Eagle River upstream for 2.5 miles:
    1. The bag and possession limit for trout is two fish.

55. **Brush Creek, West - Eagle County**

a. In the Sylvan Lake inlet and upstream for ½ mile:
    1. Fishing is prohibited from September 1 through November 30.

56. **Brush Hollow Reservoir - Fremont County**

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.

57. **Bull Basin Reservoir #1 - Mesa County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

58. **Bull Creek Reservoirs #1 and #2 and Connecting Channels - Mesa County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

59. **Button Rock (Ralph Price) Reservoir - Boulder County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.
c. Fishing is prohibited from November 1 through April 30.

60. **Cabin Creek - Garfield County**

a. From Trappers Lake upstream for ½ mile:
    1. Fishing is prohibited.

61. **Canyon Creek - Garfield County**

a. From the north side of the I-70 Bridge downstream to the confluence with the Colorado River:
    1. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

62. **Carnero Creek, Middle - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

63. **Carnero Creek, North - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

64. **Carnero Creek, South - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

65. **Carter Creek - Grand County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

66. **Carter Lake - Larimer County**

a. The bag limit and maximum size for walleye is three fish 21 inches in length.
b. The possession limit for walleye is five fish.
c. It is unlawful to possess filleted or cleaned fish in a boat on the lake.

67. **Cascade Creek - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

68. **Cascade Creek - Huerfano County**

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

69. **Castle Creek - La Plata County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

70. **Cat Creek - Rio Grande and Conejos Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

71. **Cat Creek, North Fork - Rio Grande County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

72. **Cat Creek, South Fork - Rio Grande County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

73. **Cataract Creek - Summit County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

74. **Cerro Summit (Montrose) Reservoir - Montrose County**

a. Fishing is prohibited from December 1 to February 28.
b. Fishing access is restricted to the parking lot, the trail and up to 50 feet from the water line from March 1 through August 15.
c. Fishing is by artificial flies and lures only.
d. All fish must be returned to the water immediately upon catch.
e. Ice fishing is prohibited.

75. **Chair Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

76. **Chalk Creek - Chaffee County**

a. Within Wright's Lake State Wildlife Area:
    1. Fishing is by artificial flies and lures only.

77. **Chartier Pond - Morgan County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

78. **Chatfield Reservoir and Chatfield State Park - Jefferson and Douglas Counties**

a. Within Chatfield State Park, including the South Platte River and all ponds within the park boundary:
    1. The bag limit and minimum size for walleye is three fish, 18 inches in length.
    2. No more than one walleye greater than 21 inches in length may be taken per day.
    3. The minimum size for largemouth and smallmouth bass is 15 inches in length.
    4. Fishing is prohibited from the dam and within 100 feet of the dam or walleye spawning operation nets, from March 1 through April 15, or until walleye spawning operations are completed.
    5. Fishing is prohibited on the ponds within the dog off leash area.

79. **Cheesman Reservoir - Douglas and Jefferson Counties**

a. Fishing is prohibited from October 1 through April 30.
b. Fishing is prohibited from ½ hour after sunset until ½ hour before sunrise.
c. Fishing is prohibited on the dam and around the reservoir as posted.
d. Snagging of kokanee salmon is permitted from September 1 through September 30.
e. Ice fishing is prohibited.

80. **Cherry Creek Reservoir - Arapahoe County**

a. The bag limit and minimum size for walleye is three fish, 18 inches in length.
b. No more than one walleye greater than 21 inches in length may be taken per day.
c. The minimum size for largemouth and smallmouth bass is 15 inches in length.
d. Fishing is prohibited from the dam and within 100 feet of the dam or walleye spawning operation nets, from March 1 through April 15, or until walleye spawning operations are completed.

81. **Cheyenne Creek, North - El Paso and Teller Counties**

a. From the headwaters downstream to Gold Camp Rd:
    1. Fishing is prohibited.

82. **Cimarron River - Montrose County**

a. Snagging of kokanee salmon is permitted from November 1 through December 31.

83. **Clear Creek - Chaffee County**

a. From the gauging station (approximately ½ mile above Clear Creek Reservoir) downstream to Clear Creek Reservoir:
   1. Snagging of kokanee salmon is permitted from October 1 through December 31.

84. **Clear Creek - La Plata County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

85. **Clear Creek Holding Ponds - Adams County**

a. Fishing is prohibited, except for youth participating in Division angler education activities.

86. **Clear Creek Reservoir - Chaffee County**

a. Snagging of kokanee salmon is permitted from October 1 through December 31.

87. **Clear Fork of Muddy Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

88. **Clear Lake - Jackson County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

89. **Cliff Creek - Gunnison County**

a. From the headwaters downstream to the confluence with South Prong Cliff Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

90. **Clinton Reservoir - Summit County**

a. The bag and possession limit for trout is two fish.

91. **Cochetopa Creek - Saguache County**

a. On that portion within the Cochetopa State Wildlife Area (Snyder Ranch):
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

92. **Colorado River - Garfield, Eagle, Grand, and Mesa Counties**

a. From Lake Granby Dam downstream to the US 40 bridge approximately 3 miles west of Hot Sulphur Springs:
   1. The bag and possession limit for trout is two fish.

b. From the US 40 bridge, approximately three miles west of Hot Sulphur Springs downstream to the confluence with Troublesome Creek (approximately 5 miles east of Kremmling):
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the confluence of Williams Fork River downstream to the state line:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.
d. From the confluence with Troublesome Creek downstream to the I-70 Exit 90 bridge at Rifle (excluding 50 yards upstream and downstream of the confluences with Canyon, Elk, Grizzly and No Name Creeks):
    1. The bag and possession limit for trout is two fish.
e. 50 yards upstream and downstream of the confluences with Canyon, Elk, Grizzly and No Name Creeks:
    1. The bag and possession limit for trout is two fish.
    2. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

93. **Colorado River, (North Fork) including Shadow Mountain Spillway - Grand County**

a. From Shadow Mountain Dam spillway to Lake Granby, including Columbine Bay to the Twin Creek inlet:
    1. Fishing is prohibited from October 15 through November 30.

94. **Como Creek - Boulder County**

a. From the headwaters downstream to the confluence with North Boulder Creek:
    1. Fishing is prohibited.

95. **Conejos River - Conejos County**

a. From the lower bridge at the town of Platoro downstream to the confluence with the South Fork of the Conejos River:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
b. From Menkhaven Resort downstream to the upper boundary of Aspen Glade Campground:
    1. Fishing is by artificial flies only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

96. **Conejos River, Lake Fork - Conejos County**

a. From the headwaters including Big Lake, downstream to and including Rock Lake and its outlet:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

97. **Connected Lake - Mesa County**

a. The bag and possession limit and minimum size for largemouth bass is two fish, 18 inches in length.

98. **Cooper Lake - Hinsdale County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

99. **Cornelius Creek - Larimer County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

100. **Corral Creek - San Juan County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

101. **Corral Creek - Summit County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

102. **Cottonwood Creek, Little - Moffat County**

a. From Freeman Reservoir upstream for ¼ mile:
   1. Fishing is prohibited from January 1 through July 31.

103. **Crawford Reservoir - Delta County**

a. The bag and possession limit and minimum size for largemouth bass is one fish, 18 inches in length.
b. There is no bag or possession limit on yellow perch.
c. From the fence on top of the Crawford Reservoir dam downstream to the north boundary fence:
   1. Fishing in the spillway, the stilling basin and the outlet canal is prohibited.

104. **Crosho Reservoir - Rio Blanco County**

a. The bag and possession limit and minimum size for grayling is two fish, 16 inches in length.

105. **Crystal Lake - Lake County**

a. Fishing is by artificial flies and lures only.

106. **Crystal Reservoir - Montrose County**

a. Snagging of kokanee salmon is permitted from September 1 through December 31.

107. **Culebra Creek - Costilla County**

a. From the Colo 159 bridge downstream approximately 3 miles to the Jaquez Bridge:

1. Fishing is by artificial flies and lures only.
2. All trout must be returned to the water immediately upon catch.

108. **Cunningham Creek - Delta County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

109. **Cunningham Creek - Pitkin County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

110. **Daigre Lake - Huerfano County**

a. Fishing is by artificial flies and lures only.
b. Ice fishing is prohibited.

111. **Deadman Gulch - Routt County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

112. **Deep Creek - Gunnison County**

a. From the headwaters downstream to Paonia Reservoir:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

113. **Deep Creek - La Plata County**

a. From the headwaters downstream to the USFS boundary:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

114. **Deep Creek - San Miguel County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

115. **Deer Beaver Creek - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

116. **Delaney Butte Lakes (North, South, and East) - Jackson County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. The bag and possession limit for trout is two fish.
c. All brown trout between 14 and 20 inches in length must be returned to the water immediately upon catch.
d. All rainbow trout, cutthroat trout and cutbows between 18 and 22 inches in length must be returned to the water immediately upon catch.

e. North Delaney Butte Lake:
    1. Fishing is prohibited from the dam and within 100 feet of the dam from September 15 through November 15.
    2. Fishing is prohibited in the inlet, upstream of the standing water line.
f. South Delaney Butte Lake:
    1. Fishing is prohibited in the inlet, upstream of the standing water line.

117. **DePoorter Lake - Sedgwick County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

118. **Dillon Reservoir - Summit County**

a. All Arctic char under 20 inches in length must be returned to the water immediately upon catch.
b. The bag and possession limit and minimum size for Arctic char is one fish, 20 inches in length.

119. **Disappointment Creek - Dolores County**

a. From the headwaters downstream to the US Forest Service boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

120. **Disappointment Creek, South Fork - Dolores County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

121. **Divide Creek, West - Garfield County**

a. From the headwaters downstream to the confluence with Brook Creek:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

122. **Dixon Lake - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

123. **Dolores River - Dolores, Montezuma, Montrose, Mesa and San Miguel Counties**

a. From the confluence with the West Fork of the Dolores River downstream to the standing water line of McPhee Reservoir:
    1. The taking of kokanee salmon is prohibited, except from November 15 through December 31, when snagging is permitted.
b. From McPhee Dam downstream approximately 11 miles to the Bradfield Bridge:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the McPhee Dam downstream to the state line:

1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

d. From the Bradfield Bridge downstream to the Utah state line:
   1. There is no bag or possession limit for brown trout.

124. **Doty Park Lake - Morgan County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

125. **Doug Creek - Montrose County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

126. **Dry Gulch - Clear Creek County**

a. From the headwaters downstream to the confluence with Clear Creek:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

127. **Duke Lake - Mesa County**

a. The bag and possession limit and minimum size for largemouth bass is two fish, 18 inches in length.

128. **Eagle River - Eagle County**

a. From the confluence of the East Fork and the South Fork downstream to the confluence with the Colorado River:
   1. The bag and possession limit for trout is two fish.
b. From the I-70 Exit 147 bridge in the Town of Eagle downstream to the confluence with the Colorado River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

129. **East Pass Creek - Saguache**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

130. **East River - Gunnison County**

a. From the upstream property boundary at the Roaring Judy Fish Hatchery downstream to the confluence with the Taylor River:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit and maximum size for trout is two fish, 12 inches in length.
   3. The taking of kokanee salmon is prohibited.
b. From the Roaring Judy Fish Hatchery outlet downstream to the Roaring Judy property boundary:
   1. Fishing is prohibited from August 1 through October 31.

131. **Echo Canyon Reservoir - Archuleta County**

a. All largemouth bass between 12 and 15 inches in length must be returned to the water immediately upon catch.

132. **Elaine T. Valente Open Space Lakes, North Lake - Adams County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All fish must be returned to the water immediately upon catch.

133. **Eleven Mile Reservoir - Park County**

a. Ice fishing shelters must be portable.
b. The bag and possession limit for trout is four fish, only two of which may be greater than 16 inches in length.
c. There is no bag or possession limit on yellow perch.

134. **Elk Creek - Garfield County**

a. From the confluence with the Colorado River upstream to the US 6 Bridge in New Castle:
    1. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

135. **Elk Creek - San Miguel County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

136. **Elkhead Reservoir - Moffat and Routt Counties**

a. The bag and possession limit and minimum size for largemouth bass is two fish, 15 inches in length.
b. The bag and possession limit for crappie is ten fish.

137. **Emerald Lakes (Big and Little) - Hinsdale County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and maximum size for trout is two fish, 14 inches in length.
c. In the Lake Creek inlet for ½ mile above Big Emerald Lake:
    1. Fishing is prohibited from January 1 through July 15.

138. **Erie Lake - Boulder County**

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

139. **Escalante Creek, North Fork - Mesa County**

a. From the headwaters downstream to the US Forest Service boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

140. **Evans City Lake (Riverside Park) - Weld County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

141. **Fall Creek - Mineral County**

a. From the headwaters downstream to Wolf Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

142. **Fall Creek - San Miguel County**

a. From the headwaters downstream to Woods Lake:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

143. **Fawn Creek - Rio Blanco County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

144. **Florida River - La Plata County**

a. From the headwaters downstream to Lemon Reservoir:
   1. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. From the US 160 bridge east of Durango downstream to the confluence with the Animas River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

145. **Forbes Park Lake - Costilla County**

a. Fishing is by artificial flies and lures only.
b. All trout must be returned to the water immediately upon catch.

146. **Fort Morgan Ponds - Morgan County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

147. **Fourmile Creek - Garfield County**

a. From the confluence with the Roaring Fork River upstream for ½ mile:
   1. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

148. **Frank Easement Ponds - Weld County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

149. **Fraser Creek - Garfield County**

a. From Trappers Lake upstream for ½ mile:
    1. Fishing is prohibited.

150. **Fraser River - Grand County**

a. From the headwaters downstream to the confluence with St. Louis Creek:
    1. Fishing is by artificial flies and lures only.
    2. All rainbow trout must be returned to the water immediately upon catch.
b. From the confluence with St. Louis Creek downstream to the Colorado River:
    1. The bag and possession limit for trout is two fish.

151. **Freeman Reservoir - Moffat County**

a. Within 50 yards on either side of the inlet and upstream for ¼ mile:
    1. Fishing is prohibited from January 1 through July 31.

152. **French Gulch - Summit County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

153. **Frey Gulch - Summit County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

154. **Fryingpan Lakes #2 and #3 - Pitkin County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

155. **Fryingpan River - Eagle and Pitkin Counties**

a. From Ruedi Dam downstream to the confluence with the Roaring Fork River, approximately 14 miles:
    1. Fishing is by artificial flies and lures only.
    2. All trout (except brown trout) must be returned to the water immediately upon catch.
    3. The bag and possession limit and maximum size for brown trout is two fish, 14 inches in length.

156. **George Creek - Larimer County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

157. **Goat Creek - San Miguel County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

158. **Golden Park Ponds - Boulder County**

a. On Golden Park Ponds #3:
    1. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.
b. On Golden Park Ponds #1 and #2:
    1. Fishing is by artificial flies and lures only.
    2. Scented flies or lures must be 1.5 inches or longer.
    3. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
    4. Possession of largemouth or smallmouth bass while fishing Golden Park Ponds #1 or #2 is prohibited.

159. **Gore Creek - Eagle County**

a. From the confluence with Red Sandstone Creek downstream to the confluence with the Eagle River:
    1. Fishing by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

160. **Grand Lake - Grand County**

a. The bag and possession limit for lake trout is four fish, only one of which may be greater than 36 inches in length. All lake trout between 26 and 36 inches in length must be released immediately upon catch.
b. Ice fishing shelters must be portable.
c. Gaffs and tail snares are prohibited.

161. **Grandview Ponds - Adams County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

162. **Graneros Creek - Pueblo County**

a. From the headwaters downstream to the US Forest Service Boundary:
    1. Fishing is prohibited.

163. **Grassy Creek - San Juan County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

164. **Green Creek, Little - Grand and Routt County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

165. **Green Mountain Reservoir - Summit County**

a. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. The bag and possession limit for lake trout is eight fish.

166. **Green River - Moffat County**

a. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

167. **Griffith Reservoir - Mesa County**

a. Fishing by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

168. **Grimes Creek - La Plata County**

a. From the Bureau of Reclamation property boundary downstream to the standing water line of Vallecito Reservoir:
   1. Fishing is prohibited from September 1 through November 14.
   2. Snagging of kokanee salmon is permitted from November 15 through December 31.

169. **Grizzly Creek - Garfield County**

a. From the confluence with the Colorado River upstream for ½ mile:
   1. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

170. **Gross Reservoir - Boulder County**

a. Fishing is prohibited from sunset to sunrise.
b. Snagging of kokanee salmon is permitted from October 1 through December 1.

171. **Groundhog Creek - Dolores County**

a. From Groundhog Reservoir upstream for ½ mile:
   1. Fishing is prohibited from April 15 through July 15.

172. **Groundhog Reservoir - Dolores County**

a. In the Nash Creek and Groundhog Creek inlets upstream for ½ mile:
   1. Fishing is prohibited from April 15 through July 15.

173. **Gunnison River - Delta, Gunnison and Montrose Counties**

a. From the confluence of the East and Taylor rivers downstream to the US 50 bridge:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit and minimum size for brown trout is two fish, 16 inches in length.
   3. All rainbow trout must be returned to the water immediately upon catch.
b. From the confluence of the East and Taylor Rivers downstream to the standing water line of Blue Mesa Reservoir, including all tributary canals and diversions:
   1. The taking of kokanee salmon is prohibited from August 1 through October 31.
   2. Snagging of kokanee salmon is permitted November 1 through December 31.

c. From Blue Mesa Dam downstream for 225 yards:
    1. Fishing is prohibited, as posted.
d. From the closure signs below Blue Mesa Dam downstream to Morrow Point Reservoir Dam:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.
e. From Morrow Point Reservoir dam downstream for 130 yards:
    1. Fishing is prohibited, as posted.
f. From the closure sign below Morrow Point Reservoir dam downstream to Crystal Reservoir Dam:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.
g. From Crystal Reservoir dam downstream for 200 yards:
    1. Fishing is prohibited, as posted.
h. From 200 yards downstream of the Crystal Reservoir dam downstream to the Relief Ditch diversion (five miles above Austin Bridge):
    1. Fishing is by artificial flies and lures only.
    2. All rainbow trout must be returned to the water immediately upon catch.
i. From the confluence with the Smith Fork downstream to the confluence with the Colorado River:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

174. **Gunnison River, North Fork - Gunnison and Delta Counties**

a. From the confluence with Anthracite Creek downstream to the confluence with the Gunnison River:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

175. **Gunnison River, Lake Fork - Gunnison and Hinsdale Counties**

a. From the headwaters downstream to the waterfall at Sherman:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.
b. From first bridge crossing above Lake San Cristobal downstream to Lake San Cristobal:
    1. Fishing is by artificial flies only.
c. From the confluence with High Bridge Gulch downstream to the BLM boundary below The Gate campground:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for brown trout is two fish, 16 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.
d. From the BLM boundary below The Gate campground to the confluence with Cherry Creek:
    1. The bag and possession limit for trout is two fish.
e. From the confluence with Cherry Creek downstream to the upper Red Bridge campground boundary:
    1. Fishing is by artificial flies and lures only.

2. The bag and possession limit and minimum size for brown trout is 2 fish, 16 inches in length.
3. All rainbow trout must be returned to the water immediately upon catch.

f. From the upper Red Bridge campground boundary downstream to Blue Mesa Reservoir:
1. Snagging of kokanee salmon is permitted from September 1 through December 31.

176. **Gypsum Ponds SWA - Eagle County**

a. The bag and possession limit for trout is two fish.

177. **Hahn Creek - Rio Blanco County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

178. **Hallenbeck (Purdy Mesa) Reservoir - Mesa County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth bass between 12 and 15 inches in length must be returned to the water immediately upon catch. No more than two largemouth bass in any bag and possession limit may be greater than 15 inches in length.

179. **Hamilton Creek - Grand County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

180. **Hanging Lake - Garfield County**

a. Fishing is prohibited.

181. **Harvey Gap Reservoir - Garfield County**

a. The minimum size for largemouth bass is 15 inches in length.
b. The bag and possession limit for channel catfish is two fish.
c. Use of spearfishing, archery, slingbows and gigs for the take of northern pike is prohibited.

182. **Hat Creek - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

183. **Haxtun City Lake (Gun Club Lake) - Phillips County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

184. **Headache Creek - Archuleta County**

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

185. **Heberton Creek - Garfield County**

a. From Trappers Lake upstream for ½ mile:
   1. Fishing is prohibited.

186. **Henry Reservoir - Crowley County**

a. Trotlines and jugs are permitted.

187. **Herman Gulch - Clear Creek County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

188. **Hermosa Creek - La Plata and San Juan Counties**

a. From the headwaters downstream to the confluence with East Cross Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

189. **Hermosa Creek, East Fork - La Plata County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

190. **Hidden Lakes - Lake County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

191. **Highline Reservoir - Mesa County**

a. The bag and possession limit and minimum size for largemouth bass is two fish, 15 inches in length.

192. **Himes Creek - Mineral County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

193. **Hine Lake - Jefferson County**

a. The minimum size for largemouth bass is 18 inches in length.

194. **Hohnholz Lake #3 - Larimer County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is four fish.

195. **Holyoke City Lake (Lions Club Fishing Hole) - Phillips County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

196. **Homestake Conveyance Channel (Spinney Mountain Reservoir inlet ditch) - Park County**

a. Fishing is prohibited.

197. **Horse Creek Reservoir (Timber Lake) - Bent and Otero Counties**

a. Trotlines and jugs are permitted.

198. **Horseshoe Reservoir - Huerfano County**

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.

199. **Horseshoe Reservoir - Larimer County**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

200. **Horsetooth Reservoir - Larimer County**

a. Fishing is prohibited in the inlet area as posted from March 15 through May 31.
b. The minimum size for smallmouth bass is 12 inches in length.

201. **Hotel Draw - San Juan County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

202. **Hubbard Creek, Main - Delta County**

a. From the headwaters downstream to the Overland Ditch:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

203. **Hubbard Creek, Middle - Delta County**

a. From the headwaters downstream to the Overland Ditch:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

204. **Hudson Town Pond - Weld County**

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

205. **Huerfano River - Huerfano County**

a. From the headwaters downstream to the US Forest Service boundary:

1. Fishing is by artificial flies or artificial lures only.
2. The bag and possession limit for trout is two fish.

206. **Hunt Lake - Chaffee County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

207. **Illinois River - Jackson County**

a. Within the Diamond J and Yarmony Ranch State Wildlife Areas:
   1. Fishing is by artificial flies or artificial lures only.
   2. The bag and possession limit for trout is two fish.

208. **Jackson Lake (Reservoir) - Morgan County**

a. Ice fishing shelters must be portable.
b. The minimum size for walleye and saugeye is 15 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
d. The minimum size for wipers is 15 inches in length.
e. The minimum size for crappie is 10 inches in length.
f. Fishing in the outlet ditch immediately below the dam around the rotary screen structure is prohibited.

209. **Jayhawker Ponds - Larimer County**

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. The bag and possession limit for yellow perch is 5 fish.

210. **Jerry Creek Reservoirs #1 and #2 - Mesa County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All fish must be returned to the water immediately upon catch.
c. Use of float tubes with chest-high waders is allowed.

211. **Jim Creek - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

212. **Joe Wright Creek - Larimer County**

a. From the confluence with Joe Wright Reservoir upstream to Colo 14:
   1. Fishing is prohibited from January 1 through July 31.
   2. Fishing is by artificial flies and lures only.

213. **Joe Wright Reservoir - Larimer County**

a. Fishing is by artificial flies and lures only.

214. **John Martin Reservoir - Bent County**

a. Trotlines and jugs are permitted.

215. **Johnstown Reservoir - Weld County**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for largemouth and smallmouth bass is 15 inches in length.
d. The minimum size for crappie is 10 inches in length.

216. **Jumbo (Julesburg) Reservoir - Logan and Sedgwick Counties**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for wipers is 15 inches in length.
d. The minimum size for crappie is 10 inches in length.

217. **Juniata Reservoir - Mesa County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth bass between 12 and 15 inches in length must be returned to the water immediately upon catch. No more than two largemouth bass in any bag and possession limit may be greater than 15 inches in length.

218. **Kaufman Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

219. **Kelly Lake - Jackson County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

220. **Kelso Creek - Mesa County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

221. **Kenney Reservoir - Rio Blanco County**

a. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

222. **Kerr Lake - Conejos County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

223. **Ketner Lake - Jefferson County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

224. **Kingfisher Pond (Fort Collins Environmental Learning Center) - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

225. **Kinney Creek (3 miles east of Hot Sulphur Springs) - Grand County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

226. **KOA Lake - Boulder County**

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

227. **La Plata River - La Plata County**

a. From the US 160 bridge downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

228. **Lake Arbor - Jefferson County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The minimum size for walleye and saugeye is 15 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

229. **Lake Creek - Hinsdale County**

a. From Big Emerald Lake inlet upstream for ½ mile:
   1. Fishing prohibited from January 1 through July 15.

230. **Lake Dorothey - Las Animas County**

a. Within the Lake Dorothey State Wildlife Area, including Schwachheim Creek and all other drainages into the lake:
   1. Fishing is by artificial flies and lures only.

231. **Lake Fork Creek - Lake County**

a. From the headwaters downstream to the confluence with Glacier Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

232. **Lake Granby - Grand County**

a. The bag and possession limit for lake trout is four fish.

b. From January 1 through August 31, the bag and possession limit for trout (except lake trout) and kokanee salmon is four fish, singly or in aggregate.
c. From September 1 through December 31, the bag and possession limit for trout (except lake trout) is four fish, singly or in aggregate.
d. From September 1 through December 31, the bag and possession limit for kokanee salmon is 10 fish.
e. Snagging of kokanee salmon is permitted in Lake Granby only from September 1 through December 31 except snagging is prohibited in Columbine Bay from the inlet of Twin Creek upstream.
f. Gaffs and tail snares are prohibited.
g. Ice fishing shelters must be portable.
h. In Columbine Bay from the inlet of Twin Creek upstream:
    1. Fishing is prohibited from October 15 through November 30.

233. **Lake John - Jackson County**

a. The bag and possession limit for trout is four fish.

234. **Lake Loveland - Larimer County**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

235. **Laramie River - Larimer County**

a. Within the Hohnholz State Wildlife Area:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.

236. **Laskey Gulch - Summit County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

237. **Lester Creek - Routt County**

a. For ¼ mile upstream and ¼ mile downstream from Pearl Lake:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 18 inches in length.

238. **Lon Hagler Reservoir - Larimer County**

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. Only one channel catfish in bag or possession may be greater than 20 inches.

239. **Lone Pine Creek - Larimer County**

a. From Parvin Lake upstream to Larimer Co Rd 74E (Red Feather Lakes Rd):
    1. Fishing is prohibited, as posted.

240. **Long Draw Reservoir - Larimer County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

241. **Los Pinos Creek - Saguache County**

a. On that portion within the Cochetopa State Wildlife Area (Snyder Ranch):
    1. Fishing is by artificial flies and lures only.
    2. All fish must be returned to the water immediately upon catch.

242. **Los Pinos River - Hinsdale and La Plata Counties**

a. From the headwaters downstream to the Weminuche Wilderness boundary:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.
b. From the US 160 bridge in Bayfield downstream to Navajo Reservoir:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

243. **Lost Trail Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

244. **Lowell Ponds - Adams County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

245. **Mack Mesa Reservoir - Mesa County**

a. The bag and possession limit and minimum size for largemouth bass is two fish, 15 inches in length.

246. **Mancos River - Montezuma County**

a. From the US 160 bridge in Mancos downstream to the state line:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

247. **Martin Lake - Huerfano County**

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.

248. **May Creek - Larimer County**

a. From the headwaters downstream to the confluence with the Poudre River:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

249. **Mead Ponds - Weld County**

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

250. **McElmo Creek - Montezuma County**

a. From the US 160 bridge east of Cortez downstream to the state line:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

251. **McKay Lake - Adams County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth bass must be returned to the water immediately upon catch.

252. **McMurry Ponds - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

253. **McPhee Reservoir - Montezuma County**

a. All largemouth and smallmouth bass between 10 and 15 inches in length must be returned to the water immediately upon catch.
b. Snagging of kokanee salmon is permitted from September 1 through December 31.
c. There is no bag or possession limit for walleye.

254. **Meadow Creek - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

255. **Meadow Creek, East - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

256. **Meadow Creek Reservoir - Grand County**

a. The bag and possession limit and minimum size for tiger trout is one fish, 18 inches in length.

257. **Meadow Creek Reservoir - Jackson County**

a. The bag and possession limit for trout is two fish.

258. **Medano Creek - Saguache and Alamosa Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

259. **Medano Creek, Hudson Branch - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

260. **Medano Creek, Little - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

261. **Meredith Reservoir - Crowley County**

a. Trotlines and jugs are permitted.

262. **Michigan River - Jackson County**

a. Within the Brownlee, Murphy, and Diamond J State Wildlife Areas:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.

263. **Middle Creek, East - Saguache County**

a. From the headwaters downstream to the waterfall approximately 2.5 miles upstream from the confluence with Middle Creek:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

264. **Miners Creek - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

265. **Minnesota Creek, South Fork - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

266. **Mitchell Creek - Garfield County**

a. From the headwaters downstream to the upper boundary of the Glenwood Springs Fish Hatchery:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

267. **Montgomery Reservoir - Park County**

a. Ice fishing is prohibited.
b. Fishing is prohibited from December 1 through May 31.
c. On the south side of the reservoir and from the west face of the dam:
    1. Fishing is prohibited, as posted.

268. **Monument Reservoir - Las Animas County**

a. Snagging of kokanee salmon is permitted from October 1 through December 31.

269. **Morrow Point Reservoir - Gunnison and Montrose Counties**

a. Snagging of kokanee salmon is permitted September 1 through December 31.

270. **Mount Elbert Forebay Reservoir - Lake County**

a. The bag and possession limit for lake trout is one fish. All lake trout between 22 and 34 inches in length must be returned to the water immediately upon catch.

271. **Muddy Creek - San Miguel County**

a. From the headwaters downstream to Woods Lake:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

272. **Muddy Creek, Little - Grand County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

273. **Nash Creek - Dolores County**

a. From Groundhog Reservoir upstream for ½ mile:
   1. Fishing is prohibited from April 15 through July 15.

274. **Nate Creek - Ouray County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

275. **Native Lake - Lake County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

276. **Navajo Lake - Dolores County**

a. Fishing is by artificial flies and lures only.

277. **Navajo Reservoir - Archuleta County**

a. Trotlines are permitted.

278. **Navajo River - Archuleta and Conejos Counties**

a. From the headwaters downstream to Bridal Veil Falls:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.
b. From the Oso Diversion Dam downstream to the state line:

1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

279. **Nee Gronda Reservoir - Kiowa County**

a. Trotlines and jugs are permitted.

280. **Nee Noshe Reservoir - Kiowa County**

a. Trotlines and jugs are permitted.

281. **Nee So Pah Reservoir (Sweetwater and Jet) - Kiowa County**

a. Trotlines and jugs are permitted.

282. **Newlin Creek - Custer and Fremont Counties**

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

283. **Nickelson Creek - Pitkin County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

284. **No Name Creek - Garfield County**

a. From the confluence with the Colorado River upstream for ½ mile:
   1. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

285. **Nolan Creek - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

286. **North Lake State Wildlife Area - Las Animas County**

a. Fishing is by artificial flies and lures only.

287. **North Platte River - Jackson County**

a. Within the Brownlee II or Verner State Wildlife Areas:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.
b. From the southern boundary of the Routt National Forest downstream to the Wyoming state line (Northgate Canyon):
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

288. **North Platte River, North Fork - Jackson County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

289. **North Shields Ponds - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

290. **North Sterling Reservoir - Logan County**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for wipers is 15 inches in length; only one wiper may be greater than 25 inches in length.
d. The minimum size for smallmouth bass is 12 inches in length.
e. The minimum size for largemouth bass is 15 inches in length.
f. The minimum size for crappie is 10 inches in length.

291. **North Taylor Creek - Custer County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

292. **Northwater Creek - Garfield County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

293. **Old Dillon Reservoir - Summit County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for golden trout is one fish, 16 inches in length.

294. **Osier Creek - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

295. **Overland Trail Pond - Logan County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

296. **Paonia Reservoir (Muddy Creek) - Gunnison County**

a. From the top of Paonia Dam downstream to the boundary fence below the stilling basin:
    1. Fishing is prohibited, as posted.

297. **Parachute Creek, East Fork - Garfield County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

298. **Parachute Creek, East Middle Fork - Garfield County**

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

299. **Parvin Lake - Larimer County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.
c. In the inlet stream (Lone Pine Creek) upstream to Larimer Co Rd 74E (Red Feather Lakes Rd):
    1. Fishing is prohibited, as posted.

300. **Pass Creek - Mineral County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

301. **Pasture Creek - La Plata and San Juan Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

302. **Pearl Lake - Routt County - Including the inlet stream for ¼ mile above the inlet and the outlet stream for ¼ mile below the outlet:**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 18 inches in length.

303. **Pella Crossing Recreation Area Ponds (All Ponds) - Boulder County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
c. Fishing is prohibited in Webster Pond.

304. **Petty Creek - San Juan County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

305. **Piedra River - Archuleta County**

a. From the Piedra River bridge on USFS 631 (Piedra Road) downstream to the lower boundary of the Tres Piedra Ranch (1.5 miles above US 160):
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
b. From the US 160 bridge downstream to Navajo Reservoir:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

306. **Piedra River, East Fork - Hinsdale and Mineral Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

307. **Pikes Peak North Slope Recreation Area (Crystal, North Catamount and South Catamount Reservoirs) - El Paso and Teller Counties**

a. The bag and possession limit for lake trout is two fish.
b. North Catamount Reservoir only:
    1. Fishing is by artificial flies and lures only.

308. **Pikes Peak South Slope Recreation Area (Boehmer Reservoir, Boehmer Creek, Mason Reservoir and McReynolds Reservoir) - El Paso and Teller Counties**

a. In Boehmer Reservoir and Boehmer Creek, from the headwaters to Mason Reservoir:
    1. Fishing is prohibited.
b. In Mason Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and maximum size for trout is one fish, 16 inches in length.
c. In McReynolds Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

309. **Pit D Pond - Boulder County**

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

310. **Poage Lake - Rio Grande County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and maximum size for trout is two fish, 12 inches in length.

311. **Points Creek - Mesa County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

312. **Poose Creek - Rio Blanco County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

313. **Porcupine Lake - Routt County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

314. **Poudre Ponds #1 - Weld County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

315. **Poudre River - Larimer County**

a. From the Rocky Mountain National Park boundary downstream to the confluence with Joe Wright Creek:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.
b. From the upper boundary of the Big Bend campground downstream to the confluence with Black Hollow Creek:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the west boundary of the Hombre Ranch (below Rustic) downstream to the Pingree Park Road/bridge:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
d. From the upper boundary of Gateway Park (water diversion for Ft. Collins) downstream to the confluence with the North Fork of the Poudre River:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

316. **Poudre River, North Fork - Larimer County**

a. From the confluence with Divide Creek downstream to Bull Creek (above Halligan Reservoir):
    1. Fishing is by artificial flies or artificial lures only.
    2. All trout must be returned to the water immediately upon catch.
b. From Milton Seaman Reservoir downstream to the confluence with the Poudre River:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

317. **Poudre River, South Fork - Larimer County**

a. From the Rocky Mountain National Park boundary downstream for one mile:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

318. **Prewitt Reservoir - Logan and Washington counties**

a. The minimum size limit for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
c. The minimum size for wipers is 15 inches in length.
d. The minimum size for crappie is 10 inches in length.

319. **Priest Gulch - Dolores and Montezuma Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

320. **Pronger Pond - Logan County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

321. **Prospect Park Lakes - Jefferson County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. Bass Lake and West Prospect Lakes only:
    1. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.

322. **Prospect Ponds #2 and #3 - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

323. **Pryor Creek - Ouray County**

a. From the headwaters downstream to the US Forest Service boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

324. **Pueblo Reservoir - Pueblo County**

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.
b. The bag and possession limit and minimum size for walleye and saugeye is five fish in the aggregate, 18 inches in length.
c. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.
d. The bag and possession limit for crappie is ten fish.
e. The minimum size for crappie is 10 inches in length.
f. The bag and possession limit for wiper is five fish.
g. No more than one wiper greater than 21 inches in length may be taken per day.
h. Underwater spearfishing is allowed for the take of channel, blue and flathead catfish with an aggregate bag and possession limit of five fish; and for wiper with a bag and possession limit of five fish.
i. Fishing is prohibited from the dam and within 100 feet of the dam or walleys spawning operation nets, from March 1 through April 15, or until walleye spawning operations are completed.
j. It is unlawful to possess filleted or cleaned fish in a boat on the lake.

325. **Purgatoire River, Middle Fork - Las Animas County**

a. Within the Bosque del Oso State Wildlife Area:
    1. Fishing is by artificial flies and lures only.
    2. All fish must be returned to the water immediately upon catch.

326. **Purgatoire River, South Fork - Las Animas County**

a. Within the Bosque del Oso State Wildlife Area:
    1. Fishing by artificial flies and lures only.
    2. All fish must be returned to the water immediately upon catch.

327. **Queens Reservoir, North and South - Kiowa County**

a. Trotlines and jugs are permitted.

328. **Quincy Reservoir - Arapahoe County**

a. Fishing by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. The bag and possession limit for trout is two fish.
c. The minimum size for largemouth and smallmouth bass is 18 inches in length.
d. Fishing access is controlled by Aurora Parks and Recreation as posted.

329. **Rampart Reservoir - El Paso County**

a. Ice fishing is prohibited.
b. The bag and possession limit for lake trout is two fish.

330. **Ranch Creek, North Fork - Grand County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

331. **Red Lion State Wildlife Area - Logan County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The minimum size for crappie is 10 inches in length.

332. **Relay Creek - La Plata and San Juan Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

333. **Rhodes Gulch - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

334. **Ridgway Reservoir - Ouray County**

a. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. There is no bag or possession limit for smallmouth bass.

335. **Rifle Gap Reservoir - Garfield County**

a. The bag and possession limit and minimum size for walleye is one fish, 18 inches in length.
b. The bag and possession limit for yellow perch is twenty fish.

336. **Rio Blanco Lake - Rio Blanco County**

a. The minimum size for largemouth bass is 15 inches in length.

337. **Rio Blanco River - Archuleta and Conejos Counties**

a. From the headwaters downstream to the San Juan Wilderness boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

b. From the Blanco Diversion Dam downstream to the confluence with the San Juan River:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie

338. **Rio de Los Pinos - Conejos County**

a. From the headwaters downstream to the waterfall at the South San Juan Wilderness boundary:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

339. **Rio Grande River - Hinsdale, Mineral and Rio Grande Counties**

a. From the lower boundary of River Hill Campground downstream to the the Colo 149 bridge:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and maximum size for brown trout is two fish, 12 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.
b. From the Colo 149 bridge at South Fork downstream to the Rio Grande Canal diversion structure:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for brown trout is two fish, 16 inches in length.
    3. All rainbow trout must be returned to the water immediately upon catch.

340. **Rio Lado Creek - Montezuma County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

341. **Riverbend Ponds #1, #2, #3, #4 and #5 - Larimer County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

342. **River's Edge Natural Area Ponds (Bass, Dragonfly, Sandpiper) - Larimer County**

a. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. The bag and possession limit for yellow perch is 5 fish.

343. **Road Beaver Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

344. **Roaring Creek and tributaries - Larimer County**

a. Fishing is by artificial flies and lures only.

b. All cutthroat trout must be returned to the water immediately upon catch.

345. **Roaring Fork Creek - Grand County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

346. **Roaring Fork of the North Platte - Jackson County**

a. Within the Manville State Wildlife Area:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.

347. **Roaring Fork River - Pitkin and Garfield Counties**

a. From the confluence with McFarlane Creek downstream to the upper Woody Creek bridge:
    1. Fishing is by artificial flies only.
    2. All trout must be returned to the water immediately upon catch.
b. From the upper Woody Creek bridge downstream to the confluence with the Colorado River (excluding 50 yards upstream and downstream from the confluences with Fourmile Creek and Threemile Creek):
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
c. 50 yards upstream and downstream from the confluences with Fourmile Creek and Threemile Creek:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.
    3. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

348. **Roaring Fork - Mineral County**

a. From the headwaters downstream to the confluence with Goose Creek, including unnamed tributary streams:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

349. **Roaring Forks Creek - Montezuma County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

350. **Robinson Creek - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

351. **Rock Creek - Gunnison County**

a. From the headwaters downstream to the confluence with Clear Fork of Muddy Creek:
    1. Fishing is by artificial flies and lures only.

2. All cutthroat trout must be returned to the water immediately upon catch.

352. **Rock Creek - Lake County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

353. **Rock Creek, Little - Mesa County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

354. **Rock Creek - Park County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

355. **Rock Lake - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

356. **Rocky Fork Creek - Pitkin County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

357. **Rocky Mountain Lake - Denver County**

a. The minimum size for largemouth bass is 15 inches in length.

358. **Rosemont Reservoir - Teller County**

a. Fishing is by artificial flies and lures only.
b. Ice fishing is prohibited.

359. **Rough Canyon - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

360. **Ruby Jewel Lake - Jackson County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

361. **Runyon/Fountain Lakes State Wildlife Area - Pueblo County**

a. Ice fishing is prohibited.

362. **Saguache Creek - Saguache County**

a. From the confluence of the Middle and South Forks downstream to the confluence with California Gulch:
   1. Fishing is by artificial flies and lures only.

363. **Saguache Creek, Middle Fork - Saguache County**

a. From the headwaters downstream to the confluence with the South Fork of Saguache Creek:
   1. Fishing is by artificial flies and lures only.

364. **Saguache Creek, South Fork - Saguache County**

a. From the headwaters downstream to the confluence with the Middle Fork of Saguache Creek:
   1. Fishing is by artificial flies and lures only.

365. **Saint Vrain Creek (North and South) - Boulder County**

a. Within the town limits of Lyons as posted:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

366. **Saint Vrain State Park - Weld County**

a. Bald Eagle Lake:
   1. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
   2. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
b. Blue Heron Lake:
   1. All largemouth and smallmouth bass must be returned to the water immediately upon catch.
   2. Only one channel catfish in bag or possession may be greater than 20 inches.

367. **San Francisco Creek (Middle and West Forks) and West San Francisco Lake - Rio Grande County**

a. That portion on US Forest Service lands including West San Francisco Lake:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

368. **San Juan River - Archuleta County**

a. From the intersection of US 160 and US 84 downstream through Pagosa Springs to the intersection of Apache Street with the river, including River Center Ponds:
   1. The bag and possession limit for trout is two fish.
b. From the US 160 bridge in Pagosa Springs downstream to Navajo Reservoir:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

369. **San Miguel River - Montrose and San Miguel Counties**

a. From the Colo 90 bridge at Pinon downstream to the confluence with the Dolores River:

1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

370. **Scenery Pond (Colorow Mountain State Wildlife Area) - Rio Blanco County**

a. The bag and possession limit for trout is two fish.

371. **Schaeffer Creek - Gunnison County**

a. From the headwaters downstream to Gunnison Co Rd 12C:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

372. **Schwachheim Creek - Las Animas County**

a. Within the Lake Dorothey State Wildlife Area:
   1. Fishing is by artificial flies and lures only.

373. **Second Creek - Delta County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

374. **Second Creek - Gunnison County**

a. From the headwaters downstream to the confluence with Clear Fork of Muddy Creek:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

375. **Severy Creek - El Paso County**

a. From the headwaters downstream to the US Forest Service boundary:
   1. Fishing is prohibited.

376. **Shadow Mountain Reservoir - Grand County**

a. Ice fishing shelters must be portable.

377. **Shadow Mountain Spillway - Grand County**

a. From Shadow Mountain Reservoir downstream to Lake Granby including Columbine Bay to the Twin Creek inlet:
   1. Fishing is prohibited from October 15 through November 30.
   2. Snagging is prohibited.

378. **Sheep Creek - Conejos County**

a. From the headwaters downstream to the Conejos River:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.

379. **Sheep Creek - Larimer County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

380. **Sheep Creek, East and West Forks - Larimer County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

381. **Sig Creek - La Plata and San Juan Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

382. **Sig Creek, East Fork - San Juan County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

383. **Silver Lake - Mesa County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

384. **Slate Creek - Dolores County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

385. **Slater Creek, South Fork and West Prong of the South Fork - Routt County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

386. **Sloan Lake - Hinsdale County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

387. **Snell Creek - Rio Blanco County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

388. **South Platte Park (Littleton) - Arapahoe County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

389. **South Platte River - Douglas, Jefferson, Park and Teller Counties**

a. From the confluence of the Middle and South Forks downstream to Spinney Mountain Reservoir:

1. Fishing is by artificial flies and lures only.
2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.

b. From the outlet of Spinney Mountain Reservoir downstream to the inlet of Eleven Mile Reservoir:
1. Fishing is by artificial flies and lures only.
2. All fish caught must be returned to the water immediately upon catch.
3. Some portions may be closed to fishing as posted from September 15 to December 31 for kokanee salmon spawning operations.

c. From immediately below Eleven Mile Dam downstream to the Wagon Tongue Gulch Road bridge at Springer Gulch (Eleven Mile Canyon):
1. Fishing is by artificial flies and lures only.
2. All trout must be returned to the water immediately upon catch.

d. From Cheesman Dam downstream to the upper Wigwam Club property line:
1. Fishing by artificial flies and lures only.
2. All trout must be returned to the water immediately upon catch.

e. From the lower boundary of the Wigwam Club downstream to Scraggy View Picnic Ground:
1. Fishing is by artificial flies and lures only.
2. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

f. From Strontia Springs Dam downstream to 300 yards upstream from the Denver Water Board's Marston Diversion structure:
1. Fishing is by artificial flies and lures only.
2. The bag and possession limit for trout is two fish.

g. Within Chatfield State Park:
1. The bag limit and minimum size for walleye is three fish, 18 inches in length.
2. No more than one walleye greater than 21 inches in length may be taken per day.
3. The minimum size for largemouth and smallmouth bass is 15 inches in length.

390. **South Platte River, Middle Fork - Park County**

a. From the Colo 9 bridge (4.9 miles north of Garo) downstream to the confluence with the South Fork of the South Platte:
1. Fishing is by artificial flies and lures only.
2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.

391. **South Platte River, South Fork - Park County**

a. From US 285 downstream to Antero Reservoir:
1. Fishing is by artificial flies and lures only.
2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.

b. From Antero Reservoir downstream in the newly constructed channel to the confluence with the existing channel:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the lower boundary fence of the Badger Basin State Wildlife Area downstream to the confluence with the Middle Fork of the South Platte:
    1. Fishing is by artificial flies and lures only.
    2. All trout between 12 and 20 inches in length must be returned to the water immediately upon catch.
    3. The bag and possession limit for trout is two fish, only one of which may be greater than 20 inches in length.

392. **Spinney Mountain Reservoir - Park County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is one fish, 20 inches in length.
c. Fishing is prohibited from ½ hour after sunset until ½ hour before sunrise.
d. Ice fishing is prohibited.
e. There is no bag or possession limit for yellow perch.

393. **Sprat-Platte Lake - Adams County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. The minimum size for largemouth bass is 18 inches in length.

394. **Spring Creek - Dolores County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

395. **Spring Gulch Pond - Douglas County**

a. Fishing is by artificial flies and lures only.
b. All fish must be returned to the water immediately upon catch.

396. **Spruce Creek (confluence with Blue River approximately 5 miles north of Green Mtn. Res.) - Grand and Summit Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

397. **Spruce Creek (confluence with Blue River approximately 2.5 miles south of Breckenridge) - Summit County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

398. **Stagecoach Reservoir - Routt County**

a. There is no bag or possession limit for walleye.

399. **Stalker Lake - Yuma County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

400. **Standley Lake - Jefferson County**

a. The minimum size for walleye and saugeye is 15 inches in length.
b. No more than one walleye or saugeye in the aggregate greater than 21 inches in length may be taken per day.

401. **Stearns Lake - Boulder County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

402. **Steelman Creek - Grand County**

a. From the headwaters downstream to the Denver Water Board Diversion:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

403. **Stueben Creek, West Fork - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

404. **Summit Reservoir - Montezuma County**

a. The minimum size for largemouth bass is 15 inches in length.

405. **Swamp Lakes - Lake County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

406. **Swan River - Summit County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is 2 fish, 16 inches in length.

407. **Swan River, North Fork - Summit County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

408. **Sweitzer Lake - Delta County**

a. All fish, except carp, must be returned to the water immediately upon catch.

409. **Sylvan Lake - Eagle County**

a. In the inlet and upstream for ½ mile:
   1. Fishing is prohibited from September 1 through November 30.

410. **Tamarack Ranch Pond - Logan County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

411. **Tarryall Creek - Park County**

a. For that portion of Tarryall Creek located on the Cline Ranch State Wildlife Area:
    1. Fishing is by artificial flies and lures only.
    2. The bag and possession limit for trout is two fish.
    3. Fishing is prohibited from October 1 through the end of February.
    4. Fishing access is restricted to designated fishing areas (beats) only. Access to each fishing beat is restricted to occupants of the vehicle parked in the parking stall assigned to that beat (determined by corresponding number). No more than four anglers are allowed per vehicle, and only one vehicle is allowed per stall.

412. **Taylor Creek, Little - Montezuma County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

413. **Taylor Park Reservoir - Gunnison County**

a. The bag and possession limit for lake trout is three fish, only one of which may be greater than 26 inches in length.
b. Gaffs and tail snares are prohibited.
c. Snagging of kokanee salmon is permitted from September 1 through December 31.

414. **Taylor River - Gunnison County**

a. From the top of Taylor Dam and then from the dam downstream for 325 yards:
    1. Fishing is prohibited as posted.
b. From a point 325 yards below Taylor Dam downstream to the lower boundary of the Taylor State Wildlife Area (approximately 0.4 miles):
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

415. **Terror Creek, East Fork - Delta County**

a. From the headwaters downstream to the confluence with Terror Creek (including unnamed tributary below Terror Creek Reservoir);
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

416. **Terror Creek, West Fork - Delta County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

417. **Thomas Reservoir - Boulder County**

a. The bag and possession limit and minimum size for largemouth and smallmouth bass is one fish in the aggregate, 15 inches in length.

418. **Three Lakes - Lowest and Middle Lakes - Lake County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

419. **Three Licks Creek - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

420. **Threemile Creek - Garfield County**

a. From the confluence with the Roaring Fork River upstream for ½ mile:
   1. Fishing is prohibited from March 15 through May 31 and from October 1 through November 30.

421. **Thurston Reservoir - Prowers County**

a. Trotlines and jugs are permitted.

422. **Timberline Lake - Lake County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

423. **Torsido Creek - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

424. **Totten Reservoir - Montezuma County**

a. The minimum size for largemouth bass is 15 inches in length.

425. **Trapper Creek - Garfield County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

426. **Trappers Lake - Garfield County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for cutthroat trout is two fish. All cutthroat trout greater than 11 inches in length must be returned to the water immediately upon catch.
c. Fishing is prohibited in all inlets and upstream for ½ mile.
d. Fishing is prohibited within 100 feet of either side of all inlet streams.
e. Fishing is prohibited within 100 feet of either side of the outlet and downstream to the first falls.
f. There is no bag or possession limit on brook trout.

427. **Trinidad Reservoir - Las Animas County**

a. The minimum size for largemouth, smallmouth, and spotted bass is 15 inches in length.
b. The bag and possession limit for walleye and saugeye is five fish in the aggregate.
c. No more than one walleye or saugeye in the aggregate greater than 18 inches in length may be taken per day.

428. **Trout Creek - Rio Blanco and Routt Counties**

a. From the headwaters downstream to, but not including Sheriff Reservoir:
    1. Fishing is by artificial flies and lures only.
    2. All cutthroat trout must be returned to the water immediately upon catch.

429. **Turquoise Reservoir - Lake County**

a. The bag and possession limit for lake trout is two fish.

430. **Tuttle Creek - Saguache County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

431. **Twin Creek, North & South - Gunnison County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

432. **Twin Lakes - Lake County**

a. The bag and possession limit for lake trout is one fish. All lake trout between 22 and 34 inches in length must be returned to the water immediately upon catch.

433. **Two Buttes Reservoir - Baca County**

a. Trotlines and jugs are permitted.

434. **Two Ledge Reservoir - Jackson County**

a. Fishing is by artificial flies and lures only.

435. **Uncompahgre River - Ouray, Montrose and Delta Counties**

a. From the Ouray Co Rd 23 bridge downstream to Ridgway Reservoir:
    1. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. From Ridgway dam downstream to the fence just below the USGS Gauge Station:
    1. Fishing is prohibited, except as posted.
c. From the fence just below the USGS Gauge Station below Ridgway Dam downstream to the confluence with Cow Creek:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
d. From the Ridgway Dam downstream to the confluence with the Gunnison River:

1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

e. From the Colo 90 Bridge downstream to the LaSalle Rd. Bridge:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.

436. **Union Reservoir (Calkins Lake) - Weld County**

a. The minimum size for wipers is 15 inches in length.

437. **Upper Seepage Lake - Mineral County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit and minimum size for trout is two fish, 16 inches in length.

438. **Valco Ponds #4-7 - Pueblo County**

a. All largemouth bass, smallmouth bass, and spotted bass must be returned to the water immediately upon catch.
b. The bag and possession limit for channel catfish is one fish.

439. **Vallecito Creek - La Plata and San Juan Counties**

a. From the headwaters downstream to the southern boundary of the Weminuche Wilderness:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.
b. From the southern boundary of the Weminuche Wilderness downstream to the La Plata Co Rd 501 bridge:
   1. All kokanee salmon must be returned to the water immediately upon catch from September 1 through November 14.
   2. Snagging of kokanee salmon is permitted from November 15 through December 31.
c. From the La Plata Co Rd 501 bridge downstream to the standing water line of Vallecito Reservoir:
   1. Fishing is prohibited from September 1 through November 14.
   2. Snagging of kokanee salmon is permitted from November 15 through December 31.

440. **Vasquez Creek, Little - Grand County:**

a. From the headwaters downstream to the Denver Water Board Diversion:
   1. Fishing is by artificial flies and lures only.
   2. All cutthroat trout must be returned to the water immediately upon catch.

441. **Vasquez Creek, South Fork - Grand County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

442. **Vaughn Reservoir - Rio Blanco County**

a. The bag and possession limit for cutthroat trout is two fish.

443. **Virginia Gulch Creek, West - La Plata County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

444. **Virginia Lake - Lake County**

a. Fishing is by artificial flies and lures only.
b. The bag and possession limit for trout is two fish.

445. **Wacker Ponds (formerly known as Hanson Bros. Ponds) - Morgan County**

a. The minimum size for largemouth and smallmouth bass 15 inches in length.

446. **Wahatoya State Wildlife Area - Huerfano County**

a. Fishing is by artificial flies and lures only.
b. Ice fishing is prohibited.

447. **Walden Ponds (except Wally Toevs Pond) - Boulder County**

a. Fishing is by artificial flies and lures only. Scented flies or scented lures may be used on this water if they are 1.5 inches or longer.
b. All largemouth and smallmouth bass must be returned to the water immediately upon catch.

448. **Walker Lake State Wildlife Area - Mesa County**

a. Fishing is prohibited from October 1 through the last day of February.

449. **Waneka Lake (Lafayette) - Boulder County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

450. **Washington Park (Lily Pond) - Denver County**

a. Fishing is restricted to youth 15 years of age or younger.

451. **Watson Lake - Larimer County**

a. The minimum size for smallmouth bass is 12 inches in length.

452. **West Creek - Mesa County**

a. From the Colo 141 Bridge downstream 5 miles to the confluence of Ute Creek:
   1. The bag and possession limit for trout is two fish.

453. **West Cross Creek - Eagle County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

454. **White River - Rio Blanco County**

a. From the confluence of the North and South Forks of the White River downstream to the Colo 13 Bridge below Meeker (excluding the Sleepy Cat easement, and the Meeker Pasture State Wildlife Area):
    1. The bag and possession limit for trout is two fish.
b. On the Sleepy Cat easement, and the Meeker Pasture State Wildlife Area east of Meeker:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
c. From the confluence of the North and South Forks of the White River downstream to Kenney Reservoir:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.
d. From Taylor Draw Dam downstream 400 yards:
    1. Fishing is prohibited, as posted, to protect native fish spawning.
e. From Taylor Draw Dam downstream to the state line:
    1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

455. **White River, North Fork - Rio Blanco County**

a. From the headwaters downstream to confluence with the South Fork of the White River:
    1. The bag and possession limit for trout is two fish.

456. **White River, South Fork - Rio Blanco County**

a. From the headwaters downstream to confluence with the North Fork of the White River:
    1. The bag and possession limit for trout is two fish.

457. **Wildcat Creek - Dolores and Montezuma Counties**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

458. **Williams Fork Reservoir - Grand County**

a. Snagging of kokanee salmon is permitted from September 1 through December 31.
b. All northern pike between 26 and 34 inches in length must be returned to the water immediately upon catch.
c. From the buoy line at the Williams Fork River inlet upstream to the first Grand Co Rd bridge:
    1. Fishing and snagging are prohibited from September 15 through November 30.
d. Use of spearfishing, archery, slingbows and gigs for the take of northern pike is prohibited.
e. The bag and possession limit for lake trout is eight fish, only one of which may be greater than 30 inches in length.

459. **Williams Fork River - Grand County**

a. From Williams Fork Dam downstream to the confluence with the Colorado River:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.

460. **Williams Gulch - Larimer County**

a. From the headwaters downstream to the confluence with the Poudre River:
    1. Fishing is prohibited.

461. **Willow Creek (Little Snake drainage) - Moffat County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

462. **Willow Creek Reservoir - Grand County**

a. Ice fishing shelters must be portable.

463. **Windsor Reservoir - Weld County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.

464. **Wolf Creek - Conejos County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

465. **Wolf Creek, South Fork - Mineral County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

466. **Wolford Mountain Reservoir - Grand County**

a. Public access, including fishing, is prohibited within 150 feet of any kokanee spawning trap or wing net from October 1- December 1.

467. **Woods Lake State Wildlife Area - San Miguel County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

468. **Wrights Lake - Chaffee County**

a. Fishing is by artificial flies and lures only.

469. **Yampa River - Routt County**

a. From Stagecoach Dam downstream for 0.6 mile:
    1. Fishing is by artificial flies and lures only.
    2. All trout must be returned to the water immediately upon catch.
b. From Stagecoach Dam downstream to Catamount Lake:

1. Spawning areas (redds) are closed to fishing as posted to protect spawning fish.

c. From 0.6 miles below Stagecoach Dam downstream to the confluence with Walton Creek, excluding Catamount Lake:
   1. Fishing is by artificial flies and lures only.
   2. The bag and possession limit for trout is two fish.
d. From the confluence with Walton Creek downstream for 4.8 miles to the James Brown (Soul Center of the Universe) bridge, in Steamboat Springs:
   1. Fishing is by artificial flies and lures only.
   2. All trout must be returned to the water immediately upon catch.
e. From the James Brown (Soul Center of the Universe Bridge) downstream to the Colo 394 bridge near Craig:
   1. The bag and possession limit for trout is two fish.
f. From the headwaters of the Yampa River downstream to the confluence with the Green River:
   1. There is no bag or possession limit for channel catfish, largemouth bass, smallmouth bass, northern pike, walleye, green sunfish, bluegill, bullhead, yellow perch or crappie.

470. **Youngs Creek Reservoirs #1, #2, and #3 - Delta County**

a. Fishing is by artificial flies and lures only.
b. All cutthroat trout must be returned to the water immediately upon catch.

471. **Yuma City Lake - Yuma County**

a. The minimum size for largemouth and smallmouth bass is 15 inches in length.
b. The bag and possession limit for channel catfish is five fish.

472. **Zimmerman Lake - Larimer County**

a. Fishing is by artificial flies and lures only.
b. All trout must be returned to the water immediately upon catch.
c. Fishing is prohibited in the inlet area as posted from January 1 through July 31.

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Office of the Attorney General

Tracking number: 2021-00618

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/18/2021

2 CCR 406-1

CHAPTER W-1 - FISHING

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:04:02

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-2

Rule title

2 CCR 406-2 CHAPTER W-2 - BIG GAME 1 - eff 01/01/2022

Effective date

01/01/2022

FILING - 11/30/2021

FINAL REGULATIONS - CHAPTER W-2 - BIG GAME

ARTICLE I - GENERAL PROVISIONS

#201 - LICENSE FEES

A. Big Game License Fees

1. License Fee Reduction:

In accordance with the provisions of §33-4-102, C.R.S., the following big game license fees shall be reduced to the fee specified herein, from the level set forth in §33-4-102, C.R.S.:

License Type	2021 License Fee	2022 License Fee
Resident Bear	$38.00	$38.70
Nonresident Bear	$100.00	$101.85
Resident Bear (Youth)	$14.00	$14.26
Nonresident Bear (Youth)	$50.00	$50.93
Nonresident Mountain Lion	$350.00	$356.48
Nonresident Antlerless Elk	$514.88*	$524.42*
*Nonresident Antlerless Elk license fee is set at 75% of the Nonresident Elk license fee.		

B. Combination Big Game/Annual Fishing Licenses for Nonresidents

1. Big game licenses issued to non-residents shall be issued as combination Big Game/Annual Fishing licenses, and for each such combination license purchased each year by a nonresident $10 of the above license fee shall be allocated to the fishing portion of such combination license.

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Tracking number: 2021-00619

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/18/2021

2 CCR 406-2

CHAPTER W-2 - BIG GAME

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:04:45

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-3

Rule title

2 CCR 406-3 CHAPTER W-3 - FURBEARERS AND SMALL GAME, EXCEPT MIGRATORY BIRDS 1 - eff 01/01/2022

Effective date

01/01/2022

FILING - 11/30/2021

FINAL REGULATIONS - CHAPTER W-3 - FURBEARERS and SMALL GAME, EXCEPT MIGRATORY BIRDS

ARTICLE I - GENERAL PROVISIONS

#301 - LICENSE FEES

A. Furbearer License Fee

1. Furbearer License Fee Reduction:
In accordance with the provisions of §33-4-102, C.R.S., the following furbearer license fees shall be reduced to the fee specified herein, from the level set forth in §33-4-102, C.R.S.:

License Type	License Fee
Nonresident Furbearer	$84.75

B. Resident senior combination fishing and small game hunting license fee

1. Resident senior combination fishing and small game hunting license fee reduction:
In accordance with the provisions of §33-4-102, C.R.S., the following combination license shall be created with a reduced fee specified herein, from the level set forth in §33-4-102, C.R.S.:

License Type	License Fee
Resident senior combination fishing and small game hunting license	$29.28
Resident senior lifetime fishing upgrade to annual combination fishing and small game hunting license*	$20.81

*Valid only for resident senior Lifetime Disability and Low Income Fishing license holders.

ARTICLE II - SMALL GAME SEASON DATES, UNITS (AS DESCRIBED IN CHAPTER 0 OF THESE REGULATIONS), BAG AND POSSESSION LIMITS, LIMITED LICENSES AND PERMITS

#322 - Wild Turkey

A. Season Bag and Possession Limits

1. The bag and possession limit for each season annually shall be as provided below.
   a. Spring Season - The limit shall be two bearded turkeys in the spring for those persons who possess a limited spring license. One turkey must be harvested on the limited license and in the limited area. The additional bearded turkey must be harvested with an over-the-counter license.
   b. Fall Season - The limit shall be one turkey of either sex.
   c. Late Season - The limit shall be two beardless turkeys.
2. In addition to the above bag and possession limits, a hunter may obtain any number of nuisance turkey licenses as provided in #322(F).

3. In addition to the above bag and possession limits, a hunter may take one additional turkey with a Turn In Poachers (TIPS) license as provided in #002(H)(11)(b).

B. Applications for Limited Licenses

1. Application requirements
   a. No person shall submit more than one (1) application per season.
   b. Incomplete applications will not be accepted.
   c. Applications not submitted by the deadline date and time are void.
2. Drawing applications submittal
   a. Applications will be accepted by phone or internet only through the Division's electronic licensing system.
   b. Each drawing application shall include payment of a $7.00 non-refundable application fee for residents and a $9.00 non-refundable application fee for nonresidents. Individuals successful in the draw with be charged for the limited license as well as a $.25 fee designated for search and rescue operations and a $1.50 Wildlife Council surcharge.
   c. Spring season
      1. Applications for limited licenses must be received by phone or online no later than 8:00 PM Mountain Time, on the first Tuesday in February annually.
   d. Fall season
      1. Applications for limited licenses must be received by phone or online no later than 8:00 PM Mountain Time, on the last business day in May annually.
3. Preference systems
   a. Preference Points: Preference will be given for correct applications for first choice hunt codes only and shall be subject to the following provisions:
      1. One preference point will be awarded to each person who qualifies for and fails to draw a limited license as a first choice in the drawing or who applies using a first choice hunt code established for the purpose of accumulating a preference point only. However, no applicant may accumulate more than two turkey preference points per calendar year.
      2. Preference points will be used in future drawings for the same species and will continue to accumulate until the applicant draws a license as a first choice. If an applicant both fails to apply for a turkey license and has not purchased a turkey license during any given 10-year period, all accumulated preference points for turkey become void.
      3. Applications receiving preference will be given priority over all applications with fewer points.
      4. Group applications will receive preference at the level of the group member with the fewest accumulated points.
      5. Unsuccessful and successful applicants in the drawing can check their current accumulated preference point totals online.
   b. Hunting Licenses for Hunters with Mobility Impairments - The Director may make licenses valid in certain GMU's available to qualified hunters with mobility impairments.
      1. Applicants for hunting licenses for hunters with mobility impairments must have a mobility impairment resulting from permanent medical conditions, which makes it physically impossible for them to hunt without the assistance of an attendant. Evidence of an impossibility to participate in the hunt without the assistance of an attendant may include, but is not limited to, prescribed use of a wheel chair; shoulder or arm crutches; walker; two canes; or other prescribed medical devices or equipment.
      2. Applications for hunting licenses for hunters with mobility impairments shall be made on the form, available from and submitted with the applicable license fee to, Colorado Parks and Wildlife, Limited License Office, 6060 Broadway, Denver,

Colorado 80216. Hunters may apply from the Monday after the November Commission meeting through the last day of the spring season.

3. Applications for hunting licenses for hunters with mobility impairments shall contain a statement from a licensed medical doctor or a certified physical, occupational, or recreational therapist describing the applicant's mobility impairment and the permanent medical condition which makes it impossible for the applicant to hunt without the assistance of an attendant. Additional documentation may be required, if necessary to establish the applicant's eligibility for a hunting license for hunters with mobility impairments. Once certified by the Division as mobility-impaired according to these regulations, applicants will not be required to submit the medical statement.
4. Ten (10) hunting licenses for hunters with mobility impairments will be available for the spring season, valid only on private lands in units 91, 92, and 96. The licenses will be valid for the season dates established for the authorized hunt code. Licenses for hunters with mobility impairments may not be issued for Ranching for Wildlife properties unless otherwise provided in the ranch contract.

c. Youth Outreach Hunting Licenses – The Director may make additional youth outreach program turkey licenses available to qualified organizations sponsoring youth hunting activities.
   1. There will be no more than 200 licenses issued annually under this subsection.
   2. Licenses will be approved by the applicable Regional Manager on a case-by-case basis.
   3. Licenses are issued on a first come, first served basis to qualified organizations.
   4. Organizations who wish to request a Youth Outreach license must submit the request in writing to Colorado Parks and Wildlife, State Hunter Outreach Coordinator, 6060 Broadway, Denver, Colorado 80216 no later than 60 days prior to the planned hunting event.
   5. Licenses are limited to youth hunters under 18 years of age.

d. Novice Outreach Hunting Licenses- The Director may make additional outreach program turkey licenses available to qualified organizations sponsoring novice adult hunting activities.
   1. There will be no more than 200 licenses issued annually under this subsection.
   2. Licenses will be approved by the applicable Regional Manager on a case-by-case basis.
   3. Licenses are issued on a first-come, first-served basis to qualified organizations.
   4. Organizations who wish to request an Outreach License must submit the request in writing to Colorado Parks and Wildlife, State Hunter Outreach Coordinator, 6060 Broadway, Denver, Colorado 80216 no later than 60 days prior to the planned hunting event.
   5. Licenses are limited to novice hunters. For the purpose of these regulations a novice adult hunter is defined as a Colorado resident 18 years of age or older, who has either: no turkey license purchase history, only held a turkey license(s) in the previous year, or has no turkey license purchase history in the previous five years.

C. Special Restrictions

1. Tagging Requirements
   a. When any person kills a turkey, that person must immediately detach, sign, and date the carcass tag. Such tags must be attached to the carcass of the bird while it is transported in any vehicle, while in camp, at a residence, or other place of storage.
   b. Such tags, when dated, signed and attached to the turkey lawfully taken or killed and lawfully in possession, authorizes the possession, use, storage, and transportation of the carcass, or any part thereof, within the state.
   c. If the carcass tag is inadvertently or accidentally detached from the license or is lost or destroyed, the licensee must obtain a duplicate carcass tag before he can lawfully

hunt with such license. The duplicate carcass tag may be obtained upon furnishing satisfactory proof as to the inadvertent or accidental nature of the detachment, loss, or destruction to Colorado Parks and Wildlife.

2. Spanish Peaks SWA
   a. Hunting during the spring turkey season shall be permitted only on Saturdays, Sundays, Mondays and Tuesdays on the Spanish Peaks State Wildlife Area, except as provided in subparagraph b of this subsection.
   b. For hunters with mobility impairments, hunting during the spring turkey season shall be permitted after the second weekend of the season on Wednesdays, Thursdays and Fridays, by special access permit only. For the purposes of this subparagraph, the following restrictions shall apply:
      1. Applicants for access permits for hunters with mobility impairments must have a mobility impairment resulting from permanent medical conditions, which makes it physically impossible for them to hunt without the assistance of an attendant. Evidence of an impossibility to participate in the hunt without the assistance of an attendant may include, but is not limited to, prescribed use of a wheelchair; shoulder or arm crutches; walker; two canes; or other prescribed medical devices or equipment. Applications will be accepted until the last day of the spring turkey season. Permits will be issued on a first-come, first-served basis, and will be limited to two (2) individuals during each Wednesday through Friday time period during the spring season.
      2. Applications for access permits for hunters with mobility impairments shall be made on the form available from, and submitted to, Colorado Parks and Wildlife, Limited License Office, 6060 Broadway, Denver, Colorado 80216.
      3. Applications for access permits for mobility-impaired hunters shall contain a statement from a licensed medical doctor or a certified physical, occupational, or recreational therapist describing the applicant's mobility impairment and the permanent medical condition which makes it impossible for the applicant to hunt without the assistance of an attendant. Additional documentation may be required if necessary to establish the applicant's eligibility for an access permit for hunters with mobility impairments. Once certified by the Division as mobility-impaired according to these regulations, applicants will not be required to submit the medical statement.
3. Higel and Rio Grande SWAs
   a. Turkey hunting access during the spring turkey season requires an access permit. Access permits will be issued for each property, from the Division Office in Monte Vista through a hand drawing. Permit applications may be obtained from CPW, 0722 S. Road 1E, Monte Vista, CO 81144. Group applications will be accepted. No more than two (2) applicants per group. Application deadline is January 31 of each year. Successful applicants will be notified by mail. The date, time and location of the drawing will be included on the application.
4. Horsethief Canyon State Wildlife Area
   a. Turkey hunting access is limited to the spring turkey season and is restricted to youth mentor turkey hunting only, by access permit only. Mentors are not allowed to hunt. Permit applications are available from Colorado Parks and Wildlife Northwest Region Service Center at 711 Independent Ave., Grand Junction, CO 81505, 970-255-6100. The application deadline is March 31. Successful applicants will be notified by mail.
5. Southwest Youth Turkey Extended Season

   Youths under 18 years of age may hunt turkey in GMUs 52, 54, 55, 60, 61, 62, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 411, 521, 551, 681, 682, 711, 741, 751 and 771 from the Saturday before Thanksgiving through the Sunday after Thanksgiving, provided they possess an unfilled youth fall turkey license (including, but not limited to, hunt code TE000U3R), comply with applicable regulations for the hunt in which they participate, and are accompanied by a mentor. A mentor must be at least 18 years of age and comply with hunter education requirements. The mentor may not hunt.

D. Season Dates and Units - Unlimited Licenses.

1. Spring Seasons

Units	Hunt Code	Date Open	Date Closed	Licenses
001, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 016, 017, 018, 019, 020, 022, 024, 028, 029, 030, 031, 032, 033, 038, 039, 040, 041, 042, 046, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059 except on the Beaver Creek SWA and the Table Mountain State Trust Land Lease, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 082, 083, 084, 085, 086, 087, 088, 089, 090, 093, 094, 095, 097, 098, 099, 100, 104, 105, 106, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 126, 128, 130, 131, 133, 134, 135, 136, 137, 138, 140 except on James M. John and Lake Dorothey State Wildlife Areas, 141, 142, 143, 144, 145, 146, 147, 161, 171, 181, 191, 211, 214, 231, 301, 391, 411, 421, 441, 461, 481, 500, 501, 511, 512, 521, 551, 561, 581, 591, 681, 682, 691, 711, 741, 751, 771, 791, 851 except the Bosque del Oso SWA, 861, 951, and private land portions of 91, 92, 101, 102, 103, 107, 109, 124, 125, 127, 129, 132, 139.	TM000U1R	04/09/2022	05/31/2022	Unlimited

2. Fall Seasons

Unit	Hunt Code	Open Date	Close Date	Licenses
001, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 016, 017, 018, 019, 020, 022, 023, 024, 028, 029, 031, 032, 033, 038, 039, 040, 041, 042, 043, 046, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059 except on the Beaver Creek SWA and the Table Mountain State Trust Land Lease, 060, 061, 062, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 082, 083, 084, 085 except on the Spanish Peaks State Wildlife Area, 086, 087, 088, 094, 104, 105, 110, 112, 113, 114, 116, 117, 118, 119, 121, 122, 123, 128, 130, 131, 133, 134, 135, 136, 137, 138, 140 except on the James M. John and Lake Dorothey State Wildlife Areas, 141, 142, 143, 144, 145, 147, 161, 171, 181, 191, 211, 214, 231, 301, 391, 411, 421, 441, 461, 481, 500, 501, 511, 512, 521, 551, 561, 581, 591, 681, 682, 691, 711, 741, 751, 771, 791, 851 except on the Bosque del Oso SWA, 861, 951, and private land portions of 101, 102,.	TE000U2R	09/01/2022	10/02/2022 and 10/28/2022	Unlimited West of I-25 and GMU 140 and East of I-25 (excluding GMU 140)

3. Private Land Only Late Seasons
   a. Private land only licenses are valid on all private land within the game management unit upon which the license holder has permission to hunt.

Unit	Hunt Code	Open Date	Close Date	Licenses
112, 113	TF000U2R	12/15/2022	01/15/2023	Unlimited

E. Season Dates and Units **-** Limited Licenses and Limited License Areas. Limited licenses shall be valid only for the time period and game management unit(s) or area(s) indicated on the license.

1. Spring Season.

Unit	Hunt Code	Date Opened	Date Closed	Licenses
				Bearded Turkey Only
2	TM002O1R	04/09/2022	05/31/2022	15
15, 27,37 and 361	TM015O1R	04/09/2022	05/31/2022	15
21	TM021O1R	04/09/2022	05/31/2022	10
23	TM023O1R	04/09/2022	05/31/2022	15
23 – private land only	TM023P1R	04/11/2022	05/31/2022	25
25	TM025O1R	04/09/2022	05/31/2022	40
34	TM034O1R	04/09/2022	05/31/2022	40
35, 36	TM035O1R	04/09/2022	05/31/2022	20
43	TM043O1R	04/09/2022	05/31/2022	60
44	TM044O1R	04/09/2022	05/31/2022	80
47	TM047O1R	04/09/2022	05/31/2022	15
59 - Beaver Creek State Wildlife Area and Table Mountain State Trust Land Lease only	TM059O1R	04/09/2022	04/29/2022	5
59 - Beaver Creek State Wildlife Area and Table Mountain State Trust Land Lease only	TM059O2R	04/30/2022	05/31/2022	10
59 - Beaver Creek State Wildlife Area and Table Mountain State Trust Land Lease only – youth only	TM059K1R	04/09/2022	05/31/2022	10
80	TM080O1R	04/09/2022	05/31/2022	10
81	TM081O1R	04/09/2022	05/31/2022	10
91	TM091O1R	04/09/2022	04/29/2022	50
91, 92, 96, 101, 102-youth only	TM091K1R	04/09/2022	05/31/2022	200
91	TM091O2R	04/30/2022	05/31/2022	50
92	TM092O1R	04/09/2022	04/29/2022	50
92	TM092O2R	04/30/2022	05/31/2022	50
96	TM096O1R	04/09/2022	04/29/2022	100
96 - private land only	TM096P1R	04/09/2022	04/29/2022	175
96	TM096O2R	04/30/2022	05/31/2022	100
96 - private land only	TM096P2R	04/30/2022	05/31/2022	175
101, 102	TM101O1R	04/09/2022	04/29/2022	40
101, 102	TM101O2R	04/30/2022	05/31/2022	40

1. Spring Season.				
Unit	**Hunt Code**	**Date Opened**	**Date Closed**	**Licenses**
				Bearded Turkey Only
103, 107, and 109	TM103O1R	04/09/2022	04/29/2022	50
103,107, and 109	TM103O2R	04/30/2022	05/31/2022	50
103, 107, 109 - youth only	TM103K1R	04/09/2022	05/31/2022	40
124, 125, and 129	TM124O1R	04/09/2022	05/31/2022	25
124, 125, and 129 - youth only	TM124K1R	04/09/2022	05/31/2022	15
127, 132	TM127O1R	04/09/2022	05/31/2022	30
139	TM139O1R	04/09/2022	05/31/2022	15
140 - Lake Dorothey State Wildlife Area only	TM140O1R	04/09/2022	05/31/2022	30
140 - James John State Wildlife Area only	TM140O2R	04/09/2022	05/31/2022	20
444	TM444O1R	04/09/2022	05/31/2022	45
444 – Private Land Only	TM444P1R	04/09/2022	05/31/2022	30
851 - Bosque del Oso State Wildlife Area only	TM851O1R	04/09/2022	05/31/2022	30
Total				**1790**

2. Fall Season				
Unit	**Hunt Code**	**Date Opened**	**Date Closed**	**Licenses**
				Either Sex
15, 27, 37 and 361	TE015L1R	09/01/2022	10/02/2022	15
25	TE025L1R	09/01/2022	10/02/2022	15
34	TE034L1R	09/01/2022	10/02/2022	25
47	TE047L1R	09/01/2022	10/02/2022	25
59 - Beaver Creek State Wildlife Area and Table Mountain State Trust Land Lease only	TE059L1R	09/01/2022	10/02/2022	15
85 - Spanish Peaks State Wildlife Area - Oberosler Tract only	TE085L1R	09/01/2022	10/02/2022	25
85 - Spanish Peaks State Wildlife Area – Dochter Tract only	TE085L2R	09/01/2022	10/02/2022	25
85 -Spanish Peaks State Wildlife Area - Sakariason Tract only	TE085L3R	09/01/2022	10/02/2022	25
91	TE091L1R	09/01/2022	10/28/2022	50
91, 92, 96, 101, and 102 – youth only	TE091K1R	09/01/2022	10/28/2022	50
92	TE092L1R	09/01/2022	10/28/2022	50
96	TE096L1R	09/01/2022	10/28/2022	175
101, 102	TE101L1R	09/01/2022	10/28/2022	50
103, 107, and 109	TE103L1R	09/01/2022	10/28/2022	45

2. Fall Season				
Unit	**Hunt Code**	**Date Opened**	**Date Closed**	**Licenses**
				Either Sex
103, 107, 109 - youth only	TE103K1R	09/01/2022	10/28/2022	20
124, 125 and 129	TE124L1R	09/01/2022	10/28/2022	15
124, 125 and 129 - youth only	TE124K1R	09/01/2022	10/28/2022	15
126, 146	TE126L1R	09/01/2022	10/28/2022	20
127, 132	TE127L1R	09/01/2022	10/28/2022	20
139	TE139L1R	09/01/2022	10/28/2022	10
140 - Lake Dorothey State Wildlife Area only	TE140L1R	09/01/2022	10/02/2022	35
140 - James John State Wildlife Area only	TE140L2R	09/01/2022	10/02/2022	10
444	TE444L1R	09/01/2022	10/02/2022	20
851 - Bosque del Oso State Wildlife Area only	TE851L1R	09/01/2022	10/02/2022	25
Total				**780**

F. Special Licenses for Nuisance Turkeys

1. The Director shall have the authority to establish special hunting seasons for turkeys, between December 1 and March 31 on an annual basis, when necessary to control nuisance turkeys. The Area Wildlife Manager will determine the type of license(s) (either-sex or hen only) most appropriate to control the conflict.

    a. Nuisance turkey hunts are limited to a maximum of 50 licenses per landowner, per year.

        1. The Area Wildlife Manager shall provide the landowner with special application forms for distribution to individuals of their choice. Participants shall submit the completed application form with payment to the Division office indicated on the application. Nuisance turkey licenses shall be sold at the fall season license price.

    b. Prior to approving the hunt, the Division shall:

        1. Verify that conflicts are occurring.

        2. Designate what area shall be open to hunting.

        3. Determine the manner of hunting that will be permitted.

        4. Determine the number of hunters allowed to hunt in each designated area.

    c. Hunting will be done under the direction of a District Wildlife Manager, following approval by the owner of land where such conflict is occurring.

    d. Hunters shall hunt in designated areas and on the dates indicated on the license.

1. A map or a written description of the designated area open to hunting (which would include, but would not be limited to landowner(s) name, game management unit, township, range and section(s) and/or identification of landmarks such as roads, rivers, or fence lines which coincide with boundaries), will be provided to each licensed hunter by the Division.

e. Any person who purchases a license for a nuisance turkey season shall be required to complete a Division harvest survey form and return it to the Area office that is nearest the location of the hunt no later than 5 days after the season ends.

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Tracking number: 2021-00620

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/18/2021

2 CCR 406-3

CHAPTER W-3 - FURBEARERS AND SMALL GAME, EXCEPT MIGRATORY BIRDS

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:05:21

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

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Parks and Wildlife (406 Series, Wildlife)

CCR number

2 CCR 406-9

Rule title

2 CCR 406-9 CHAPTER W-9 - WILDLIFE PROPERTIES 1 - eff 01/01/2022

Effective date

01/01/2022

FILING - 11/30/2021

FINAL REGULATIONS - CHAPTER W-9 - WILDLIFE PROPERTIES

ARTICLE I - GENERAL PROVISIONS

#900 - REGULATIONS APPLICABLE TO ALL WILDLIFE PROPERTIES, EXCEPT STATE TRUST LANDS

A. DEFINITIONS

1. “Aircraft” means any machine or device capable of atmospheric flight, including, but not limited to, airplanes, helicopters, gliders, dirigibles, balloons, rockets, hang gliders and parachutes, and any models thereof.

2. "Water contact activities" means swimming, wading (except for the purpose of fishing), waterskiing, sail surfboarding, scuba diving, and other water-related activities which put a person in contact with the water (without regard to the clothing or equipment worn).

3. “Youth mentor hunting” means hunting by youths under 18 years of age. Youth hunters under 16 years of age shall at all times be accompanied by a mentor when hunting on youth mentor properties. A mentor must be 18 years of age or older and hold a valid hunter education certificate or be born before January 1, 1949.

B. Public Access to State Wildlife Areas

1. Only properties listed in this chapter are open for public access. The Director may open newly acquired properties for public access for a period not to exceed nine (9) months pending adoption of permanent regulations. In addition, the Director may establish and post restrictions based upon consideration of the following criteria:
   a. The location and size of the area.
   b. The location, type and condition of roads, vehicle parking areas and the number and type of sanitary facilities available.
   c. The number of users and vehicles the area will tolerate without significant degradation to wildlife resources, and public or private property.
   d. Opportunity to assure public safety, health and welfare.

2. If a property is opened for public access pursuant to this provision, the property shall be posted with a list of applicable access restrictions. It shall be unlawful for any person or vehicle to enter any such property, except in accordance with its posting and the applicable restrictions.

C. Prohibited Activities

Except as otherwise provided in these regulations or specifically authorized by contractual agreement, official document, public notice, permit, or posted sign, the following activities are prohibited on all lands, waters, the frozen surface of waters, rights-of-way, buildings, and other structures or devices owned, operated, or under the administrative control of Colorado Parks and Wildlife:

1. To enter, use or occupy any State Wildlife Area or portion thereof for all persons 16 years of age and older without:
   a. a hunting license valid for the current license year,
   b. a valid fishing license, or
   c. a valid Colorado State Wildlife Area pass.

Annual hunting licenses, including all big game hunting licenses, small game hunting licenses, turkey hunting licenses, annual fishing licenses, and annual Colorado State Wildlife Area passes are only valid for the individual specified on the license or pass, and authorize such individual to enter, use or occupy any State Wildlife Area or portion thereof from March 1 through March 31 of the following year, also known as the current license year. Daily Colorado State Wildlife Area passes and daily or multi-day fishing and small game licenses are only valid for the individual specified on the license or pass, and authorize such individual to enter, use or occupy any State Wildlife Area or portion thereof only on the date(s) indicated on the license or pass.

2. To enter, use, or occupy any area or portion thereof for any purpose when posted against such entry, use, or occupancy.

3. To enter, use, or occupy any area for any commercial purpose or to conduct land, water, oil, gas, or mineral investigations, surveys, or explorations of any kind.

4. To operate any form of vehicle (motorized or non-motorized) except on established roads or within designated camping or parking areas. All motor vehicles and the operators thereof must be in compliance with all Colorado statutes and regulations pertaining to motor vehicle operation.

5. To operate a motor vehicle in excess of posted speed limits or in excess of 25 miles per hour where not posted.

6. To leave a camp, pitched tent, shelter, motor vehicle, or trailer unattended for more than 48 hours, or to camp or to park a travel trailer or camper on any one state wildlife area for more than 14 days in any 45-day period.

7. To build, erect, or establish any permanent structure or to plant any vegetation. Only portable blinds or treestands and steps may be erected by the public on state wildlife areas. No nails may be driven into trees. Portable blinds or tree stands intended for use to hunt any big game or waterfowl during an established season may be erected on state wildlife areas no earlier than 30 days prior to the season in which they are used. All man-made materials used for blinds or tree stands during big game or waterfowl seasons must be removed within 10 days after the end of the season in which they are used. Any other portable blind or tree stand used for any other purpose must be removed at the end of the day in which they are used. The Customer Identification Number of the owner and the date(s) to be used must be displayed on the outside of all portable blinds and on the underside of all tree stands in a readily visible area. However, the erection or placement of any blind or tree stand by any person does not reserve the blind or tree stand for personal use. All such blinds and tree stands remain available for use to the general public on a first come, first-served basis.

8. To remove, modify, adjust, deface, destroy, or mutilate any building, structure, water control device, fence, gate, poster, notice, sign, survey or section marker, tree, shrub or other vegetation or any object of archaeological, geological, or historical value or interest.

9. To litter in any form, to leave fish, fish entrails, human excrement, waste water, containers or cartons, boxes or other trash, garbage or toxic substance on any area or to bring any household or commercial trash, garbage or toxic substance to a Division-controlled area for disposal, or to dump trailer waste into any toilet or sanitary facility.

10. To set or build a fire without provision to prevent the spreading thereof, or to leave a fire unattended.

11. To release or allow livestock to graze or range on any area, except that horses, mules, llamas, and burros may be used when in direct association with wildlife recreational activities.

12. To possess, use or apply explosives (other than lawful firearm ammunition), fireworks, poisons, herbicides, insecticides or other pesticides.

13. To release wildlife or privately-owned game birds, except privately-owned game birds released for field trials, including group dog training, or on those state wildlife areas where release for dog training is specifically authorized in #901.B of these regulations; or to permit dogs, cats, or other domestic pets to run at large (not on a leash) on any area, except dogs lawfully used while actively hunting, or while training dogs for hunting, or during Division licensed field trials.

14. To excavate or dig trenches, holes, or pits.

15. To leave vessels beached, at anchor, moored or docked unattended overnight, except in areas designated for that purpose.

16. To fish from, block or impede any Division-controlled boat ramps or boat docks when in conflict with boaters or as posted.

17. To snorkel, scuba dive, or spearfish with the aid of diving mask, swim fins, snorkel, and/or air tanks, except in waters where swimming is permitted, when location is properly identified by a "divers down flag," and when the scuba diver has a valid S.C.U.B.A. diver's certificate issued by a recognized S.C.U.B.A. training organization.

18. To engage in any unlawful conduct or act as defined in Title 18, C.R.S.

19. To utilize any air or gas inflated floating device as a means of transportation upon or across the surface of the water unless such device is of multi-compartment construction and has a rigid motor mount for those devices propelled by gasoline or electric motors. Single compartment air or gas filled flotation devices are restricted to designated swimming areas.

20. To promote, sponsor, or conduct or participate in boat regattas, paintball shooting, questing, or other non-wildlife oriented activities.

21. To launch or land any aircraft.

22. To leave any decoys or anything used as decoys set up in the field or on the water overnight.

23. To swim, except in designated waters or in association with specifically authorized water contact activities.

24. To discharge a firearm or bow within designated parking, camping, or picnic areas.

25. To possess the following types of ammunition and/or firearms: tracer rounds, armor-piercing rounds, military hardened rounds with explosive or radioactive substances, .50 caliber BMG rounds, or fully automatic firearms.

26. To possess, store, or use hay, straw, or mulch which has not been certified as noxious weed free in accordance with the Weed Free Forage Crop Certification Act, Sections 35-27.5-101 to 108, C.R.S., or any other state or province participating in the Regional Certified Weed Free Forage Program. See Appendix A of this chapter. All materials so

certified shall be clearly marked as such by the certifying state or province. Exempted from this prohibition are persons transporting such materials on Federal, State, or County roads that cross Division property; and hay produced on the property where it is being used.

27. Upon notification by authorized Colorado Parks and Wildlife personnel of a violation of any of the above (or any other law of the State of Colorado) and where the unlawful activity is not immediately and permanently discontinued or if it is of a continuing nature, the violator(s) may be required to leave Colorado Parks and Wildlife property for a minimum of 72 hours.

28. To trap, unless such trapping is done in accordance with the provisions of 33-6-204 (General Exemptions), 33-6-205 (Exemptions for Departments of Health), 33-6-206 (Nonlethal Methods Exemptions), #901 and Chapter W-3 of these regulations. Persons wishing to use the above-mentioned exemptions must have prior authorization from Colorado Parks and Wildlife.

29. To conduct field trials or group dog training without first obtaining a field trial license, in accordance with the provisions of Chapter W-8 of these regulations.

30. Consumption of alcoholic beverages on lands and waters under the supervision, administration, and/or jurisdiction of the Division is permitted with the following exceptions:
    a. It shall be prohibited to consume alcoholic beverages on any archery or firearm range unless specifically authorized by a concession contract, cooperative agreement or special activities permit, and then only allowed in areas specifically designated by the contract, agreement, or permit.
    b. It shall be prohibited to sell and/or dispense alcoholic beverages on any lands and waters under the supervision, administration, and/or jurisdiction of the Division unless specifically authorized by a concession contract, cooperative agreement, or special activities permit, and then only allowed in areas specifically designated by the contract, agreement, or permit and the applicant party has obtained all appropriate licenses and permits to sell and/or dispense alcoholic beverages.
    c. It shall be prohibited to be present on any lands and waters under the supervision, administration, and/or jurisdiction of the Division when under the influence of alcohol or any controlled substance to the degree that may endanger oneself or another person, damage property or resources, or may cause unreasonable interference with another person's enjoyment of any lands or waters under the supervision, administration, and/or jurisdiction of the Division.

D. Limitation of People and Vehicle Usage

1. The Director of Colorado Parks and Wildlife may establish and enforce a limitation not to exceed sixty (60) days, on public occupancy of the land and water areas owned or leased by the Division.

   The Director shall use only the following criteria when establishing such limitation:
   a. The location and size of the area.
   b. The location, type and condition of roads, vehicle parking areas and the number and type of sanitary facilities available.
   c. The number of users and vehicles the area will tolerate without significant degradation to wildlife resources, and public or private property.
   d. Opportunity to assure public safety, health and welfare.

2. Whenever such limitation is exercised, the area(s) involved shall be posted indicating the specific number of persons or vehicles permitted within the area at all times when such area is posted. It shall be unlawful for any person or vehicle to enter any such area(s) posted as being fully occupied or after being advised by an officer of the Division that the area is full.

3. The Division may waive these restrictions for daytime use during a specified period of time for organized supervised groups whose numbers exceed the limitations set forth. Written approval must first be obtained from the appropriate Regional Manager.

E. Closure of Properties to Public Use

1. The Director of Colorado Parks and Wildlife may establish and enforce temporary closures of, or restrictions on, lands or waters owned or leased by the Division, or portions thereof, for a period not to exceed nine months, when any one of the following criteria apply:

   a. The property has sustained a natural or man-made disaster such as drought, wildfire, flooding, or disease outbreak which makes public access unsafe, or where access by the public could result in additional and significant environmental damage.
   b. The facilities on the property are unsafe.
   c. To protect threatened or endangered wildlife species, protect wildlife resources from significant natural or manmade threats, such as the introduction or spread of disease or nuisance species, changing environmental conditions or other similar threats, protect time-sensitive wildlife use of lands or waters, or facilitate Division-sponsored wildlife research projects or management activities.

2. Whenever such closure is instituted, the area(s) involved shall be posted indicating the nature and purpose of the closure. It shall be unlawful for any person or vehicle to enter any such area(s) posted as closed.

F. Criteria for Activities Requiring Express Authorization - Whenever an activity requires expressed authorization (e.g. target practice) the Division shall grant or deny permission based on consideration of public safety and wildlife resource protection.

G. Commercial Use of State Wildlife Areas

1. Except as provided herein, commercial use of state wildlife areas, including, but not limited to, the provision of any goods or services to members of the general public using the state wildlife area, is prohibited. However, commercial uses of state wildlife areas may be allowed by the Division when:
   a. such commercial use will not adversely impact wildlife resources or habitat;
   b. there is a demonstrated need for the goods or services to be provided as part of such commercial use;
   c. such commercial use will not unreasonably interfere with the primary wildlife related recreational uses of the state wildlife area by members of the general public;
   d. the state wildlife area, and its existing facilities, can safely accommodate such commercial use; and
   e. Such commercial uses may be exclusive or nonexclusive, as determined by the Division to be necessary for the proper management of the state wildlife area in light of the criteria set forth above and the compensation provided to the Division.

2. Prior to making any commercial use of a state wildlife area, a person must receive a permit from the Division or enter into a commercial use agreement with the Division providing for such use. Any person accessing a State Wildlife Area under such authority

is not required to have a valid hunting or fishing license, or Colorado State Wildlife Area pass. Such permit or agreement shall, at a minimum, include provisions regarding:

a. the specific goods or services to be provided;
b. user number restrictions;
c. seasonal or time restrictions;
d. record-keeping requirements, including, but not limited to, a requirement that the authorized user maintain records regarding the goods and services provided, the date(s) and time(s) the person provided these goods and services on the property, and the number of goods or services provided, by user day, for a period of at least three years. Such records shall be available for inspection by the Division;
e. compensation to the Division: a minimum fee equal to 5% of the gross income generated by the activity shall be paid to the Division, but in no event shall any fee for a commercial use permit or agreement be less than $100. The $100 minimum shall be paid at the time the permit is issued or the agreement is signed. The Division may impose additional items, conditions and charges in connection with the permit or agreement as reasonably necessary to offset the administrative burden, costs or risks associated with the proposed activities;
f. the Division may retain third party consultants to evaluate the potential adverse impacts of the proposed activity and develop appropriate strategies to offset or mitigate such risks. The applicant shall be notified if the Division decides to retain a consultant and shall be given the opportunity to provide input concerning consultant selection and scope of work. The applicant shall be responsible for the actual costs associated with this consultant review.
g. the term or length of the permit or agreement, and a provision providing for cancellation or termination of such permit or agreement for any failure to comply with its terms and conditions and any applicable laws;
h. any other provision necessary to protect wildlife resources, habitat or public safety, to prevent conflict with primary wildlife related recreational uses of the state wildlife area by the general public or to properly administer the commercial use and the commercial use permit or agreement, including bonding requirements.

3. Incidental commercial services such as the renting of pack animals or their services to remove harvested animals; emergency vehicle repairs or tow services; or other similar incidental services may be provided to wildlife recreational users without a commercial use permit or agreement when the service is relatively infrequent, the provider does not advertise for or solicit business specifically for a state wildlife area and maintains a separate place of business, and the service is not one for which the provider is required by law to obtain a guide or outfitter license.

H. Special (Non-Wildlife Related) Use of State Wildlife Areas

1. Except for uses or activities otherwise specifically prohibited by these regulations, the Division may allow special (non-wildlife related) uses of state wildlife areas. Special uses may only be allowed if:
   a. such use will not adversely impact wildlife resources or habitat;
   b. such use will not interfere with wildlife-related recreational uses of the state wildlife area by members of the general public;
   c. such use is non-commercial in nature; and
   d. the state wildlife areas, and its existing facilities, can safely accommodate such use.

2. Prior to making any special use of a state wildlife area, a person must receive a permit from the Division or enter into a special use agreement with the Division. Any person accessing a State Wildlife Area under such authority is not required to have a valid hunting or fishing license, or Colorado State Wildlife Area pass. Such permit or agreement shall, at a minimum, include provisions regarding:
   a. the nature of the special use;

b. user number restrictions;
c. time and date restrictions;
d. compensation to the Division: A minimum fee of $100 shall apply to all special use permits and agreements, but in no event shall the compensation received by the Division be less than the costs of administering such use, including, but not limited to, staff time;
e. cancellation or termination of the permit or agreement for any failure to comply with the terms and conditions of the permit or agreement and any applicable laws; and
f. any other provision necessary to protect wildlife resources, habitat or public safety, to prevent conflict with primary wildlife related recreational uses of the state wildlife area by the general public or to properly administer the special use and the special use permit or agreement, including bonding requirements.

I. Utility and Road Easements

1. The Director may grant easements, for a term not to exceed twenty-five (25) years, on properties owned in fee title by the Division after consideration of the following:

   a. financial consideration for the easement represents fair market value and is no more than $100,000;
   b. the easement is customary or minor in nature, or is a replacement, modification or confirmation of an existing easement;
   c. the easement is not detrimental to wildlife habitat, water resources, or the operation of a hatchery, fish rearing facility or administrative facility and is in the public interest; and
   d. the businesses or persons involved in or maintaining the utility or road easements are not required to have a valid hunting or fishing license, or Colorado State Wildlife Area pass.

J. Leases

1. The Director may execute documents related to existing leases wherein the Division is either the lessor or lessee, after consideration of the following:

   a. the document is a renewal, extension or amendment of an existing lease;
   b. the renewal or extension is for a term not to exceed twenty-five (25) years;
   c. total consideration for the entire potential term of the renewal, extension or amendment represents fair market value and is no more than $100,000;
   d. the renewal, extension or amendment supports, protects, enhances or is not detrimental to wildlife habitat, water resources or the operation of a hatchery, fish rearing facility or administrative facility and is in the public interest; and
   e. the businesses or persons involved in or maintaining the lease are not required to have a valid hunting or fishing license, or Colorado State Wildlife Area pass.

2. The Director may execute a new lease for staff housing for a term not to exceed twelve (12) months.

ARTICLE II - PROPERTY-SPECIFIC PROVISIONS

#901 - PROPERTY-SPECIFIC REGULATIONS

See Appendix B for a list of properties without property-specific regulations, to which only restrictions in #900 apply)

A. On all Division properties which have reservations available or required, those reservations may be made by phone or online (cpw.state.co.us). Reservations for small game and waterfowl hunting may not be made more than 14 days in advance of the hunt date, nor after 12:00 noon on the day before the hunt date. Reservations for big game hunting may not be made more than 45 days in advance of the start of the season for which the reservation is being made. Unless otherwise specified, reservations for big game hunting are valid throughout the season designated by the license. Hunters who wish to cancel a reservation must do so no later than 12:00 noon on the day before the hunt date. Failure to hunt a reserved area without prior cancellation, or follow check station procedures, may cause forfeiture of the privilege to make reservations for the remainder of the hunting season. Hunters are limited to a maximum of one reservation per hunt date. Hunters must possess a valid license for the species to be hunted in order to make a reservation. Reservations are not transferable. The individual named on the reservation must be at the property on the day of the hunt. Hunters with reservations may only hunt the hunt area specified on the reservation. Any exceptions to the above restrictions will be listed under property specific regulations.

B. In addition to or in place of those restrictions listed in regulation #900, the following provisions or restrictions apply:

1. **Adams State Wildlife Area - Routt County**

a. Public access is prohibited from December 1 through June 30.
b. Camping is prohibited.
c. Fires are prohibited.
d. Dogs are prohibited, except as an aid in hunting grouse.
e. Vehicle access is prohibited beyond the parking area.

2. **Adobe Creek Reservoir State Wildlife Area - Bent and Kiowa Counties**

a. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing.
b. All terrain vehicles, dirt bikes, and snowmobiles are prohibited.
c. Public access to the frozen surface of the lake is prohibited.
d. Public access to the dams, inlets, and outlet structures is prohibited, except for fishing.

3. **Almont Triangle State Wildlife Area - Gunnison County**

a. Public access is prohibited from December 1 through April 30.

4. **Andrick Ponds State Wildlife Area - Morgan County**

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Public access is limited to Saturdays, Sundays, Wednesdays, and state and federal holidays.
c. Camping is prohibited.
d. Fires are prohibited.
e. Fishing is prohibited.
f. Dog training is prohibited.
g. Target practice is prohibited.

h. Hunting with centerfire rifles is prohibited.
i. Hunting on Clark Lake is prohibited.
j. From September 1 through the dark goose season, only migratory bird hunting within designated areas is permitted. Reservations are required and valid until sunrise, and are limited to three (3) per hunter annually. Reservations must be made in accordance with #901.A of these regulations.
k. Hunters must check-in and out at check stations. Hunters may not check in until 4:00 am and can only hunt the area reserved. Hunters may check-in on a first-come, first-serve basis after a hunter checks out or after sunrise if a hunter has not checked-in. Maximum of four (4) hunters allowed per hunting area.
l. From the end of the dark goose season through the spring turkey season, only turkey hunting is permitted. During spring turkey season, reservations are required and valid until sunrise. Hunters must check-in and out at the check station on CR AA, but may hunt the entire property.
m. During waterfowl and turkey seasons, scouting is prohibited, except on Thursdays from 10:00 am – 2:00 pm. All persons must check-in and out at check stations. All firearms and dogs are prohibited while scouting.

5. <u>Arikaree State Wildlife Area - Yuma County</u>

a. Public access is prohibited from June 1 – August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Target practice is prohibited except when authorized by the Area Wildlife Manager.

6. <u>Atwood State Wildlife Area - Logan County</u>

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Dog training is prohibited.
e. Horses are prohibited.
f. Target practice is prohibited except when authorized by the Area Wildlife Manager.
g. All recreational activities, except deer hunting, are prohibited on opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
h. The launching or takeout of vessels is prohibited during waterfowl seasons.

7. <u>Badger Basin State Wildlife Area - Park County</u>

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Parking is prohibited, except in designated areas.
e. Public access is allowed only from designated parking areas and is prohibited beyond the fenced and posted easement.

8. <u>Banner Lakes State Wildlife Area - Weld County</u>

a. Boating is prohibited, except for float tubes or craft propelled by hand.
b. Camping is prohibited.
c. Fires are prohibited.
d. Discharge of firearms or bows is prohibited, except when hunting or training hunting dogs.
e. Discharge of bows is allowed for bowfishing.
f. Horseback riding is prohibited.

g. Bicycling is prohibited.
h. Fishing is prohibited from October 1 through the end of February.
i. Public access is prohibited from the first day of the regular waterfowl season to the day before the first day of pheasant season, except for waterfowl hunting on Saturdays, Sundays, Mondays and state and federal holidays. During this period reservations are available for waterfowl, but not required. Reservations are valid throughout the reserved day until the hunter with the reservation checks out. Hunters may check in on a first come, first served basis after a hunter with a reservation checks out, or if no reservation exists for a hunt area after 12:00 midnight immediately preceding the hunt, or if a reserved area is not claimed by legal sunrise. Reservations may be made in accordance with #901.A of these regulations. No more than four hunters are allowed per reservation. Hunters with reservations may only hunt the hunt area specified on the reservation.
j. From the Thursday before September 1 through the end of the dark goose season, scouting is permitted only on Thursdays that are not open to hunting within and immediately prior to established waterfowl seasons. Scouting will be permitted from 10:00 am until 2:00 pm with a reservation confirmation number or letter issued by the Division, and all persons scouting must check in and check out at the check station. During scouting dates, firearms and dogs are prohibited.
k. Waterfowl hunters must check in and check out at the designated check station.
l. Public access is allowed only through designated parking areas.
m. Public access is prohibited north of Colo 52 from April 1 through July 15.
n. Public access is restricted to foot traffic only.
o. Dog training is permitted north of Colo 52 during February, March and July 16 to August 31 only. Dog training is permitted south of Colo 52 from February 1 through August 31 only.
p. Field trials may be authorized during February, March, and August only. No more than four (4) field trials will be allowed per year, except that the number of group training events will not be limited.
q. Domestic birds, feral birds, or privately-owned game birds may be released for field trials and for dog training south of Colo 52 by permit only, in accordance with the provisions of this chapter and other applicable regulations, including, but not limited to, #007, #008, #009, #801 and #804 of these regulations. All such birds taken during training activities shall be removed from the State Wildlife Area by the dog training permittee and all privately-owned game birds shall be prepared for human consumption.
r. The Division is authorized to implement a dog training reservation system should overcrowding become an issue on the State Wildlife Area.

9. <u>Basalt State Wildlife Area (Basalt Unit, Christine Unit, Toner Unit, Peachblow Unit, 7 Castles Unit, Schuck Unit) - Eagle and Pitkin Counties</u>

a. Except for muzzle-loaders, firearms on the shooting range are restricted to those lower than .50 caliber. Discharge of shotguns is allowed.
b. Fully automatic firearms are prohibited.
c. From March 15 – October 14, firearms may only be discharged on the shooting range on Monday, Tuesday, Thursday and Friday from 7:00 a.m. until 7:00 p.m., and on Saturday and Sunday from 9:00 a.m. until 5:00 p.m. From October 15 – March 14, firearms may only be discharged on the shooting range on Monday, Tuesday, Thursday and Friday from 9:00 a.m. until 4:00 p.m., and on Saturday and Sunday from 9:00 a.m. until 4:00 p.m.
d. Boating is prohibited on Christine Lake.
e. Camping is prohibited, except by licensed hunters during an established big game or turkey season plus three (3) days before and three (3) days after such season. With the exception of the Christine Lake and rifle range areas, all human activity is prohibited from December 1 to April 15 of the following year.

f. Camping is prohibited at all times within one-quarter (1/4) mile of the Frying Pan River.
g. Fires are prohibited.
h. Water contact activities are prohibited on Christine Lake.
i. Field trials may be authorized during August and September only.
j. Dogs are prohibited, except as provided in 'i'
k. Mountain bikes are prohibited.

10. Bayfield Lions Club Shooting Range - La Plata County

a. Public access is allowed April 1 through November 30.
b. Public access is allowed from 9:00 am to 8:00 pm from April 1 - October 31.
c. Public access is allowed from 10:00 am to 5:00 pm from November 1 - November 30.
d. Pistol or rifle shooting is prohibited on the shotgun trap range.
e. Shotguns, shooting slugs only, are allowed on the pistol- rifle range.
f. Except for muzzleloaders, rifles are restricted to those smaller than .50 caliber.
g. Except for clay targets, glass or other breakable targets are prohibited.
h. Public access to Bayfield Lions Club Shooting Range is exempt from requirements set forth in section #900(C)1 of these regulations.

11. Beaver Creek Reservoir State Wildlife Area - Rio Grande County

a. Discharge of firearms is prohibited.
b. Bowfishing is prohibited.
c. Open fires are prohibited on the ice.
d. Boating is prohibited in a manner that creates a white water wake.

12. Beaver Lake State Wildlife Area (Marble) - Gunnison County

a. Boating is prohibited, except for float tubes or craft propelled by hand.
b. Camping is prohibited.
c. Discharge of firearms or bows is prohibited.
d. Fires are prohibited.
e. Vehicles are prohibited on dam.

13. Bellaire Lake State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Public access to Bellaire Lake State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

14. Bergen Peak State Wildlife Area - Clear Creek and Jefferson Counties

a. Public access is prohibited, except by foot and horse only.
b. Camping is prohibited.
c. Fires are prohibited.
d. Dogs must be on a leash, except when used to hunt small game.
e. The discharge of firearms or bows is prohibited, except when hunting.

15. Big Thompson Ponds State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes used for fishing.
b. Camping is prohibited.
c. Dog training is prohibited.
d. Fires are prohibited.
e. Discharge of firearms or bows is prohibited, except when hunting.
f. Discharge of bows is allowed for bowfishing.
g. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except when fishing or when authorized by a night hunting permit.
h. Horseback riding is prohibited.

i. Bicycle riding is prohibited.

16. Bighorn Springs State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. Access is allowed only within the high water line.
c. Parking is allowed in designated parking lots only.
d. Camping is prohibited.
e. Fires are prohibited.

17. Bill Paterson State Wildlife Area – Garfield County

a. Camping is prohibited.
b. Fires are prohibited.
c. Waterfowl hunting from designated blinds only.
d. Hunting allowed with shotguns only.

18. Billy Creek State Wildlife Area - Ouray and Montrose Counties

a. Snowmobile use is prohibited on the Colona Tract.
b. Except for hunting, fishing and trapping along the Uncompahgre River corridor from US Hwy 550 to 100 feet on the eastern bank of the Uncompahgre River as posted, public access is prohibited from January 1 through April 30.

19. Bitterbrush State Wildlife Area - Moffat County

a. Public access is prohibited from January 15 through April 30.
b. Camping is prohibited.
c. Fires are prohibited.
d. Vehicle access is restricted to Moffat Co Rds 59 and 143.
e. The placing of any portable blind, marker, stand or related structure is prohibited prior to August 1 annually.
f. Any person who places any such portable blind, marker, stand or related structure shall be responsible for the removal of such materials, which removal must take place within 24 hours after that person harvests an animal or within seven days after the end of the archery pronghorn season, whichever comes first.

20. Blacktail Conservation Easement - Routt County

a. Public access is prohibited from December 1 through June 30.
b. Camping is prohibited.
c. Fires are prohibited.
d. Dogs are prohibited, except as an aid in hunting grouse.
e. Vehicle access is prohibited beyond designated parking areas.

21. Bliss State Wildlife Area - Larimer County

a. Vessel launching and takeouts are prohibited.

22. Blue River State Wildlife Area (Blue River Unit, Eagles Nest Unit, Sutton Unit) - Summit County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited.
c. Fires are prohibited.
d. Firewood cutting is prohibited.
e. Vehicle parking overnight is prohibited.

23. Bodo State Wildlife Area - La Plata County

a. Public access is prohibited from December 1 through April 15, except that:
    1. Small game hunting is allowed south of CR 210.

2. The Smelter Mountain Trail is open for foot access only from 10:00 am - 2:00 pm. Dogs are prohibited from access under this provision.

b. Camping is prohibited.
c. Discharge of firearms is prohibited, except when hunting.
d. Snowmobile use is prohibited.
e. Fires are prohibited.
f. The launching of paragliders is allowed from the Smelter Mountain Trail, subject to the restrictions listed in a.2 above.

24. <u>Boedecker Reservoir State Wildlife Area - Larimer County</u>

a. Boating is prohibited in a manner that creates a white water wake.
b. Fishing is prohibited from vessels from November 1 through the last day of the migratory waterfowl season.
c. Horseback riding is prohibited.
d. Sail surfboards are prohibited.
e. Discharge of firearms or bows is prohibited, except when hunting.
f. Discharge of bows is allowed for bowfishing.
g. Fires are prohibited.
h. Camping is prohibited.
i. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing or when authorized by a night hunting permit.

25. <u>Bosque del Oso State Wildlife Area - Las Animas County</u>

a. Fires are prohibited, except in designated areas and in the fire containment structures provided by the Division.
b. The discharge of firearms or bows is prohibited, except while hunting.
c. Discharge of bows is allowed for bowfishing.
d. Camping is prohibited outside designated areas, except by hunters during an established hunting season.
e. Parking is prohibited, except in designated areas.
f. Leaving unattended any food or refuse is prohibited unless it is being stored in a bear resistant manner or container.
g. Snowmobile, motorized and all-terrain vehicles and bicycle use of established roads and trails may be prohibited when necessary to protect wildlife and prevent resource damage. Closures will be posted.
h. Public access is prohibited from December 1 through April 30, except for properly licensed big game and spring turkey hunters and one non-hunting companion.
i. Fishing is prohibited on the South Fork of the Purgatoire River within the boundaries of the Bosque del Oso State Wildlife Area from the first day after the Labor Day holiday weekend to the first day of the Memorial Day holiday.

26. <u>Bravo State Wildlife Area - Logan County</u>

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Horses are prohibited.
e. Field trials are prohibited.
f. Target practice is prohibited except when authorized by the Area Wildlife Manager.
g. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
h. The launching or takeout of vessels is prohibited during waterfowl seasons.

27. <u>Brower State Wildlife Area - Weld County</u>

a. Camping is prohibited.

b. Discharge of firearms or bows is prohibited, except shotguns or bows may be used while hunting.
c. Public access is prohibited from the day after the spring turkey season through August 31. Additionally, public access is prohibited from the day after the close of the regular goose season through the day before the opening of the spring turkey season.
d. Public access is prohibited unless hunting with a valid hunting license.
e. Fishing is prohibited.
f. Public access is prohibited one hour after sunset to 4:00 am.
g. Parking is only allowed in the designated parking area.
h. Horse use is prohibited.
i. Fires are prohibited.
j. Target practice is prohibited.
k. Dogs are prohibited, except as an aid in hunting.
l. Dog training is prohibited, except when training dogs for the purpose of hunting.
m. The launching or takeout of vessels is prohibited.
n. Hunting with center-fire rifles or muzzleloaders is prohibited.

28. Brown Lakes State Wildlife Area - Hinsdale County

a. Camping is prohibited.

29. Brownlee State Wildlife Area (Fishing Lease) - (Michigan River) Jackson County

a. Public access is for fishing only.

30. Brownlee II State Wildlife Area (Fishing Lease) - (North Platte River) Jackson County

a. Public access is for fishing only.

31. Browns Park State Wildlife Area (Beaver Creek Unit, Calloway Unit, Cold Springs Mountain Unit, Wiggins Unit) - Moffat County

a. Public use is prohibited within the posted administrative area of the Calloway Unit.
b. Camping is prohibited in posted areas within the Cold Springs Mountain Unit.
c. Camping allowed only west of Beaver Creek in the Beaver Creek Unit.

32. Brush State Wildlife Area - Morgan County

a. Public access is prohibited from 9:00 pm – 4:00 am, except with an authorized night hunting permit
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.

33. Brush Hollow State Wildlife Area - Fremont County

a. Boating is prohibited in a manner that creates a white water wake.
b. Camping is prohibited.
c. Fires are prohibited.

34. Brush Prairie Ponds State Wildlife Area - Morgan County

a. Public access is prohibited from 9:00 pm – 4:00 am.

b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited.
e. From September 1 through the dark goose season, only hunting permitted. Hunters must check-in and out at the check station.
f. From September 1 – November 30, only migratory bird hunting within designated areas is permitted, and only on Saturdays, Sundays, Wednesdays, and state and federal holidays. Reservations are required and valid until sunrise, and are limited to three (3) per hunter annually. Reservations must be made in accordance with #901.A of these regulations.
g. Hunters may not check-in until 4:00 am and can only hunt the area reserved or which they check into. Hunters may check-in on a first-come, first-serve basis after a hunter checks out or after sunrise if a hunter has not checked in. Maximum of four (4) hunters and two (2) vehicles allowed per hunting area.
h. From September 1 – November 30, scouting is prohibited, except on Thursdays from 10:00 am – 2:00 pm. All persons must check-in and out at the check station. All firearms and dogs are prohibited while scouting.
i. From December 1 through the dark goose season, hunters may check-in on a first-come, first-serve basis after 4:00 am or after a hunter checks out. Five (5) hunting areas are open for check in. Hunters properly checked in may hunt anywhere on the property.
j. Up to two (2) hunting areas are reserved each year for residents with a physical address of Brush, CO. Applications to enter the drawing are available at the CPW Brush Service Center in mid-August. Hunters must possess a valid license to hunt waterfowl to enter the drawing. Hunters may apply for one hunt area per day, but can list multiple requests on one application. Hunters successful in the drawing are required to comply with all hunting restrictions listed in regulation #901.A of these regulations.

35. Buena Vista State Wildlife Area - Chaffee County

a. Public access to Buena Vista State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

36. Centennial State Wildlife Area - Gunnison County

a. Public access is prohibited from December 1 through June 30.
b. Motorized and mechanized vehicle use is restricted as posted.
c. Camping is prohibited.

37. Centennial Valley State Wildlife Area – Weld County

a. Public access is prohibited from one hour after sunset – 4:00 am.
b. Public access is prohibited from the day after the last day of the spring turkey season through August 31.
c. During the spring turkey season, public access is prohibited except for licensed turkey hunters that have a turkey hunting reservation. A total of ten (10) reservation slots per day will be available for spring turkey hunters during the spring turkey season. Turkey hunters with a reservation may hunt the entire property. There is no annual limit on the number of turkey reservations. Reservations must be made in accordance with #901.A of these regulations. A maximum of four (4) hunters are allowed per turkey hunting reservation slot.
d. Camping is prohibited.
e. Dogs are prohibited, except as an aid to hunting.
f. Horses are prohibited.
g. Fires are prohibited.
h. Target practice is prohibited.
i. Hunting with centerfire rifles is prohibited.
j. The launching or takeout of vessels is prohibited.

k. During the regular duck seasons, public access is limited to Saturdays, Sundays, Wednesdays, and state and federal holidays. Reservations are required to hunt waterfowl and small game, and are limited to three (3) per hunter annually. Waterfowl and small game hunters may only hunt the areas specified on their reservation. Reservations must be made in accordance with #901.A of these regulations.
l. All reservation hunters must check out at one of the check stations located in each parking lot of the property.
m. Small game and waterfowl hunting is prohibited on the opening weekend of the regular plains rifle deer season and the opening day and first weekend of the late plains rifle deer season.

38. Cerro Summit State Wildlife Area - Montrose County

a. Public access is for fishing and hunting only.
b. Hunting is prohibited from December 1 to August 14.
c. Fishing is prohibited from December 1 to February 28.
d. Access to the property is from the designated parking area only.
e. Public access is by foot only.
f. Dogs are prohibited, except as an aid in hunting.
g. Water contact is prohibited except by float tubes with waders only.

39. Champion State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. All access must be from designated parking areas only.

40. Chance Gulch State Wildlife Area – Gunnison County

a. Public access is prohibited from March 1 through June 30, except for through traffic on Gunnison Co Rd 42a and established roads connecting to designated BLM roads.

41. Charlie Meyers State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

42. Chatfield State Fish Unit - Douglas County

a. Dogs are prohibited.

43. Cherokee State Wildlife Area (Upper Unit, Middle Unit, Lower Unit, Lone Pine Unit, Roy Brown Unit) - Larimer County

a. Motor vehicle access is permitted on established roads as posted.
b. Public access is prohibited from September 1 to May 1, except for hunting and fishing.
c. Hunting and fishing access after the close of the last big game season is by foot only.
d. Horseback and bicycle riding are restricted to designated roads and trails, except for horses used as an aid in hunting big game.

44. Chesmore State Wildlife Area - Chaffee County

a. Public access to Chesmore State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

45. Christina State Wildlife Area (Elk River Fishing Easement) - Routt County

a. Camping is prohibited.
b. Fires are prohibited.

46. Chubb Park Ranch State Wildlife Area - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited.
d. Vehicles are prohibited off the county road.
e. Snowmobiles are prohibited.

47. Chuck Lewis State Wildlife Area - Routt County

a. Overnight parking is prohibited.
b. Public access is prohibited from 10:00 pm through 4:00 am daily.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dogs are prohibited, except as an aid in hunting waterfowl.
f. Big game and small game hunting are prohibited.
g. Waterfowl hunting is permitted, except within 50 yards of the bridge on Routt Co Rd 14F.
h. Horses are prohibited outside of the parking area.
i. Bicycles are prohibited.
j. The launching or takeout of all flotation devices (including, but not limited to, kayaks, canoes, rafts and tubes), except those being used exclusively for fishing, is prohibited.

48. Cimarron State Wildlife Area - Montrose and Gunnison Counties

a. Camping is prohibited.
b. Fires are prohibited.
c. Snowmobile use is prohibited.
d. Vehicle parking is prohibited, except in established parking areas.
e. Public access is prohibited from January 1 through June 30.

49. Clear Creek Reservoir State Wildlife Area - Chaffee County

a. Camping is prohibited, except in established camping areas on the west end of the property.
b. Fires are prohibited, except in campgrounds.
c. Fishing is prohibited from the dam, spillway, outlet structures and downstream to US 24.

50. Cline Ranch State Wildlife Area - Park County

a. Access is by foot and horseback only.
b. Horse use is restricted to designated trails only. A reservation is required for all horse use. Reservations may be made by calling the Park County Office of Tourism and Community Development at (719) 836-4279. A maximum of two reservations per day are allowed.
c. All access must be from designated parking areas only.
d. Overnight parking is prohibited
e. Fishing is by artificial flies and lures only.
f. The bag and possession limit for trout is two fish.
g. Fishing is prohibited from October 1 through the end of February.
h. Fishing access is restricted to designated fishing areas (beats) only. Access to each fishing beat is restricted to occupants of the vehicle parked in the parking stall assigned to that beat (determined by corresponding number). No more than four anglers are allowed per vehicle, and only one vehicle is allowed per stall.
i. Hunting access is limited to occupants of vehicles parked in designated parking stalls with a maximum of four hunters per vehicle.
j. Dogs are prohibited except as an aid in hunting.
k. Dog training is prohibited
l. Camping is prohibited.
m. Fires are prohibited.

n. Discharge of firearms or bows is prohibited, except while hunting.

51. Coalbed Canyon State Wildlife Area – Dolores County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms is prohibited, except while hunting.

52. Cochetopa State Wildlife Area - Saguache County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Fires are prohibited.
d. Public access is prohibited, except by foot from established parking areas.
e. Public access is prohibited from one hour after sunset until one hour before sunrise, except when a hunter is retrieving downed game.
f. Big game hunting is prohibited north of the posted east/west center line of Section 27, Range 2 East, Township 46 North.

53. Coller State Wildlife Area - Rio Grande and Mineral Counties

a. Camping is prohibited.
b. Snowmobile use is prohibited.
c. Overnight parking is prohibited.

54. Collins Mountain Ranch State Wildlife Area – Rio Blanco County

a. Hunting is restricted to elk and deer.
b. Hunting access is by reservation only. Reservation holders must have their confirmation letter with them at all times while hunting on the property.
c. To make a reservation, hunters must already possess a big game hunting license for one of the specific hunt codes permitted on the property.
d. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
e. Hunters with a reservation may be accompanied by one other person who is not hunting.
f. Hunters may only access the property during the dates specified on their reservation.
g. Vehicle use is prohibited except on designated roadways or through permission of the ranch owners. All other access is restricted to walk-in access only.
h. The following are prohibited on the property: overnight camping, dogs, fires, fishing, woodcutting, target shooting/sight-in, building permanent blinds, or gathering artifacts.
i. Reservations for the antlered deer and elk hunts are valid throughout the season designated by the deer or elk license.
j. Reservation for the antlerless elk hunts are restricted to certain portions of the late rifle private-land-only season.

55. Colorado River Island State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Hunting is prohibited, except for waterfowl hunting from designated blinds.
c. Dogs are prohibited, except as an aid to hunting.
d. Waterfowl hunting on this property is by reservation only. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
e. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must check in and out at the property.

56. Colorow Mountain State Wildlife Area - Rio Blanco County

a. Public access is prohibited from February 1 through July 15.

b. Motorized vehicles are prohibited in the Scenery Gulch Unit.
c. Motorized vehicles are prohibited in the Tschuddi Unit north of the designated camping area.
d. Parking and camping is permitted in designated areas only, as posted.
e. Discharge of firearms or bows is prohibited within 200 yards of camping or parking areas or any structure.

57. Columbine State Wildlife Area - Douglas County

a. Discharge of firearms is prohibited.
b. Fires are prohibited.
c. Fishing is prohibited.
d. Hunting is prohibited.
e. Public access is prohibited in riparian areas for the protection of Preble's meadow jumping mouse, as posted.

58. Cottonwood State Wildlife Area - Morgan County

a. Public access is prohibited from 9:00 pm – 4:00 am, except with an authorized night hunting permit
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.

59. Cottonwood Creek State Wildlife Area - Chaffee County

a. Public access to Cottonwood Creek State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

60. Cowdrey Lake State Wildlife Area - Jackson County

a. Boating is prohibited in a manner that creates a white water wake.
b. Sail surfboards are prohibited.

61. Crooked Wash Ranch State Wildlife Area – Moffat County

a. Hunting is restricted to antlerless elk.
b. Hunting access is by reservation only. Reservation holders must have their confirmation letter with them at all times while hunting on the property.
c. To make a reservation, hunters must already possess a big game license for one of the specific hunt codes permitted on the property.
d. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
e. Hunters with a reservation may be accompanied by one other person who is not hunting.
f. Hunters may only access the property during the dates specified on their reservation.
g. Vehicle use is prohibited except on designated roadways or through permission of the ranch owners. All other access is restricted to walk-in access only.
h. The following are prohibited on the property: overnight camping, dogs, fires, fishing, woodcutting, target shooting/sight-in, building permanent blinds, or gathering artifacts.

62. Cross Canyon State Wildlife Area - Dolores County

a. Camping is prohibited.
b. Fires are prohibited.
c. Parking is prohibited, except in designated area.
d. Snowmobile use is prohibited.
e. Access during the first two days of the rifle deer and elk seasons is restricted to youth and a non-hunting mentor.
f. Discharge of firearms and bows is prohibited, except while hunting.
g. Dogs are prohibited, unless used as an aide in hunting.

63. <u>Dan Noble State Wildlife Area - San Miguel County</u>

a. Miramonte Reservoir Tract
    1. Camping is prohibited, except in the established campgrounds located along the Northeast, Southwest and Southeast portions of the reservoir.
    2. Discharge of firearms or bows is prohibited, except when hunting waterfowl.
    3. Waterskiing is prohibited from 6:00 pm through 10 am.
    4. Waterskiing and jet skiing are prohibited, except in designated areas located in the western half of the reservoir. Such areas will be designated as necessary to avoid conflicts with wildlife related recreational activities.
b. Greager Tract
    1. Public access is prohibited from March 1 through May 15, except under permit issued by AWM/DWM for viewing purposes.
    2. Viewing site is limited to area selected by Division personnel.
    3. Viewing parties will abide by all restrictions and conditions on the permit.
    4. Snowmobile use is prohibited.
    5. Camping is prohibited.
    6. Access by foot or horseback only.
c. John Kane Tract
    1. Public access is prohibited from March 1 through May 15.
    2. Snowmobile use is prohibited.
    3. Camping is prohibited.
    4. Access by foot or horseback only.

64. <u>Dawn Pond State Wildlife Area - Bent County</u>

a. Public access is for fishing only; hunting is by landowner permission only.
b. Boating is prohibited, except for float tubes or craft propelled by hand or electric motor.
c. Parking is prohibited, except in designated areas.

65. <u>Delaney Butte Lakes State Wildlife Area - Jackson County</u>

a. Boating is prohibited in a manner that creates a white water wake.
b. Sail surfboards are prohibited.

66. <u>Devil Creek State Wildlife Area - Archuleta County</u>

a. Snowmobile use is prohibited.
b. Fires are prohibited.
c. Camping is prohibited.

67. <u>Deweese Reservoir State Wildlife Area – Custer County</u>

a. Off-highway vehicle (OHV) use is prohibited.

68. <u>Diamond J State Wildlife Area (Hunting and Fishing Lease) - (Illinois River and Michigan River) - Jackson County</u>

a. Access is allowed for fishing, small game hunting, and waterfowl hunting only.
b. Hunting is restricted to shotguns or falconry only.

69. <u>Dolores River State Wildlife Area - Montezuma County</u>

a. Camping is prohibited.
b. Fires are prohibited.
c. Fishing is prohibited in the rearing ponds.

70. Dome Lakes State Wildlife Area - Saguache County

a. Discharge of firearms and hunting are prohibited in the designated safety zones.

71. Dome Rock State Wildlife Area - Teller County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Fires are prohibited.
d. Horseback and pack animal use is limited to designated roads and trails, except when used as an aid to big game hunting.
e. Public access is prohibited from December 1 to July 15 in the area bounded on the east by the Sand Creek Trail, on the north by the Dome Rock Trail, and on the west and south by the property boundaries. The Dome Rock Trail west of the Jack Rabbit Lodge is closed from December 1 to July 15. .
f. Public access is restricted to foot or horseback only from designated parking lots and connecting trails from Mueller State Park.
g. Rock climbing is prohibited.

72. Douglas Reservoir - Larimer County

a. Hunting is prohibited.
b. Fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.
d. Discharge of firearms or bows is prohibited.
e. Sailboards, sailboats, and ice skating are prohibited.
f. Camping is prohibited.
g. From one hour after sunset until one hour before sunrise, use other than fishing is prohibited.
h. All-terrain type vehicles, dirt bikes and snowmobiles are prohibited.
g. The use of any vessel or single compartment air or gas filled flotation device and all water contact is prohibited, unless actively fishing.

73. Dowdy Lake State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.
b. Public access to Dowdy Lake State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

74. Dry Creek Basin State Wildlife Area - San Miguel County

a. Snowmobile use is prohibited.
b. Camping is prohibited, except in designated areas.

75. Duck Creek State Wildlife Area - Logan County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. One field trial per year in February, March, or August may be authorized.

76. Dune Ridge State Wildlife Area - Logan County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.

d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.

77. Dutch Gulch State Wildlife Area - Gunnison County

a. Public access is prohibited from March 1 through June 30, except for through traffic on Gunnison Co. Rd 42 and on established roads connecting to designated BLM roads.
b. Camping is prohibited.
c. Fires are prohibited.

78. Eagle River State Wildlife Area (Fishing Leases) - Eagle County

a. Camping is prohibited.
b. Fires are prohibited.
c. Public access is prohibited, except for fishing.
d. Dogs are prohibited.
e. Public access (ingress and egress) is limited to designated points as posted to protect private property.

79. Eagle Rock State Wildlife Area - Yuma County

a. Public access prohibited from 9 pm to 4 am.
b. Public access is restricted to foot traffic only.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Target practice is prohibited, except when authorized by the Area Wildlife Manager.
g. Horse use is prohibited, except when used in hunting.

80. Echo Canyon Reservoir State Wildlife Area - Archuleta County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.
d. Snowmobile use is prohibited.

81. Elk Springs Ranch State Wildlife Area - Moffat County

a. Public access is prohibited from March 1 through August 14.

82. Elliott State Wildlife Area - Morgan County

a. Public access is prohibited from 9:00 pm – 4:00 am, except with an authorized night hunting permit
b. Camping is prohibited.
c. Fires are prohibited.
d. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
f. Landowner permission is required to hunt deer on access easement.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.
h. Lonetree Tract:

1. From September 1 through the regular duck seasons, hunters must check-in and out at check station. Hunters may not check-in until 4:00 am.

i. Hamlin Tract:
   1. From September 1 through the regular duck seasons, hunters must check-in and out at check stations. Hunters may check-in on a first-come, first-serve basis after 4:00 am or after another hunter checks out. Hunters may only hunt the area they check into, and must comply with youth-mentor only area restrictions as posted. Maximum of four (4) hunters allowed per hunting area.

j. Union Tract:
   1. Only waterfowl hunting permitted from designated blinds or areas, and only on Saturdays, Sundays, Wednesdays, and state and federal holidays. Reservations are required and valid until sunrise, and are limited to three (3) per hunter annually. Reservations must be made in accordance with #901.A of these regulations.
   2. All hunters must check-in and out at check station. Hunters may not check-in until 4:00 am and can only hunt the area reserved or which they check into. Hunters may check-in on a first-come, first-serve basis after a hunter checks out or after sunrise. A maximum of four (4) hunters allowed per hunting area.
   3. During waterfowl seasons, scouting is prohibited, except on Thursdays from 10:00 am until 2:00 pm. All persons must check-in and out at the check station. All firearms and dogs prohibited while scouting.

83. Emerald Mountain State Wildlife Area - Routt County

a. Public access is prohibited from December 1 through June 30.
b. Public access is prohibited from 10:00 p.m. through 4:00 a.m. daily.
c. Public access is by foot and horseback only.
d. Camping is prohibited.
e. Fires are prohibited.
f. Dogs are prohibited.

84. Escalante State Wildlife Area - Mesa, Delta & Montrose Counties

a. Field trials may be authorized during February, March, August, and September only.
b. Dog training is prohibited on the Hamilton and Lower Roubideau tracts during any upland game bird or migratory bird season.
c. Game birds listed in #009(B) of these regulations may be released by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.
d. Public access is prohibited on the Hamilton and Lower Roubideau tracts from March 15 through July 31.
e. Hunting is limited to youth mentor hunting only on the Lower Roubideau tracts. No more than one mentor per youth hunter may engage in hunting. f. Bowfishing is prohibited.

85. Fish Creek State Wildlife Area - Dolores County

a. Camping is prohibited, except during deer and elk seasons.

86. Flagler Reservoir State Wildlife Area - Kit Carson County

a. Boating is prohibited during the migratory waterfowl season, except for craft propelled by hand, wind or electric motor.
b. Boating is prohibited in a manner that creates a white water wake, except waterskiing is permitted on Sundays and Mondays from June 1 through August 31.
c. Hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

87. Flanders Ranch State Wildlife Area – Routt County

a. Access is by foot only.
b. Fishing is prohibited during established big game hunting seasons.
c. Waterfowl hunting on the property will be permitted for one (1) group (up to four hunters) per day during established waterfowl seasons.
d. Big game hunting on the property will be divided across eight established time periods with up to eight (8) reservations available per time period:
    i. Three archery seasons for deer and elk (no overlap with muzzleloader season),
    ii. The muzzleloader deer and elk season,
    iii. The first regular rifle elk season,
    iv. The second regular rifle deer and elk season,
    v. The third regular rifle deer and elk season, and
    vi. The fourth regular rifle deer and elk season.
e. Waterfowl and big game hunting access is by reservation only. Reservation holders must have their confirmation letter with them at all times while hunting on the property.
f. To make a reservation, big game hunters must already possess a license for one of the specific hunt codes permitted on the property.
g. Reservations may be obtained through the Hunter Reservation System according to #901.A of these regulations.
h. Dogs must be kept on a leash no greater than six feet in length, except when used as an aid in waterfowl hunting.
i. Parking is prohibited, except in designated areas.
j. Public boating, launching or the recovery of boats from the Yampa River is prohibited.

88. Fort Lyon State Wildlife Area - Bent County

a. ATVs and dirt bikes are prohibited.

89. Four Mile State Wildlife Area - Douglas County

a. Access is by foot and horseback only.
b. Camping is prohibited.
c. Fires are prohibited.

90. Frank State Wildlife Area - Weld and Larimer counties

a. All public access, including fishing and wildlife-related recreation, is prohibited north of the Poudre River.
b. Discharge of firearms or bows is prohibited, except when bowfishing.
c. Fires are prohibited.
d. Hunting is prohibited.
e. Camping is prohibited.
f. Boating is prohibited in a manner that creates a white water wake.

91. Franklin Island State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Hunting is prohibited, except for waterfowl hunting from designated blinds.
c. Dogs are prohibited, except as an aid to hunting.
d. Waterfowl hunting on this property is by reservation only. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
e. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must check in and out at the property.

92. Frantz Lake State Wildlife Area - Chaffee County

a. Camping is prohibited.
b. Discharge of bows and firearms prohibited.

93. Frenchman Creek State Wildlife Area - Phillips County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.

94. Garfield Creek State Wildlife Area - Garfield County

a. Camping is prohibited, except for seven days before the beginning of regular big game seasons through seven days after the end of regular big game seasons.
b. Hunting is prohibited in the designated safety zone as posted.
c. Hunting is prohibited within 75 yards of the center line of Garfield Co Rds 312 and 328.
d. Public access is prohibited from December 1 through July 15, except for spring turkey hunters hunting below the junction or small game hunters hunting above the junction of Garfield Co Rds 312 and 328.
e. Dogs are prohibited, except as an aid in hunting.
f. Bicycles are restricted to Garfield Co Rds 312 and 328.
g. Hunting of dusky grouse and ruffed grouse is prohibited on the Upper Baldy Tract.

95. Granada State Wildlife Area (formerly known as the XY River Tract) - Prowers County

a. Fires are prohibited.
b. Camping is prohibited.
c. Parking is prohibited, except in designated areas.
d. ATVs and dirt bikes are prohibited. All other motor vehicle use is restricted to access roads and parking lots only.
e. Area will be closed to public access from one hour after sunset until one hour before sunrise.
f. Midwestern Farms Tract
    1. Hunting is restricted to the area south of the river road and is by shotgun, archery, or falconry only.
    2. Swimming is prohibited.
    3. Boating is prohibited.
    4. Float tubes are prohibited.

96. Granby Ranch Conservation Easement - Grand County

a. Public access is prohibited from November 15 until April 15.
b. Motor vehicles are prohibited.
c. Fires are prohibited.
d. Dogs must be on a leash.
e. Public access to Granby Ranch Conservation Easement is exempt from requirements set forth in section #900(C)1 of these regulations.

97. Grand Junction - West Lake State Wildlife Area - Mesa County

a. Boating is prohibited.
b. Public access is prohibited from 9:00 p.m. to 7:00 a.m.
c. Water contact activities are prohibited.
d. Public access to Grand Junction - West Lake State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

98. Granite State Wildlife Area (Fishing Easement) - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.

c. Dogs are prohibited.
d. Mining activities and panning are prohibited.
e. Vessel ingress and egress is prohibited.

99. Grieve Ranch Conservation Easement - Routt County

a Fires are prohibited
b. Dogs are prohibited, except as an aid in hunting.
c. Firearms are prohibited, except when used during lawful hunting activities.
d. Camping is prohibited, except in developed campgrounds
e. Snowmobile, all-terrain vehicle, and motorcycle use is prohibited.
f. Commercial use is prohibited.
g. Woodcutting and gathering is prohibited.
h. Public access is prohibited on the hay meadows north of Routt County Road 129.
i. Fishing access to the Little Snake River is restricted to the river corridor plus 20 feet above the high water line on either bank.

100. Groundhog Reservoir State Wildlife Area - Dolores County

a. Boating is prohibited in a manner that creates a white water wake.
b. All motorized or trailered boats must launch at the CPW boat ramp.
c. Camping is prohibited.
d. Public access to Groundhog Reservoir State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

101. Gunnison River State Wildlife Area (Van Tuyl and Redden) - Gunnison County

a. Public access to the Gunnison River is by foot only from the Van Tuyl trail intersection at the Y-gate.
b. Discharge of firearms or bows is prohibited, except for waterfowl hunting with shotguns on the Van Tuyl tract only.
c. Camping is prohibited.
d. Fires are prohibited.

102. Gunnison State Wildlife Area - Gunnison County

a. Public access to the Gunnison River is prohibited from December 1 through April 30.
b. Public access to the Blinberry Gulch parcel is prohibited from December 1 through June 30.
c. Public access is prohibited from 1 hour after sunset to 1 hour before sunrise from May 1 to August 15.
d. Camping is restricted to designated areas and permitted August 16 to November 30 only.
e. Beaver Creek Trail is restricted to foot and horseback travel only.

103. Gypsum Ponds State Wildlife Area - Eagle County

a. Access is prohibited between sunset and sunrise to all users, except those in the act of hunting or fishing.
b. Camping is prohibited.
c. Fires are prohibited.
d. Glass containers are prohibited.
e. Dogs are prohibited from March 15 through June 15 to protect nesting waterfowl.
f. Dogs are prohibited on the eastern ponds, except when being used for waterfowl hunting.
g. Vessel launching and takeouts are prohibited.
h. Field trials may be authorized during August and September only.

104. Hardeman State Wildlife Area (Fishing Easement) – Lake County

a. Camping is prohibited.
b. Fires are prohibited.
c. Dogs are prohibited.
d. Firearms are prohibited.
e. Mining activities and panning are prohibited.
f. Vessel ingress and egress is prohibited.

105. Harmon State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. Fires and overnight camping are prohibited.
c. Firearms and hunting are prohibited.
d. Dogs are prohibited.

106. Haviland Lake State Wildlife Area - La Plata County

a. Boating is prohibited, except for float tubes or craft propelled by hand or electric motor.

107. Hayden Shooting Range – Routt County

a. Public access is prohibited from sunset to sunrise.
b. Exploding targets and any targets other than paper and cardboard are prohibited.
c. All rounds must impact designated berms, except for shotguns using bird shot.

108. Heckendorf State Wildlife Area - Chaffee County

a. All access must be from designated parking areas only.
b. Camping is prohibited.
c. Fires are prohibited.

109. Hereford Haven State Wildlife Area – Routt County

a. Access is by foot only.
b. Fishing is prohibited during established big game seasons.
c. Waterfowl hunting on the property is limited to one (1) group (up to four (4) hunters) per day during established waterfowl seasons.
d. Big game and small game hunting prohibited.
e. Waterfowl hunting is by reservation only. Reservation holders must have their confirmation letter with them at all times while hunting on the property. Reservations may be obtained through the Hunter Reservation System according to #901.A of these regulations.
f. Dogs are prohibited, except as an aid in hunting waterfowl.
g. Launching or the recovery of vessels from the Yampa River prohibited.

110. Higel State Wildlife Area - Alamosa County

a. Public access is prohibited from September 1 through February 14, except on Saturdays, Sundays, Wednesday, and state and federal holidays.
b. From September 1 through February 14, a valid access permit must be obtained. A maximum of 25 permits will be issued per day and are available at no charge on a first-come, first-served basis. From September 1 through September 30 and November 11 through February 14, permits may be obtained either through the reservation system by calling 719-587-6923, or in person at the Monte Vista Service Center. From October 1 through November 10, all permits must be obtained through the reservation system.
    1. Reservations for weekends may be made up to 14 days in advance, but not less than two days before the Saturday of the weekend requested. Reservations for Wednesdays may be made up to 14 days in advance but not less than two days before the date requested.
    2. Reservations can be made for up to two people per reservation.

c. Public access is prohibited from February 15 through July 15 annually to protect nesting water birds.
d. The Area Wildlife Manager may authorize special use of the area during closures to accommodate educational or scientific uses if it will not be detrimental to nesting or migrating water birds.

111. Hohnholz Lakes State Wildlife Area - Larimer County

a. Boating is prohibited, except for craft propelled by hand, wind or electric motor.
b. Camping is prohibited, except within the Laramie River camping area.
c. Public access is prohibited on the Grace Creek access road except to licensed hunters, beginning August 16 through the last day of the fourth rifle season.
d. Sail surfboards are prohibited.

112. Holbrook Reservoir State Wildlife Area - Otero County

a. Hunting is prohibited in the safety zone around the residence on the southwest side, as posted.

113. Holly State Wildlife Area - Prowers County

a. Camping is prohibited.
b. Fires are prohibited.
c. ATVs and dirt bikes are prohibited.
d. Hunting prohibited in designated safety zones between US 50 and Prowers Co Rd ff.

114. Holyoke State Wildlife Area - Phillips County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.

115. Home Lake State Wildlife Area - Rio Grande County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind, electric motor, or motorboats as provided in b and c below.
b. Motorboats up to 10 horsepower may be used at anytime.
c. Motorboats greater than and including 10 horsepower may be used only between the hours of 10 a.m. and 4 p.m.
d. Public access prohibited from sunset to sunrise daily, except for fishing.
e. Hunting is prohibited.
f. Public access to Home Lake State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

116. Horse Creek Reservoir State Wildlife Area (Timber Lake) - Bent & Otero Counties

a. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing.
b. All terrain vehicles, dirt bikes, and snowmobiles are prohibited.
c. Public access to the frozen surface of the lake is prohibited.
d. Public access to the dams, inlets, and outlet structures is prohibited, except for fishing.

117. Horsethief Canyon State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Turkey hunting is prohibited, except:
    1. Youth mentor spring turkey hunting is allowed by limited access permit only.
    2. Hunters with limited GMU 30 turkey licenses may hunt on Skipper's Island only.

c. Hunting is permitted with shotguns, hand-held bows, and muzzle-loading rifles or by falconry.
d. Fires are prohibited.
e. Waterfowl hunting on Saturday is restricted to youth mentor hunting only from 100 yards east of Blind #1 to the western boundary of the property.
f. Users wishing to hunt waterfowl on the west end of the property must reserve a specific designated blind and are restricted to hunt from or within 100 yards of that blind. No more than four hunters are permitted per blind. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
g. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must check in and out at the property.
h. Permits are not required for waterfowl hunting 100 yards east of Blind #1 to the eastern boundary of the property, including Skipper's Island.
i. Public access is prohibited between 9 p.m. and 5 a.m., except for fishing.
j. Quail hunting is prohibited.
k. Waterfowl hunting is prohibited from Wednesday through Friday of each week, except on Thanksgiving Day, Christmas Day and New Year's Day.
l. Game birds listed in #009(B) of these regulations may be released by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.
m. Waterfowl hunting on North Skipper's island is prohibited except limited to existing waterfowl blinds only.
o. Public access to Horsethief Canyon State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

118. Hot Creek State Wildlife Area - Conejos County

a. Snowmobile use is prohibited.
b. Vehicles are prohibited from January 1 through April 30.

119. Hot Sulphur Springs State Wildlife Area (Joe Gerrans Unit, Byers Canyon Rifle Range, Hot Sulphur Springs State Ranch, Lone Buck Unit, Parshall Divide Unit, Paul F. Gilbert Fishing Area, Pioneer Park Unit and Jenny Williams Unit) - Grand County

a. Camping is prohibited, except in the Joe Gerrans Unit and Lone Buck campgrounds.
b. Discharge of firearms is prohibited in the Joe Gerrans Unit, Lone Buck campgrounds and Paul F. Gilbert Fishing Area.
c. Public access is prohibited on the Byers Canyon Rifle Range, except between sunrise and sunset daily when in compliance with all posted range rules.
d. Public access on the Byers Canyon Rifle Range may be prohibited for the protection of wintering big game.
e. Fires and off-road travel are prohibited on the Parshall Divide Unit.
f. Bowfishing is prohibited.

120. Hugo State Wildlife Area - Lincoln County

a. Boating is prohibited.

121. Indian Run State Wildlife Area - Routt County

a. Camping is restricted to designated areas only.
b. Discharge of firearms or bows is prohibited in designated safety areas.

122. Jackson Lake State Wildlife Area - Morgan County

a. Public access is prohibited from 9:00 pm – 4:00 am, except for legal fishing activities.
b. Camping is prohibited.

c. Fires are prohibited.
d. Fishing is prohibited from October 1 through the dark goose season.
e. Ice fishing is prohibited.
f. Target practice and hunting with centerfire rifles are prohibited.
g. Vessels and hunting are prohibited on frozen surface of lake.
h. During the teal season and the first split of the regular duck season, reservations are required on Saturdays, Sundays, and state and federal holidays to hunt waterfowl. Reservations are valid until sunrise and are limited to three (3) per hunter annually. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations. Reservations are not required Monday through Friday, except state and federal holidays, and hunters may check in on a first-come, first-served basis.
i. Waterfowl hunters must check in and out at the check station. Hunters may not check in until 4:00 am and can only hunt the area reserved. Hunters may check in on a first-come, first-served basis after a hunter checks out or after sunrise if a hunter has not checked in. A maximum of four (4) hunters are allowed per hunting area.

123. James M. John State Wildlife Area - Las Animas County

a. Camping is prohibited within one-hundred (100) feet of any stream.
b. Public access is prohibited from December 1 through April 1.
c. Public access is prohibited, except by foot or horseback only.
d. Hunting access is restricted during the regular rifle deer and elk seasons to big game only, on a drawing basis, in accordance with #209(B)(1).

124. James Mark Jones State Wildlife Area - Park County

a. Public access is prohibited January 1 through May 1.
b. Fires are prohibited, except in established fire rings at designated parking areas.

125. Jean K. Tool State Wildlife Area - Morgan County

a. Public access is prohibited from 9:00 pm – 4:00 am, except with an authorized night hunting permit.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.

126. Jensen State Wildlife Area - Rio Blanco County

a. Camping is prohibited, except in designated areas.
b. Public access is prohibited from January 1 through July 15.

127. Jerry Creek Reservoirs State Wildlife Area (Jerry Creek Reservoirs #1 and #2) -Mesa County

a. Hunting is prohibited.
b. Camping is prohibited.
c. Fires are prohibited.
d. Firearms are prohibited.
e. Boating, floating, swimming and wading are prohibited.
f. Ice fishing on, and all other public access to, the frozen surface of the lake is prohibited.

g. Pets and other domestic animals are prohibited.
h. Vehicles (motorized or non-motorized) are prohibited.

128. Jim Olterman/Lone Cone State Wildlife Area - Dolores County

a. Snowmobile use is prohibited.

129. Joe Moore Reservoir State Wildlife Area - Montezuma County

a. Boating is prohibited in a manner that creates a white water wake.
b. Camping is prohibited.

130. John Martin Reservoir State Wildlife Area - Bent County

a. Field trials may be authorized during February, March, August, and September only.
b. Public access is prohibited, except to retrieve downed waterfowl from November 1 through the last day of the migratory waterfowl season as posted on US Army Corp of Engineer property under lease by Colorado Parks and Wildlife to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.
c. ATVs and dirt bikes are prohibited.

131. Jumbo (Julesburg) Reservoir State Wildlife Area - Logan and Sedgwick Counties

a. Property is limited to 250 vehicles.
b. All loud noises that disturb the peace, except legal hunting activities, are prohibited from 10:00 pm – 6:00 am.
c. Target practice is prohibited.
d. Waterskiing is prohibited from 7:00 pm – 10:00 am, Friday through Monday of Memorial Day weekend.
e. Vessels are prohibited within 50 feet of outlet structure.
f. The launching of motorized vessels or sailboats is prohibited if the Aquatic Nuisance Species (ANS) inspection station is closed.
g. Hand-launched and hand-powered vessels shall only be used for fishing, to set-up/pick-up decoys or retrieve downed waterfowl after the ANS inspection station closes for the year or until the reservoir is frozen.
h. Hunting is prohibited from the frozen surface of the lake.

132. Jumping Cow State Wildlife Area - Elbert County

a. Hunting is restricted to dove, turkey, doe pronghorn, antlerless elk, antlerless white-tailed deer, and antlerless mule deer. Hunting on the Woodard Unit is restricted to waterfowl, small game (excluding dove, turkey, and coyote), doe pronghorn, antlerless mule deer, and antlerless white-tailed deer.
b. Hunting and fishing access is allowed by permit only. Hunters and anglers must have a valid license for their activity prior to applying for a permit. Permit holders shall have their permit on their person at all times while on the property. Permits may designate specific geographic hunting zones; in this case permits are restricted to the listed zone and are not valid property-wide. Access permits for hunters and anglers will be issued free of charge. Permits may be obtained via a drawing process. Permits on the Woodard Unit will be issued with priority given to mobility-impaired hunters and youth (accompanied by one hunting mentor). Applications are available from the CPW in Denver (303)291-7227. Application due dates are as follows:
    1. Applications for fall hunting access are due the 3rd Monday in August.
    2. Spring turkey applications due 3rd Monday in March.
    3. Fishing applications due 14 days prior to intended access date.
c. Permitted hunters and anglers may take one other person (an observer) who is not hunting or fishing with them onto the property; however that person must

remain with the permit holder at all times. On the Woodard Unit, a mobility-impaired person may bring two non-hunting companions.

d. Permitted hunters may not enter the property prior to the first Monday after the opening day of their individual season. Permits valid for hunting dove, wild turkey, or that are valid for the Woodard Unit only, may access the property on opening day of their season.
e. Vehicular access to the property is restricted. Motor vehicle use is only allowed on marked existing roadways that lead to marked parking areas. All other access is restricted to foot and horseback only. On the Woodard Unit, mobility-impaired hunters are allowed to use an Off-highway vehicle (OHV) for hunting and game retrieval as specified on their permit.
f. All gates on the property shall be left in the condition in which they are found after passing through the gateway.
g. Access is permitted from two hours prior to sunrise to one hour after sunset. In the event that an animal has been harvested by a hunter, the hunter may remain as long as is reasonable to recover and remove the animal from the property.
h. Camping is prohibited.
i. Fires are prohibited.
j. Dogs are prohibited on the Woodard Unit.

133. Junction Butte State Wildlife Area - Grand County

a. Camping is prohibited.
b. Hang gliding is prohibited.
c. Vehicles are prohibited, except from the day after Labor Day through the day after any late big game season.

134. Karney Ranch State Wildlife Area - Bent County

a. Camping is prohibited.
b. Fires are prohibited.
c. Firewood collection is prohibited.
d. Off-highway vehicle (OHV) use is prohibited.
e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal.
f. Public access is prohibited in the building envelope safety zone, as posted.
g. Ornate box turtle collection and/or release is prohibited.
h. Night hunting with artificial light may be permitted as provided in regulation #W-303.E.10.
i. Foot access only. All vehicles are restricted to roads and parking lots.
j. Dogs are prohibited except as an aid to hunting.
k. No public access to signed safety zones.

135. Karval Reservoir State Wildlife Area - Lincoln County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

136. Kemp-Breeze State Wildlife Area - Grand County

a. Fishing at the Breeze Unit Kids Pond is restricted to youth fishing only and those anglers with mobility impairments who are restricted to a wheelchair.
b. Public access on the Breeze Unit hay meadow wetland is prohibited from March 15 through July 15.

137. Kinney Lake State Wildlife Area- Lincoln County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

138. Knight-Imler State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.
c. Public access is prohibited beyond 25 feet from the center line of the stream.

139. Knudson State Wildlife Area - Logan County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited.
e. Horses are prohibited.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. Landowner permission required to hunt deer on access easement.
h. The launching or takeout of vessels is prohibited during waterfowl seasons.

140. La Jara State Wildlife Area - Conejos County

a. Snowmobile use is prohibited.
b. Vehicles are prohibited from January 1 through the last Thursday prior to Memorial Day.

141. Lake Beckwith State Wildlife Area - Pueblo County

a. Camping is prohibited.
b. Boating is prohibited, except for craft propelled by hand, wind or electric motor.
c. Hunting is prohibited.
d. Fires are prohibited.
e. Ice fishing and all public access to the frozen surface of the lake is prohibited.
f. Public access to Lake Beckwith State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

142. Lake Dorothey State Wildlife Area - Las Animas County

a. Camping is prohibited within two hundred (200) yards of Lake Dorothey or one-hundred (100) feet of any stream, except in designated areas.
b. Discharge of firearms or bows is prohibited, except shotguns or bows are allowed while hunting.
c. Discharge of bows is allowed for bowfishing.
d. Hunting big game is prohibited, except by means of archery.
e. Public access is prohibited, except by foot or horseback from established parking areas.
f. Trapping is prohibited.

143. Lake John State Wildlife Area - Jackson County

a. Camping is prohibited, except in established camping areas.
b. Waterskiing is prohibited.
c. Sail surfboards are prohibited.

144. Lake Pueblo State Wildlife Area - Pueblo County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except shotguns or bows, are allowed while hunting.
c. Discharge of bows is allowed for bowfishing.
d. Fires are prohibited.
e. Field trials may be authorized during February, March, August, and September only.
f. Target practice is prohibited.

g. Jumping, diving or swinging from cliffs, ledges or man-made structures is prohibited, including, but not limited to, boat docks, marina infrastructure and the railroad trestle in Turkey Creek.

145. Leatha Jean Stassen State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Public access is prohibited from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise.
e. Motor vehicles are prohibited.

146. Lennartz State Wildlife Area - Logan County

a. Public access is prohibited.

147. Little Snake State Wildlife Area - Moffat County

a. Camping is prohibited, except in self-contained units during any deer, elk, or pronghorn season.
b. Fires are prohibited.

148. Loma Boat Launch State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Discharge of firearms is prohibited.
c. Fires are prohibited.
d. The launching and/or use of personal water craft (jet skis) is prohibited.
e. Parking is restricted to designated areas only.

149. Lon Hagler State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.
b. Camping is prohibited.
c. Fishing is prohibited in the inlet structure and the annex pond.
d. Horseback riding is prohibited.
e. Sail surfboards are prohibited.
f. Sailboats are prohibited.
g. Target practice is prohibited.
h. Fires are prohibited.
i. Bicycling is prohibited.
j. All pet leashes must be no longer than six feet in length.
k. Any dog on a boat is not required to be on a leash.
l. Between September 1 and the last day of February, dogs are prohibited west of the lakeside parking lots, except as an aid to hunting.
m. Between March 1 and August 31, dogs are prohibited west of the lakeside parking lots.
n. Dogs are prohibited on the annex pond and adjacent lands, as posted, to protect wildlife habitat and nesting wildlife.

150. Lone Dome State Wildlife Area - Montezuma and Dolores counties

a. Overnight parking is prohibited, except in designated areas.
b. Fires are prohibited.

151. Louisiana Purchase Ranch State Wildlife Area – Moffat County

a. Hunting is restricted to deer and elk.
b. Hunting access is by reservation only. Reservation holders must have their confirmation letter with them at all times while hunting on the property.
c. To make a reservation, hunters must already possess a big game license for one of the specific hunt codes permitted on the property.

d. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
e. Hunters with a reservation may be accompanied by up to two (2) other people who are not hunting.
f. Hunters may only access the property during the dates specified on their reservation.
g. Vehicle use is prohibited except on designated roadways or through permission of the ranch owners. All other access is restricted to walk-in access only.
h. The following are prohibited on the property: overnight camping, dogs, fires, fishing, woodcutting, target shooting/sight-in, building permanent blinds, or gathering artifacts.
i. Reservations are valid starting the sixth day of the season designated by the license through the end of the season.

152. Love Meadow Watchable Wildlife Area - Chaffee County

a. Open for wildlife viewing only.
b. Public access to Love Meadow Watchable Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

153. Manville State Wildlife Area (Fishing Lease) - (Roaring Fork of the North Platte River) Jackson County

a. Public access is for fishing only.

154. McCluskey State Wildlife Area - Delta County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Fires are prohibited.
d. Public access is prohibited, except for hunting, fishing, or trapping.
e. Public access is prohibited from the day after the conclusion of the annual big game seasons through April 30.

155. Meeker Pastures State Wildlife Area- Rio Blanco County

a. Big game hunting is restricted to the use of archery equipment only.

156. Melon Valley State Wildlife Area - Otero County

a. On weekends, hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

157. Messex State Wildlife Area - Washington and Logan Counties

a. Public access is prohibited from 9:00 pm – 4:00 am, except with an authorized night hunting permit.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the area wildlife manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. Landowner permission required to hunt deer on access easement.
h. The launching or takeout of vessels is prohibited during waterfowl seasons.

158. Mike Higbee State Wildlife Area - Prowers County

a. ATVs and dirt bikes are prohibited.

b. Closed to public access from one hour after sunset until one hour before sunrise, unless camping in designated areas or actively hunting or fishing.
c. Game birds listed in #009(B) of these regulations may be released by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.

159. Miller Ranch State Wildlife Area - Gunnison County

a. Public access is prohibited from March 1 through June 30.
b. Hunting is prohibited north of Gunnison Co Rd 7 except for mentored youth hunting by permit only. A maximum of four free permits will be available daily on a first-come, first-served basis. Permits are available by reservation through the Gunnison Service Center at 300 W. New York Ave., Gunnison, CO, or by calling 970-641-7060. Reservations may be made up to 30 days in advance but not less than two days before the requested hunt date. Upon reservation, the youth hunter and mentor will be provided a map with access points and restrictions. Mentors are not allowed to hunt.
c. Discharge of firearms or bows is prohibited in the designated safety zones, as posted.
d. Camping is prohibited.
e. Fires are prohibited.
f. Dogs are prohibited.

160. Mitani-Tokuyasu State Wildlife Area - Weld County

a. Public access is prohibited from one hour after sunset through 4:00 am.
b. Public access prohibited from the day after the close of the spring turkey season through August 31..
c. Camping is prohibited.
d. Fires are prohibited.
e. Target practice is prohibited.
f. The launching or takeout of vessels is prohibited.
g. Horses are prohibited.
h. Hunting access is limited to occupants of vehicles legally parked in 1 of 4 spaces in the designated parking area. A reservation is required to occupy a parking space from 4:00 am until noon. Reservations may be made in accordance with #901.A of these regulations. After noon each day, parking spaces are available on a first-come, first-serve basis.

161. Mogensen Ponds State Wildlife (Fishing) Area - Mesa County

a. Hunting is prohibited, except for waterfowl from designated blinds.
b. Camping is prohibited.
c. Fires are prohibited.
d. Firearms are prohibited, except as provided in (a) above.
e. Pets or other domestic animals are prohibited.
f. Vehicles (motorized or non-motorized) are prohibited.

162. Mountain Home Reservoir State Wildlife Area - Costilla County

a. Waterskiing is prohibited.

163. Mount Evans State Wildlife Area - Clear Creek County

a. Camping shall be limited to five days in any 45 day period, except during big game seasons in designated campgrounds.
b. Dogs are prohibited, except when used in hunting or on a leash.
c. Public access is prohibited from January 1 through June 14.
d. Use of the property is restricted to only fishing and hunting activities from the day after Labor Day through the end of the 4th regular rifle season.

e. Vehicles are prohibited from the day after Labor Day through June 14, except during regular rifle deer and elk seasons.
f. Groups of 25 or more people must obtain a permit prior to use. Permits shall be issued to limit access to no more than one group at one time.

164. Mount Ouray State Wildlife Area - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.
c. Access to the property is from designated parking areas only.
d. Hunting is permitted with shotguns, hand-held bows, and muzzleloaders or by falconry only.

165. Mount Shavano State Wildlife Area - Chaffee County

a. Public access is prohibited south of Chaffee Co. Rd. 154 and west of Colorado State Highway 291.
b. Camping is prohibited.
c. Fires are prohibited.
d. From the upper end of the Mount Shavano SFU, upstream to the marked property boundary, discharging firearms is prohibited except when hunting, which is permitted only with shotguns, hand-held bows, muzzleloaders or by falconry.
e. From the upper end of the Mount Shavano SFU, downstream to the Colo. Hwy 291 Bridge, discharging firearms is prohibited. Hunting is permitted only with hand-held bows or by falconry.
f. Hunting is prohibited between Colorado State Highway 291 and the Arkansas River from the Colorado State Highway 291 Bridge downstream to Chaffee County Road 175.

166. Murphy State Wildlife Area (Fishing Lease) - (Michigan River) Jackson County

a. Public access is for fishing only.

167. Nakagawa State Wildlife Area - Weld County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except when hunting.
c. Fires are prohibited.

168. Narraguinnep Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Glass containers are prohibited.
d. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing
e. Public access to Narraguinnep Reservoir State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

169. North Fork State Wildlife Area - Larimer County

a. Public access is prohibited, except for fishing.
b. Public access to North Fork State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

170. North Lake State Wildlife Area - Las Animas County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.
c. Fires are prohibited

171. Oak Ridge State Wildlife Area (Bel Aire Unit, Lake Avery Unit, Oak Ridge Unit, Jon Wangnild Unit, Sleepy Cat Ponds Unit, and Sleepy Cat Fishing Easement) - Rio Blanco County

a. Camping is prohibited, except in designated areas.
b. Public access is prohibited on the Oak Ridge Unit from December 1 through July 15.
c. Public access is prohibited on Sleepy Cat Ponds Unit and Sleepy Cat Fishing Easement, except for fishing.
d. Hunting is prohibited, except by archery in that portion south of Rio Blanco Co Rd 8, west of Rio Blanco Co Rd 17, and north and east of Rio Blanco Co Rd 10.
e. Water skiing, jet skis, and boating other than wakeless boating, are prohibited on Lake Avery.

172. Ogden-Treat State Wildlife Area (Fishing Easement) - Fremont County

a. Public access is for fishing only.

173. Orchard Mesa Wildlife Area - Mesa County

a. Access to the Wildlife Area is only from the parking area located on “C” Road between 30 and 31 Roads.
b. Vehicles are prohibited beyond the parking area.
c. Dogs are prohibited, except as an aid to hunting.
d. Horses are prohibited.
e. Public access is prohibited from March 15 to July 14 annually to protect nesting migratory birds.
f. Waterfowl hunting on this property is by reservation only. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
g. Waterfowl hunters must hunt from designated blinds or zones identified for each blind. No more than four hunters allowed per blind.
h. No other small game hunting allowed.
i. Deer hunting access is by reservation only. Reservation holders must have their confirmation letter with them at all times while hunting on the property.
j. To make a reservation for deer hunting, hunters must already possess a big game license for one of the specific hunt codes permitted on the property.
k. Reservations for deer hunting must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
l. Deer hunters with a reservation may be accompanied by up to two (2) people who are not hunting.
m. Deer hunters may only access the property during the dates specified on their reservation.
n. Only archery equipment will be allowed for deer hunting.
o. Hunters with reservations may only hunt the hunt area specified on the reservation. Hunters must check in and out at the property.
p. The following are prohibited on the property: overnight camping, fires, fishing, woodcutting, target shooting/sight-in, building permanent blinds, or gathering artifacts.

174. Orient Mine State Wildlife Area – Saguache County

a. Access to adjacent public lands through the property for hunting purposes is allowed October 1 - May 31 annually. Hunters wishing to gain access across the property to adjacent federal lands must contact the Orient Land Trust and adhere to their check in/out procedures.
b. Access through the property by the public for all purposes is prohibited 3 hours before sunrise and 3 hours after sunset, except when an animal has been harvested on adjacent public lands.
c. Access to the property is by foot only from adjacent public lands.

d. Camping is prohibited.
e. Fires are prohibited.
f. Hunting is prohibited.
g. Public access to Orient Mine State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

175. Overland Trail State Wildlife Area - Logan County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.

176. Paddock State Wildlife Area - Lake County

a. Fishing access is allowed in Iowa Gulch and Upper Empire Gulch only.
b. During bighorn sheep season and regular rifle deer, elk and bear seasons, access is restricted to hunting for those species only, and only to hunters with a proper and valid license for any of those species.
c. Camping is prohibited.
d. Dogs are prohibited.
e. Fires are prohibited.
f. Access is by foot only.

177. Parachute Ponds State Wildlife Area - Garfield County

a. Camping is prohibited.
b. Fires are prohibited.
c. Swimming is prohibited.
d. Float tubes are permitted for fishing only.

178. Parvin Lake State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes used for fishing.
b. Fishermen must enter the area on foot through the gate at the check station and must check in and out at the check station when open.

179. Pastorius Reservoir State Wildlife Area - La Plata County

a. Boating is prohibited, except for float tubes or craft propelled by hand or electric motor.
b. Camping is prohibited.
c. Discharge of firearms or bows is prohibited, except when hunting.
d. Fires are prohibited.
e. Hunting is prohibited, except on Saturdays, Sundays, and Wednesdays.

180. Perins Peak State Wildlife Area - La Plata County

a. Camping is prohibited, except during deer and elk seasons.
b. Discharge of firearms is prohibited, except when hunting.
c. Public access is prohibited West of La Plata County Road 208 from December 1 through April 15, except turkey hunters possessing a valid, unfilled spring turkey license.
d. Public access is prohibited east of La Plata Co Rd 208 from December 1 through July 31.

e. Snowmobile use is prohibited.
f. Fires are prohibited.

181. Perkins State Wildlife Area - Grand County

a. Open for hunting access only.
b. Access is by foot or horseback only.
c. Motorized travel is prohibited.
d. Camping is prohibited.
e. Fires are prohibited.
f. Target shooting is prohibited.
g. Dogs are prohibited, except as an aid to hunting.

182. Pikes Peak State Wildlife Area - Teller County

a. Public access is prohibited from April 1 through July 15.

183. Plateau Creek State Wildlife Area - Mesa County

a. Vehicles are prohibited from December 1 through August 1.

184. Playa Blanca State Wildlife Area - Alamosa County

a. Public access is prohibited from February 15 through July 15.
b. Public access is permitted in designated areas on Tuesdays, Thursdays, and Saturdays from July 16 to February 14.

185. Pony Express State Wildlife Area - Sedgwick County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the area wildlife manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.

186. Pot Creek State Wildlife Area – Moffat County

a. Hunting is restricted to antlerless elk.
b. Hunting access is by reservation only and reservation holders must have their confirmation letter with them while hunting on the property.
c. To make a reservation, hunters must already possess a big game license for one of the specific hunt codes permitted on the property.
d. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
e. Hunters with reservations may be accompanied by one (1) other person who is not hunting.
f. Hunters may only access the property during the dates specified on their reservation.
g. Vehicle use is prohibited except on designated roadways or through permission of the ranch owners. All other access is restricted to walk-in access only.
h. The following are prohibited on the property: overnight camping, dogs, fires, fishing, woodcutting, target shooting/sight-in, building permanent blinds, or gathering artifacts.

187. Pothook Ranch State Wildlife Area (Fishing Easement) – (Slater Creek) Moffat County

a. Public access is prohibited except for fishing, wildlife viewing and those hunting with a limited Ranching for Wildlife big game license valid for this property.
b. All public fishing and wildlife viewing access is by foot only from the designated parking areas/access points only.
c. Public fishing access is restricted to within 20 feet of the high water line of both banks of Slater Creek.
d. Public hunting and public hunting access is prohibited, except for those hunting with a limited Ranching for Wildlife big game license valid for this property.
e. Accessing adjacent parcels of public land via this property for the purpose of hunting is prohibited.
f. Shooting, archery, target practice, camping, fires, woodcutting, gathering artifacts, pets/livestock, overnight parking, motorized or mechanized travel, launching or taking out of vessels prohibited.

188. Poudre River State Wildlife Area - Larimer County

a. Camping is prohibited.
b. Discharge of firearms or bows is prohibited, except when hunting.
c. Discharge of bows is allowed for bowfishing.
d. Public access to Poudre River State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

189. Prewitt Reservoir State Wildlife Area - Logan and Washington Counties

a. Property limited to 250 vehicles.
b. All loud noises that disturb the peace, except legal hunting activities, are prohibited from 10:00 pm – 6:00 am.
c. Camping is prohibited as posted.
d. Fires are prohibited as posted.
e. Glass beverage containers are prohibited.
f. Hunting prohibited as posted, including hunting from floating devices.
g. Target practice is prohibited.
h. Sailing and windsurfing prohibited, except in July and August.
i. Boating is prohibited in a manner that creates a white water wake.
j. Waterskiing is prohibited.
k. From October 1 through the dark goose season, fishing restricted to the dam, ice fishing restricted to 50 yards of the dam, and boating prohibited, except for craft propelled by hand or electric motor used to set and pick up decoys and retrieve downed waterfowl.

190. Pridemore State Wildlife Area (Fishing Lease) - Chaffee County

a. Public access is for fishing only.

191. Puett Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.

192. Queens State Wildlife Area (Nee Noshe, Nee So Pah, Nee Gronda, Upper Queens and Lower Queens (Neeskah)) - Kiowa County

a. Boating is prohibited in a manner that creates a white water wake in the channel between Upper Queens and Lower Queens (Neeskah).
b. Upper Queens (Neeskah) (including channel), Nee Noshe, and Nee Gronda.
    1. Hunters must check in and out at the check station when open.
    2. Public access is prohibited, except to retrieve downed waterfowl from November 1 through the last day of the migratory waterfowl season as posted, to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.

c. Lower Queens (Neeskah)
    1. Boating is prohibited in a manner that creates a white water wake from the opening day of migratory waterfowl season through December 1.
    2. Hunters must check in and out at the check station when open.
    3. Public access is prohibited, except to retrieve downed waterfowl from December 1 through the last day of the migratory waterfowl season as posted, to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.
d. Nee So Pah
    1. Public access is prohibited, except to retrieve downed waterfowl from November 1 through the last day of the migratory waterfowl season as posted, to provide for waterfowl resting as necessary depending on water levels, weather, and presence of birds.
e. ATVs and dirt bikes are prohibited.

193. Radium State Wildlife Area - Grand, Routt, and Eagle Counties

a. Hunting is prohibited in the designated safety zone as posted.

194. Ralston Creek State Wildlife Area - Jefferson County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms is prohibited, except while hunting.

195. Ramah State Wildlife Area - El Paso County

a. Boating is prohibited from November 1 through the last day of the migratory waterfowl season, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.
c. Discharge of firearms or bows is prohibited, except while hunting. Discharge of archery equipment is allowed on the established archery shooting range. Hunting with centerfire rifles is prohibited.
d. Discharge of bows is allowed for bowfishing.
e. Fires are prohibited.
f. Water contact activities are prohibited.
g. Game birds listed in #009(B) of these regulations may be released by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.

196. Red Lion State Wildlife Area - Logan County

a. Camping is prohibited.
b. Fires are prohibited.
c. Target practice is prohibited except when authorized by the Area Wildlife Manager.
d. Hunting prohibited from floating devices and frozen surface of the lake.
e. Boating prohibited, except for float tubes or craft propelled by hand or electric motor used for fishing or to set and pick up decoys and retrieve downed waterfowl. Craft must be launched from the designated area as posted.

197. Red Mountain State Wildlife Area - Grand County

a. Public access is prohibited from November 15 until April 15.
b. Motor vehicles are prohibited.
c. Fires are prohibited.
d. Dogs must be on a leash.

198. Reddy State Wildlife Area (Fishing Easement) - Lake County

a. Access is limited to fishing only. No other activity is allowed.

b. Access is allowed only within 30 feet of the high water line, or as otherwise posted.
c. Access is allowed only from the Highway 24 overpass parking area or from Crystal Lake State Trust Land.
d. Dogs are prohibited.

199. Richard State Wildlife Area (Hunting and Fishing Lease) - (North Fork of the North Platte River) Jackson County

a. Access is for hunting and fishing only.
b. Hunting is prohibited within two hundred (200) yards of any building.

200. Rio Blanco Lake State Wildlife Area - Rio Blanco County

a. Field trials may be authorized during February, March, August, and September only.
b. Waterskiing is prohibited from March 1 through June 15.
c. Parking is restricted to designated areas only.
d. Hunting big game is prohibited, except by means of archery equipment.
e. Access to the Roselund Unit is restricted to day use only.

201. Rio Grande River State Wildlife Area (Del Norte Fishing Easements) - Rio Grande County

a. Camping is prohibited.
b. Public access is prohibited, except for fishing.

202. Rio Grande State Wildlife Area - Rio Grande County

a. Fires are prohibited.
b. Public access is prohibited from February 15 through July 15. The Area Wildlife Manager may authorize access during this closure if the proposed access will not adversely impact nesting or wintering bird populations.
c. Camping is prohibited, except in those parking areas with toilet facilities.
d. The Area Wildlife Manager may post area specific closures to manage waterfowl hunting pressure during established waterfowl seasons, to protect maintenance and construction equipment and to protect human health and safety.

203. Rito Hondo Reservoir State Wildlife Area - Hinsdale County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.

204. Road Canyon Reservoir State Wildlife Area - Hinsdale County

a. Camping is prohibited.
b. Boating is prohibited in a manner that creates a white water wake.

205. Roaring Fork State Wildlife Area (formerly Carbondale SWA) - Garfield County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms is prohibited.

206. Rocky Ford State Wildlife Area - Otero County

a. Fires are prohibited.

207. Roeber State Wildlife Area - Delta County

a. Camping is prohibited.
b. Dogs are prohibited.
c. Discharge of firearms is prohibited in the open space easement area.
d. Fires are prohibited.
e. Hunting is prohibited in the open space easement area.

f. Public access is prohibited from the day after the conclusion of the annual big game seasons through April 30.
g. Public access is prohibited, except for hunting and fishing.
h. Bowfishing is prohibited.

208. Rosemont Reservoir State Wildlife Area - Teller County

a. Boating is prohibited, except for float tubes used for fishing.
b. Camping is prohibited.
c. Dogs are prohibited.
d. Fires are prohibited.
e. Fishing is prohibited from 9:00 p.m. until 5:00 a.m.
f. Public access is prohibited, except by foot from established parking areas.
g. Public access is prohibited in the dam area, vicinity of the caretaker's house, and north side of the reservoir, to protect administrative sites owned by the City of Colorado Springs, as posted.
h. Water contact activities are prohibited.
i. Ice fishing is prohibited.
j. Discharge of firearms is prohibited.

209. Ruby Mountain State Wildlife Area (Fishing Easement) - Chaffee County

a. Public access is for fishing only.
b. Access is allowed only from the high water line to mid-river.
c. Parking is allowed in designated parking lots only.
d. Camping is prohibited.
e. Fires are prohibited.

210. Runyon/Fountain Lakes State Wildlife Area - Pueblo County

a. Boating is prohibited, except for float tubes or carry-on craft propelled by hand, wind, or electric motor used for fishing only. All watercraft must be under 14 feet in length.
b. Camping is prohibited.
c. Fires are prohibited.
d. Water contact activities are prohibited.
e. Public access is prohibited from sunset to sunrise, except for fishing.

211. Russell Lakes State Wildlife Area - Saguache County

a. Camping is prohibited, except with self-contained units in designated areas.
b. Field trials may be authorized during February, March, August, and September only.
c. Public access is prohibited from February 15 through July 15.
d. Vehicle parking is prohibited, except in established parking areas.
e. Public access is prohibited, except as posted, to protect wintering and nesting waterfowl, and to protect administrative areas of the property.
f. Section 29 shall be closed during waterfowl season.
g. During the first split waterfowl season, Russell Lakes SWA shall close at 1:00 p.m.
h. Public access to established restroom facilities is exempt from requirements set forth in section #900(C)1 of these regulations.

212. Sam Caudill State Wildlife Area - Garfield County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms is prohibited.

213. Sanchez Reservoir State Wildlife Area - Costilla County

a. Hunting is prohibited.

b. Public access is prohibited, except for fishing.
c. Camping is prohibited in the boat ramp parking area.
d. Waterskiing is prohibited.
e. Bowfishing is prohibited.
f. All crayfish taken must be returned to the water of origin immediately or killed and taken into possession immediately upon catch with kill being effected by separating the abdomen from the cephalothorax (tail from body).

214. Sand Draw State Wildlife Area - Sedgwick County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Hunting is limited to youth/mentor hunting only. A maximum of one (1) mentor per youth hunter may hunt.

215. Sands Lake State Wildlife Area - Chaffee County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.

216. Sandsage State Wildlife Area - Yuma County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Hunting prohibited, except with bows or shotguns with birdshot.

217. Sandy Bluffs State Wildlife Area - Yuma County

a. Public access is prohibited from June 1 – August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Horses are prohibited, except while hunting.
g. Target practice is prohibited, except when authorized by the Area Wildlife Manager.

218. San Luis Lakes State Wildlife Area - Alamosa County

a. Boating is prohibited north of the buoy line.
b. Public access is prohibited north of the buoy line and east-west fence line from February 15 through July 15.
c. Camping is prohibited outside of designated areas.

219. Sarvis Creek State Wildlife Area - Routt County

a. Camping and campfires are prohibited, except for three (3) days before the beginning of regular big game seasons through three (3) days after the end of regular big game seasons.

220. Sawhill Ponds – Boulder County

a. Dogs must be kept on a six foot leash which must be held and controlled by the handler, except in designated areas.
b. Motorized and non-motorized vehicles (including bicycles) are prohibited beyond designated parking areas.

c. Boating and float tubes are prohibited.
d. Hunting is prohibited.
e. Horseback riding is prohibited, except on established maintenance roads.
f. Public access is prohibited between midnight and 5:00 a.m.
g. Collecting of any kind is prohibited, except as authorized by permit.
h. Other activities may be prohibited as posted, to implement the management agreement between Colorado Parks and Wildlife and the City of Boulder.
i. Public access to Sawhill Ponds State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

221. Sedgwick Bar State Wildlife Area - Sedgwick County

a. Public access is prohibited from 9:00 pm – 4:00 am.
b. Camping is prohibited.
c. Fires are prohibited.
d. Target practice is prohibited except when authorized by the Area Wildlife Manager.
e. Horse use is prohibited, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
f. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
g. The launching or takeout of vessels is prohibited during waterfowl seasons.

222. Sego Springs State Wildlife Area - Conejos County

a. Field trials may be authorized during August and September only.
b. Fires are prohibited.
c. Public access is prohibited from February 15 through July 15.
d. Bowfishing is prohibited.

223. Setchfield State Wildlife Area - Bent County

a. Camping is prohibited.
b. Fires are prohibited.

224. Seymour Lake State Wildlife Area - Jackson County

a. Boating is prohibited in a manner that creates a white water wake.
b. Sail surfboards are prohibited.

225. Sharptail Ridge State Wildlife Area - Douglas County

a. Access is restricted to day use only.
b. Access is permitted by foot only.
c. Camping is prohibited.
d. Hunting is restricted to deer and elk hunting only.
e. Deer and elk hunting is allowed by permit only. Hunters must have a limited deer or elk license for unit 51 before applying. No more than two hunters will be permitted daily. Group applications are allowed for a maximum of two applicants per group. Permits will be valid for a minimum of two days and a maximum of three days beginning after Labor Day, and will be based on the length of the underlying season and maximization of individual hunter opportunity. Permit applications are available from the Division in Denver 303-291-7227.
f. Permitted hunters may take one other person (an observer) who is not hunting with them while hunting, however that person must remain with the hunter at all times.
g. Permitted hunters may park inside in the parking area behind the gate during the times for which they are permitted. Driving anywhere else on the property is prohibited.

h. Public access to Sharptail Ridge State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

226. Shriver-Wright State Wildlife Area - Rio Grande County

a. Fires are prohibited.
b. Camping is prohibited, except in parking areas with self-contained camp trailers or campers.
c. The Area Wildlife Manager may post area-specific closures to manage waterfowl hunting pressure during established waterfowl seasons, to protect maintenance and construction equipment, and to protect human health and safety.
d. Hunting is restricted to the use of archery equipment, shotguns, muzzle-loading or falconry only.
e. Target practice is prohibited.
f. Public access to Shriver-Wright State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

227. Sikes Ranch State Wildlife Area - Baca and Las Animas Counties

a. Camping is prohibited.
b. Fires are prohibited.
c. Off-highway vehicle (OHV) use is prohibited.
d. Wood cutting or gathering is prohibited.
e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal, and except when authorized by a night hunting permit.
f. Trapping is allowed by permit only. Permit holders shall have their permit on their person at all times while trapping. Permits may be obtained by calling the Lamar Service Center at 719-336-6600 or the local District Wildlife Manager at 719-980-0025.
g. Public access is prohibited in the building envelope and designated safety zones, as posted.
h. Parking is allowed in designated parking lots only.
i. All motorized travel is restricted to the primary access route (CR O).

228. Simmons State Wildlife Area - Yuma County

a. Public access is prohibited from June 1 through August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Target practice is prohibited except when authorized by the area wildlife manager.

229. Simpson Ponds State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes used for fishing.
b. Camping is prohibited.
c. Dog training is prohibited.
d. Fires are prohibited.
e. Discharge of firearms or bows is prohibited, except when hunting.
f. Discharge of bows is allowed for bowfishing.
g. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing or when authorized by a night hunting permit.
h. Horseback riding is prohibited.
i. Bicycle riding is prohibited.

230. Skaguay Reservoir State Wildlife Area - Teller County

a. Boating is prohibited in a manner that creates a white water wake.

231. 63 Ranch - Park County

a. Camping is prohibited.

232. Smith Lake State Wildlife Area - Larimer County

a. Boating is prohibited in a manner that creates a white water wake.
b. Hunting is prohibited.
c. Discharge of firearms or bows is prohibited.
d. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing.
e. Camping is prohibited.
f. Snowmobile use is prohibited.
g. Off-highway vehicle (OHV) use is prohibited.
h. Fires are prohibited.

233. Smith Reservoir State Wildlife Area - Costilla County

a. Field trials may be authorized during February, March, August, and September only
b. Public access is prohibited from February 15 through July 15 on the north and east shore areas.
c. Fishing is prohibited from November 1 through the last day of the waterfowl season, except within two-hundred (200) yards of the dam.
d. Waterskiing is prohibited.
e. Vehicles are prohibited within fifty (50) feet of the water.

234. South Republican State Wildlife Area - Yuma County

a. Field trials may be authorized during February, March, August, and September only. No more than two trials may be authorized during the February-March period and no more than one field trial may be authorized during the August-September period.
b. Waterfowl hunting is prohibited as posted to provide resting areas for wintering waterfowl.
c. Parking for waterfowl hunting is prohibited, except in designated parking areas.
d. Waterfowl hunting access is prohibited on the downstream face of the dam.

235. Spanish Peaks State Wildlife Area - Las Animas County

a. Camping is prohibited, except in established camping areas.
b. Fires are prohibited, except in designated areas.
c. Public access is prohibited, except from established parking areas.
d. Vehicle parking is prohibited, except in designated areas.

236. Spinney Mountain State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

237. Stalker Lake State Wildlife Area - Yuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating is prohibited, except for float tubes or craft propelled by hand or electric motor.
d. Target practice is prohibited, except with bows on the designated archery range.
e. Hunting is prohibited, except with bows or shotguns with birdshot.
f. Hunting on the western half of Stalker Lake is prohibited.
g. After October 31, hunting is prohibited, except in areas east of Stalker Lake dam.

238. Storm Mountain Access Road - Larimer County

a. Public access is prohibited as posted, when necessary to prevent road and habitat damage, depending on weather and habitat conditions.
b. Public access to the Storm Mountain Access Road is exempt from requirements set forth in section #900(C)1 of these regulations.

239. Summit Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating is prohibited in a manner that creates a white water wake.

240. Tamarack Ranch State Wildlife Area - Logan County

a. Public access is prohibited from 9:00 pm – 4:00 am, except with an authorized night hunting permit.
b. Camping and fires are prohibited, except in the designated camping areas.
c. Target practice is prohibited except when authorized by the Area Wildlife Manager.
d. Horse use is prohibited north of I-76, except for training hunting dogs in February, March, April (through the Wednesday preceding the turkey season), and August.
e. A maximum of three (3) field trials may be authorized during February, March, or August, and one (1) in September.
f. All hunters must check-in and out at the check station, and must park at the hunting area they are checked into. After 9:00 am, hunters may hunt adjacent areas. Deer and turkey hunters are only required to check into East, West, or South Tamarack Area.
g. From October 25 through the regular duck seasons, reservations are available, but not required, on weekends and state and federal holidays. Reservations must be made in accordance with #901.A of these regulations.
h. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
i. The launching or takeout of vessels is prohibited during waterfowl seasons.
j. Augmentation Ponds:
    1. From the first day of the second duck season through the dark goose season, waterfowl hunting is allowed only through a lottery drawing.
    2. Hunting is limited to a specific pond/hunt area on each day.
    3. To enter drawing, hunters must send a letter or postcard postmarked by September 30 to the CPW Brush Service Center, with name, address, phone number, CID number, and desired reservation dates. Hunters must possess a valid license to hunt waterfowl to enter drawing. Hunters may apply for multiple hunt dates on one postcard.
    4. Hunters successful in the drawing are required to comply with all hunting restrictions in #901.A of these regulations. All hunters must check-in and out at the check station. Maximum of four (4) hunters allowed per group per day. Hunters must park in designated parking areas, but are allowed to drop off decoys via existing four-wheel-drive only roads, as posted. Hunters must remain on existing roads as posted.
    5. During the light goose conservation order season, all hunters must check-in and out at check station.

241. Tarryall Reservoir State Wildlife Area - Park County

a. Public access is prohibited from the dam, spillway and outlet structures.
b. Boating in a manner that creates a white water wake is prohibited.
c. All terrain vehicles, dirt bikes and snowmobiles are prohibited.
d. Discharge of firearms, pellet guns, or bows is prohibited in established campgrounds.

e. Fires are prohibited.

242. Taylor River State Wildlife Area - Gunnison County

a. Camping is prohibited.
b. Fires are prohibited.
c. Hunting is prohibited.
d. Vehicle parking is prohibited, except in designated areas.
e. Public access is prohibited from Taylor Dam to 325 yards downstream.

243. Teter-Michigan Creek State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

244. Thurston Reservoir State Wildlife Area - Prowers County

a. Boating is prohibited in a manner that creates a white water wake from November 1 through the last day of the migratory waterfowl season.
b. Public access is prohibited from one hour after sunset to one hour before sunrise daily, except for fishing.
c. All terrain vehicles, dirt bikes, and snowmobiles are prohibited.
d. Public access to the frozen surface of the lake is prohibited.
e. Public access to the dams, inlets, and outlet structures is prohibited, except for fishing.

245. Tilman Bishop State Wildlife Area - Mesa County

a. Public access is prohibited during the nesting and migrating period, from March 15 through July 14.
b. Hunting is restricted to deer, waterfowl and small game only.
c. Hunters must check in and out at the property.
d. Hunting is restricted to bows and shotguns with shot-shells or by falconry only.
e. All access is restricted to walk-in access only.
f. The following are prohibited on the property: overnight camping, fires, fishing, woodcutting, target shooting/sight-in, building permanent blinds, or gathering artifacts.
g. Dogs are prohibited, except as an aid to hunting.
h. Waterfowl hunting on this property is by reservation only. Reservations must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
i. Waterfowl hunters are restricted to hunting from designated blinds or in the zone identified for each blind. No more than four hunters allowed per blind.
j. Deer hunting access is by reservation only. Reservation holders must have their confirmation letter with them at all times while hunting on the property.
k. To make a reservation, deer hunters must already possess a big game license for one of the specific hunt codes permitted on the property.
l. Reservations for deer hunting must be made through the Hunter Reservation System in accordance with #901.A of these regulations.
m. Deer hunters with a reservation may be accompanied by up to two (2) people who are not hunting.
n. Deer hunters may only access the property during the dates specified on their reservation.
o. Only archery equipment will be allowed for deer hunting.
p. Hunters with reservations may only hunt the hunt area specified on the reservation.

246. Timpas Creek State Wildlife Area - Otero County

a. Fires are prohibited.

247. Tomahawk State Wildlife Area - Park County

a. Camping is prohibited.
b. Fires are prohibited.

248. Tomichi Creek State Wildlife Area - Gunnison County

a. From the end of the waterfowl season through June 30, public access is allowed for fishing only.
b. Camping is prohibited.
c. Fires are prohibited.
d. Dogs are prohibited, except as an aid in hunting.

249. Totten Reservoir State Wildlife Area - Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Glass containers are prohibited.
d. Hunting is prohibited in the inlet area from September 30 through January 20, as posted, to protect resting waterfowl.
e. Boating is prohibited in a manner that creates a white water wake.
f. Public access is prohibited along the north shore from March 1 through May 31.
g. Public access is prohibited from one hour after sunset to one hour before sunrise, except for fishing.
h. Public access to Totten Reservoir State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

250. Trujillo Meadows State Wildlife Area - Conejos County

a. Boating is prohibited in a manner that creates a white water wake.

251. Turk's Pond State Wildlife Area - Baca County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.
c. All human activity is prohibited within a one-quarter (¼) mile of the high water line around Turk's Pond including the administrative buildings, from the opening day of the regular duck season through the last day of the regular dark goose season as posted. Hunters are allowed inside the closure only to retrieve downed waterfowl. Hunters must leave firearms outside of the closure.

252. Twin Spruce Ponds State Wildlife Area- Montezuma County

a. Camping is prohibited.
b. Fires are prohibited.
c. Glass containers are prohibited.
d. Hunting and discharge of firearms or bows is prohibited.
e. Boating is prohibited, except for float tubes or craft propelled by hand.
f. Public access is prohibited from sunset to sunrise.
g. Access to the property is from designated parking area only.

253. Two Buttes Reservoir State Wildlife Area - Baca and Prowers Counties

a. Boating is prohibited in Two Buttes Ponds below the dam, except for float tubes or craft propelled by hand, wind or electric motor.

254. Vail Deer Underpass State Wildlife Area - Eagle County

a. Hunting is prohibited.
b. Public access is prohibited from November 1 through June 15.

255. Verner State Wildlife Area (Fishing Lease) - (North Platte River) Jackson County

a. Public access is for fishing only.

256. Wahatoya State Wildlife Area - Huerfano County

a. Boating is prohibited, except for float tubes or craft propelled by hand or wind.
b. Camping is prohibited.
c. Fires are prohibited.

257. Walker State Wildlife Area - Mesa County

a. Camping is prohibited.
b. Fires are prohibited.
c. Discharge of firearms or bows is prohibited, except bows are permitted for the purpose of bowfishing.
d. Hunting is prohibited.
e. Public access is prohibited from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise.
f. Trapping is prohibited.
g. Dogs are prohibited, except that dogs on leash are permitted on the paved Riverfront Trail. All dog handlers must immediately collect, remove, and properly dispose of all dog feces left by their dog.

258. Watson Lake State Wildlife Area - Larimer County

a. Boating is prohibited.
b. Camping is prohibited.
c. Hunting is prohibited.
d. Ice fishing is prohibited.
e. Ice skating is prohibited.
f. Vehicle parking is prohibited on the South Dam.
g. Public access is prohibited to the northwest side as posted to prevent access to the water outtake and fish disposal area.
h. Discharge of firearms is prohibited.
i. The use or possession of live minnows is prohibited.
j. From one hour after sunset to one hour before sunrise, use other than fishing is prohibited.
k. The launching of any vessel or single compartment air or gas filled flotation device is prohibited on the stretch of the Cache La Poudre River that runs through Watson Lake State Wildlife Area.
l. Access onto the fish passage structure located on the northeast side of Watson Lake State Wildlife Area is prohibited.
m. Fishing from the walls of the fish passage or fishing in the fish passage is prohibited.

259. Waunita Watchable Wildlife Area - Gunnison County

a. Camping is prohibited.
b. Discharge of firearms is prohibited.
c. Dogs are prohibited.
d. Fires are prohibited.
e. All trash must be packed out.
f. Public access is permitted from April 1 through April 30 annually only, except during the second full week (Sunday through Sunday) of the month when public access is prohibited. Public access is prohibited at all other times.

260. Webster State Wildlife Area - Weld County

a. Public access is prohibited from the day after the last day of the spring turkey season through August 31.
b. From September 1 through the last day of the spring turkey season, public access is limited to only licensed hunters or members of a hunting party, and only on Saturdays, Sundays, Wednesdays and state and federal holidays.

c. Public access is prohibited from one hour after sunset to 4:00 am.
d. Hunters may only access the property by parking in a designated, numbered parking spot inside the parking lot. Parking along the access road or Weld Co Rd 394 is prohibited.
e. Camping is prohibited.
f. Fires are prohibited.
g. Target practice is prohibited.
h. Horse use is prohibited.
i. Dogs are prohibited, except as an aid in hunting.
j. Hunting with center-fire rifles and muzzleloaders is prohibited.
k. Hunting is prohibited in the inflow or outflow canals.

261. Wellington State Wildlife Area - Larimer and Weld Counties

a. Boating is prohibited, except for craft propelled by hand may be used in hunting waterfowl.
b. Camping is prohibited.
c. Field trials may be authorized on the Wellington and Schware units during February, March 1 through 14, and August only. Field trials may be authorized on the Cobb Lake Unit year-round.
d. Game birds listed in #009(B) of these regulations may be released on the Cobb Lake Unit by the Division or its agent for educational or training purposes without seasonal or numerical restrictions.
e. Fires are prohibited.
f. Public access is prohibited on the Wellington and Schware Units from March 15 through July 15.
g. Target practice is prohibited, except when authorized by the area wildlife manager.
h. Public access is prohibited on the Wellington Unit from the first day of the regular waterfowl season to the first day of the pheasant season, except on Saturday, Sundays, Mondays and state and federal holidays.
i. Horseback riding is prohibited, except at the Cobb Lake Unit, where horses may be used during field trials.
j. Domestic birds, feral birds, or privately-owned game birds may be released year-round for dog training on the Cobb Lake Unit by permit only, in accordance with the provisions of this chapter and other applicable regulations, including, but not limited to, #007, #008, #009, #801 and #804 of these regulations. All such birds taken during training activities shall be removed from the State Wildlife Area by the dog training permitee and all privately-owned game birds shall be prepared for human consumption.
k. Big game hunting on all units is restricted to the use of archery, shotguns with slugs, and muzzle-loading only.
l. The Division is authorized to implement a dog training reservation system should overcrowding become an issue on the State Wildlife Area.

262. West Lake State Wildlife Area - Larimer County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Public access to West Lake State Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

263. West Rifle Creek State Wildlife Area - Garfield County

a. Camping is prohibited, except from the day after Labor Day through December 31.
b. Public access is prohibited on the West Rifle Creek Shooting Range, except between sunrise and sunset daily when in compliance with all posted range rules.

264. Whitehorse State Wildlife Area - Adams County

a. Public access is prohibited, except for youth mentor waterfowl hunting only, when authorized by the Area Wildlife Manager as participants in the Division's youth hunting program.
b. A reservation is required for all waterfowl hunting. Reservations may be made in accordance with #901.A of these regulations. Hunters with reservations may only hunt the hunt area specified on the reservation, except when hunting areas where reservations are not required or on hunt areas which are unreserved and unoccupied. Hunters must follow check in and check out procedures as posted.
c. Waterfowl hunters must check in and check out at the designated check station.

265. Williams Creek Reservoir State Wildlife Area - Hinsdale County

a. Camping is prohibited.
b. Fires are prohibited.
c. Boating in a manner that creates a white water wake is prohibited.
d. Snowmobiles are allowed only as an aid in ice fishing.
e. Sail surfboards are prohibited.

266. Willow Creek State Wildlife Area - Yuma County

a. Public access is prohibited from June 1 through August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Camping is prohibited.
d. Fires are prohibited.
e. Dog training is prohibited.
f. Horses are prohibited.
g. Target practice is prohibited except when authorized by the area wildlife manager.

267. Willow Creek Reservoir State Wildlife Area - Grand County

a. Access permitted for fishing, small game, and waterfowl hunting only.
b. Access permitted only through designated access points as posted.
c. Hunting with centerfire rifles prohibited.
d. Camping is prohibited.
e. Fires are prohibited.

268. Wind in the Willows State Wildlife Area - Hinsdale County

a. Public access to the Easement Area is limited to a single point located at the southerly end of the property, just north of the bridge on Hinsdale Co Rd 33, near the intersection of Hinsdale Co Rd 33 and Hinsdale Co Rd 30. Public access to the Easement Area from any other portion of the property is prohibited.
b. Fishing access is allowed only on the Lake Fork of the Gunnison River, including twenty (20) feet on either side of the riverbank.
c. Public access is prohibited from one (1) hour after sunset to one (1) hour before sunrise.
d. Public access is restricted to foot traffic only.
e. Dogs and other pets are prohibited.
f. Camping is prohibited.
g. Fires are prohibited.

269. Windy Gap Watchable Wildlife Area - Grand County

a. Dogs are prohibited beyond the parking area.
b. Fishing is prohibited.
c. Discharge of firearms is prohibited.
d. Camping is prohibited.
e. Fires are prohibited.

f. No human activity allowed outside viewing area.
g. Public access is prohibited from sunset to sunrise.
h. Hunting is prohibited.
i. Trapping is prohibited.
h. Public access to Windy Gap Watchable Wildlife Area is exempt from requirements set forth in section #900(C)1 of these regulations.

270. Woods Lake State Wildlife Area - San Miguel County

a. Boating is prohibited, except for float tubes or craft propelled by hand, wind or electric motor.
b. Camping is prohibited.

271. Yampa River State Wildlife Area - Routt County

a. Camping is prohibited.
b. Fires are prohibited.

272. Yarmony Ranch State Wildlife Area - Jackson County

a. Hunting is restricted to antelope, moose and elk.
b. Fishing is by artificial flies and lures only. The possession limit is two fish.
c. Limited access permits for big game hunting may be obtained by contacting the CPW Steamboat Springs Service Center at 970-870-2197.
d. Hunters may only access the property during the dates specified on their limited access permit.
e. To obtain a limited access permit, hunters must already possess a big game license for one of the specific hunt codes permitted on the property.
f. Limited access permits will be valid starting the 1st day of the season of the license.
g. Access by hunters with a limited access permit is prohibited prior to two hours before sunrise and after one hour following sunset, except that when an animal has been harvested, the successful hunter and his/her non-hunter companion shall be allowed to remain as long as necessary to remove it. The person who is not hunting must possess a valid hunting or fishing license or Colorado State Wildlife Area pass if 16 years or age and older.
h. Hunting is not allowed in the safety zone.
i. Access is only permitted from designated parking areas.
j. Access is permitted by foot and horseback only.
k. Hunters with a limited access permit may be accompanied by up to two (2) people who are not hunting.
l. The following are not permitted on the property: overnight camping, dogs, fires, target shooting, and building blinds.

ARTICLE III - STATE TRUST LANDS

I. #902 REGULATIONS APPLICABLE TO ALL STATE TRUST LANDS LEASED BY COLORADO PARKS AND WILDLIFE

A. DEFINITIONS

1. “Youth mentor hunting” means hunting by youths under 18 years of age. Youth hunters under 16 years of age shall at all times be accompanied by a mentor when hunting on youth mentor properties. A mentor must be 18 years of age or older and hold a valid hunter education certificate or be born before January 1, 1949.

B. Public Access to State Trust Lands Leased by Colorado Parks and Wildlife

1. Public access is prohibited from March 1 through August 31, unless otherwise posted.

2. All newly enrolled properties are closed to public access until September 1 of the year of enrollment, unless otherwise posted.
3. Public access is prohibited from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise, except as posted, in accordance with the lease agreement with the State Land Board.
4. Public access is restricted to hunting and fishing, and where specifically authorized in #903, watchable wildlife activity.
5. Public access is prohibited for all persons 16 years of age and older who do not hold:
   a. a hunting license valid for the current license year, or
   b. a valid fishing license.

   Annual hunting licenses, including all big game hunting licenses, small game hunting licenses, turkey hunting licenses, and annual fishing licenses are only valid for the individual specified on the license, and, subject to #902.B.1. and #903, authorize such individual to enter, use or occupy any State Trust Lands leased by the Division or portion thereof from March 1 through March 31 of the following year, also known as the current license year. Daily or multi-day fishing and small game licenses are only valid for the individual specified on the license, and authorize such individual to enter, use or occupy any State Trust Lands leased by the Division or portion thereof only on the date(s) indicated on the license.

C. Prohibited Activities

Except as otherwise provided in these regulations, the following provisions apply to all State Trust Lands leased by Colorado Parks and Wildlife:

1. It is unlawful for any person to enter, use or occupy any area or portion thereof for any purpose when posted against such entry, use or occupancy.
2. Motorized vehicle use is restricted to designated roads.
3. Littering is prohibited. All trash must be packed out by State Trust land users.
4. Camping and fires are prohibited, unless otherwise posted.
5. Where camping is permitted as posted, it is unlawful to leave a camp, pitched tent, shelter, motor vehicle, or trailer unattended for more than 48 hours, or to camp or to park a travel trailer or camper on any one State Trust Land Public Access Program property for more than 14 days in any 45-day period.
6. Access is by foot or horseback only, unless otherwise posted.
7. No outfitting or non-wildlife related public access is permitted.
8. Target practice or non-hunting-related shooting is prohibited.
9. It is unlawful to possess the following types of ammunition and/or firearms: tracer rounds, armor-piercing rounds, military hardened rounds with explosive or radioactive substances, .50 caliber BMG rounds, or fully automatic firearms.
10. It is unlawful to possess, store, or use hay, straw, or mulch which has not been certified as noxious weed free in accordance with the Weed Free Forage Crop Certification Act, Sections 35-27.5-101 to 108, C.R.S., or any other state or province participating in the Regional Certified Weed Free Forage Program. See Appendix A of this chapter. All materials so certified shall be clearly marked as such by the certifying state or province. Exempted from this prohibition are persons transporting such materials on Federal, State, or County roads that cross State Trust Lands leased by the Division, and hay produced on the property where it is being used.
11. Consumption of alcoholic beverages on lands and waters under the supervision, administration, and/or jurisdiction of the Division is permitted with the following exceptions:
    a. It shall be prohibited to consume alcoholic beverages on any archery or firearm range unless specifically authorized by a concession contract, cooperative agreement or special activities permit, and then only allowed in areas specifically designated by the contract, agreement, or permit.

b. It shall be prohibited to sell and/or dispense alcoholic beverages on any lands and waters under the supervision, administration, and/or jurisdiction of the Division unless specifically authorized by a concession contract, cooperative agreement, or special activities permit, and then only allowed in areas specifically designated by the contract, agreement, or permit and the applicant party has obtained all appropriate licenses and permits to sell and/or dispense alcoholic beverages.
c. It shall be prohibited to be present on any lands and waters under the supervision, administration, and/or jurisdiction of the Division when under the influence of alcohol or any controlled substance to the degree that may endanger oneself or another person, damage property or resources, or may cause unreasonable interference with another person's enjoyment of any lands or waters under the supervision, administration, and/or jurisdiction of the Division.

D. Criteria for Posting Prohibited Activities

When these regulations provide that an activity is prohibited, except as posted or permitted as posted, Colorado Parks and Wildlife may control these activities by posting signs. Colorado Parks and Wildlife shall apply the following criteria in determining if an activity shall be restricted or authorized pursuant to posting:

1. Public safety.
2. Proximity to a calving or lambing area.
3. Proximity to a corral, loading chute or similar structure maintained for the purpose of handling domestic livestock.
4. Proximity to private structures such as outbuildings, houses, barns, storage sheds or similar structures.
5. Proximity to agriculture equipment.
6. Whether protection of roads or trails is necessary to prevent excessive damage causes by human use
7. Negative impacts on wildlife resources or domestic livestock, or agricultural products.
8. Whether the area can provide additional public benefits and remain consistent with all applicable agreements.

E. Closure of Properties to Public Use

1. The Director of Colorado Parks and Wildlife may establish and enforce temporary closures of, or restrictions on, lands or waters leased by the Division from the State Land Board, or portions thereof, for a period not to exceed nine months, when any one of the following criteria apply:

   a. The property has sustained a natural or man-made disaster such as drought, wildfire, flooding, or disease outbreak which makes public access unsafe, or where access by the public could result in additional and significant environmental damage.
   b. The facilities on the property are unsafe.
   c. To protect threatened or endangered wildlife species, protect wildlife resources from significant natural or manmade threats, such as the introduction or spread of disease or nuisance species, changing environmental conditions or other similar threats, protect time-sensitive wildlife use of lands or waters, or facilitate Division-sponsored wildlife research projects or management activities.

2. Whenever such closure is instituted, the area(s) involved shall be posted indicating the nature and purpose of the closure. It shall be unlawful for any person or vehicle to enter any such area(s) posted as closed.

#903 – Property Specific Regulations

A. In addition to or in place of those restrictions listed in regulation #902, the following provisions or restrictions apply:

1. Aguilar TV Hill – Las Animas County

a. Access is restricted as posted on the east side of the property.

2. Alamaditas Mesa – Conejos County

a. Public access is prohibited from March 1 through August 14.

3. Antelope Creek – Grand County

a. ATV and snowmobile access allowed on designated route as posted at East Carter Creek gate entrance during hunting season only.

4. Antero – Park County

a. Open for hunting from August 15 through the end of February only.
b. Open for fishing year-round.

5. Apishapa North – Las Animas County

a. Motorized vehicles are prohibited past parking lot.

6. Atwood – Logan County

a. Public access is prohibited from June 1 – August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Hunting with centerfire rifles is prohibited.
d. The launching or takeout of vessels is prohibited during waterfowl seasons.
e. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.

7. Badger Creek (Lower Badger Creek Unit, Upper Badger Creek Unit) Fremont/Park County

a. Lower Badger Creek Unit is open for public access for fishing year-round. For all other wildlife recreation, Lower Badger Creek Unit is open for public access from September 1 through the end of February.
b. Upper Badger Creek Unit is open for public access from October 1 through the end of February.
c. Fishing is prohibited on the Upper Badger Creek Unit.

8. Bakers Peak - Moffat County

a. Open for public access from August 1 through the end of February.
b. Motorized vehicles are prohibited off of state or county roads.
c. Only portable hunting blinds are allowed.

9. Bakerville – Clear Creek County

a. Open for fishing year-round.
b. Access to the property is off of I-70 right-of-way only.
c. Access is by foot only.

10. Bald Mountain – Moffat County

a. Public access is prohibited March 1 through August 15.

11. Bear Gulch – Custer County

a. Open for public access from the first day of archery deer and elk season through May 31.

12. Beddows Mountain – Custer County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Rifle hunting is restricted to youth mentor hunting only. Mentors are not allowed to use rifles.
c. All hunting other than youth mentor hunting is restricted to bows, muzzle-loaders or shotguns.
d. Parking is prohibited on Hwy 69.
e. Shooting is prohibited within 500 feet of Hwy 69 and manmade structures.

13. Big Hole Gulch – Moffat County

a. Open for hunting from August 15 through the end of February.
b. Open year-round for fishing.
c. Only portable hunting blinds are allowed.

14. Black Hawk – Huerfano County

a. Public access is prohibited from June 1 through August 31.
b. Motorized vehicles are prohibited off of county roads.

15. Black Mountain – Huerfano County

a. Public access is prohibited from June 1 through August 31.

16. Black Sage Pass – Gunnison County

a. Open for fishing year-round.
b. Open for other public access from August 15 through the end of February.

17. Blue Lake – Bent County

a. Open for public access year-round.
b. Public access is prohibited on the islands from May 15 through August 31.
c. Camping is allowed as posted.

18. Blue Spring – Huerfano County

a. Public access is prohibited from June 1 through August 14.
b. Hunting is prohibited in the safety zone along the east boundary, as posted.

19. Boston Flats – Moffat County

a. Open for fishing and wildlife watching access year-round.
b. Open for hunting from September 1 through the end of February
c. Access is by foot only.

20. Box Creek – Lake County

a. Access is by foot only.
b. Public access is prohibited from March 1 – August 14.

21. Bravo – Logan County

a. Public access is prohibited from March 1 – August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Public access is from Bravo SWA parking areas only.
d. On the opening weekend of the regular plains rifle deer season and the first day and weekend of the late plains rifle deer season, only deer hunting is permitted.
e. The launching or takeout of vessels is prohibited during waterfowl seasons.

22. Brett Gray Ranch – Lincoln County

a. Access is prohibited except by foot and from designated parking areas only.
b. Parking is prohibited except in designated areas.
c. Camping is prohibited.
d. Overnight parking is prohibited.

23. Browns Park – Moffat County

a. Open for public fishing access on the Green River year-round.
b. Open for big game and small game hunting year-round, during open hunting seasons only.

24. Bull Mountain – Larimer County

a. Motorized vehicles are prohibited off of county roads.

25. Burchfield – Baca County

a. Access is by foot only.

26. Burro Springs – Saguache County

a. Public access is prohibited from March 1 – April 30.
b. Collection of shed antlers, shed horns, or antlers or horns naturally attached to skull plates is prohibited from January 1 – April 30.
c. During big game hunting season only, public access is prohibited from one and one-half (1 ½) hours after sunset to one and one-half (1 ½) hours before sunrise. Public access is prohibited from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise during all other times.
d. Motorized vehicle use is restricted to designated roads. The use of off-highway vehicles (OHV) to retrieve big game is prohibited.
e. Camping is prohibited
f. Fires are prohibited

27. Carter Creek – Grand County

a. Except as otherwise allowed in this regulation, public access is limited to hunting only.
b. ATV and snowmobile access allowed on designated route in Section 31 as posted at East Carter Creek gate entrance during hunting season only.

28. Carter Place – San Miguel County

a. Access to the property is through BLM only.

29. Castor Gulch – Moffat County

a. Open for public access from August 1 through the end of February.

30. Cedars – Moffat County

a. Open for public access from August 1 through the end of February.
b. Only portable hunting blinds are allowed.

31. Cedar Springs – Moffat County

a. Motorized vehicle access is permitted only on CR 23 and BLM #1558.

32. Chubb Park – Chaffee County

a. Camping is permitted only as posted.
b. Motorized vehicle access is permitted on county roads as posted.

33. Coal Bank Gulch – Routt County

a. Open for public access from the first day of archery deer and elk season through the end of February.
b. Hunting with archery, muzzle-loaders, shotguns firing a single slug, and rimfire rifles only.
c. Hunting is limited to youth mentor hunting only. No more than one mentor per youth hunter may engage in hunting.

34. Cody Park – Fremont County

a. Public access is prohibited from June 1 through August 14.

35. Cohagen – Jackson County

a. Open for public access from August 15 through the end of February.

36. Cold Springs Mountain – Moffat County

a. Access is allowed from August 1 through December 31.
b. Camping is allowed only during big game seasons.

37. Copper Gulch – Fremont County

a. Discharge of firearms is restricted to hunting with muzzleloaders, shotguns, and rimfire rifles only.

38. Cottonwood Creek – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Hunter numbers may be limited through a mandatory check station when necessary to control overcrowding, resource damage or trespassing on neighboring private property.

39. Cottonwood Ridge – Fremont County

a. Open for fishing year-round.
b. Hunting is prohibited from June 1 through August 31.

40. Crooked Top - Park County

a. Access is permitted from Forest Service Rd 101 only.

41. Crystal Lake – Lake County

a. Access is by foot only.
b. Open for fishing year-round.

42. Daley Gulch – Gunnison/Saguache Counties

a. Open for public access year-round.
b. Camping is allowed only as posted.

43. Deer Haven – Fremont County

a. Open for hunting from September 1 through May 31.
b. Open for watchable wildlife year-round.

44. Dick's Peak – Park County

a. Access is by foot only.

45. Dirty Gulch - Fremont

a. Open for public access from September 1 through May 31.

46. Dry Creek – Rio Grande County

a. Hunting is prohibited in the safety zone along the east boundary of Section 16, as posted.
b. Hunting is prohibited from June 1 through August 14.

47. Duck Creek – Logan County

a. Public access is prohibited from March 1 – August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Public access is from the Duck Creek SWA parking area only.

48. East Carter Mountain – Grand County

a. Except as otherwise allowed in this regulation, public access is limited to hunting only.
b. Motorized vehicles are restricted to Chimney Rock road unless posted otherwise.
c. Parking is allowed at designated parking lots only.
d. ATV and snowmobile use allowed on designated route as posted at gate in Section 24 during hunting season only.
e. Hunting not allowed in safety zone, as posted along east fenceline.
f. Camping and campfires only allowed as posted within 300 feet of Chimney Rock Road.

49. East Delaney Butte Lake – Jackson County

a. Open for hunting and watchable wildlife from August 15 through the end of February.
b. Open for fishing year-round.
c. Access is by foot only.

50. Elk Mountain – Jackson County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.
c. Access to the property is from the parking lot only.

51. Elk Springs #3 – Moffat County

a. Public access is prohibited from March 1 through August 14.

52. Fernleaf Gulch – Fremont County

a. Open for public access from September 1 through May 31.
a. Access is by foot and horseback only, except on BLM Sand Gulch Road.
b. Motorized vehicles are prohibited off of BLM Sand Gulch Road.

53. Florence – Fremont County

a. Public access is prohibited from June 1 through August 31.
b. Access to the property is through National Forest land only.

54. Fly Gulch – Routt County

a. Open for youth mentor hunting only.

55. Ford Bridge – Logan County

a. Public access is prohibited from March 1 – August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Hunting with centerfire rifles is prohibited.
d. The launching or takeout of vessels is prohibited during waterfowl seasons.

56. Fortification – Moffat County

a. Access and hunting allowed through Frosty Acres Ranch only. Contact the Frosty Acres Ranch for reservations at 970-824-8935 or 970-824-9568.
b. Hunting is restricted to cow elk only.
c. Access is from parking area off Highway 13 only.
d. Access is by foot only.
e. Open for hunting from day after 4th season through the end of the late season in December.

57. Fourmile – Moffat County

a. Open for big game and small game hunting from August 1 through the end of February.

b. Motorized vehicle use is prohibited off of the County Rd.
c. Only portable hunting blinds are allowed.

58. Froze Creek – Custer County
a. Open for public access from August 15 through the end of February.
b. Access is by foot only.

59. Godiva Rim – Moffat County
a. Open for public access from August 1 through the end of February.
b. Motorized vehicle use is restricted to BLM Rd 2124.

60. Grape Creek – Fremont County
a. Open for fishing year-round as posted along Grape Creek.
b. Open for hunting from August 15 through May 31.
c. Open for watchable wildlife year-round.

61. Grassy Creek – Routt County
a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.
c. Small game hunting on weekends and Labor Day is by permit only. A maximum of eight hunters will be allowed daily. A maximum of four hunters is allowed per permit. Permits are free and may be applied for by contacting the Steamboat Springs Service Center at PO Box 775777, Steamboat Springs, CO 80477 or by calling 970-871-2855. Permit application deadline is July 1 annually. Permits will be issued by drawing, and successful applicants will be notified by mail.

62. Greasewood – Moffat County
a. Open for public access from August 1 through the end of February.
b. Access is by foot only.

63. Greasewood Lake – Weld County
a. Access is by foot only.

64. Great Divide – Moffat County
a. Open for public access from August 1 through the end of February.
b. Only portable hunting blinds are allowed.
c. Motorized vehicle use is restricted to county roads only.

65. High Creek – Park County
a. Open for hunting from August 15 through the end of February.
b. Open for fishing year-round.

66. Homestead – Moffat County
a. Open for public access from August 15 through the end of February.

67. Independence Mountain – Jackson County
a. Open for public access from August 15 through the end of February.
b. ATVs are allowed between 10:00 a.m. and 2 p.m. on designated roads otherwise closed to motorized traffic, for game retrieval only.

68. Indian Creek – Jackson County
a. Open for public access from August 15 through the end of February.
b. Hunting is prohibited with centerfire rifles in the northeast (NE) 1/4 of Section 16.
c. Access to the property if from the parking lot off of County Road 21 only.

69. Jimmy Dunn Gulch – Moffat/Routt Counties

a. Open for public access from the last Saturday in August through the end of February.
b. Hunter numbers may be limited through a mandatory check station when necessary to control overcrowding, resource damage or trespassing on neighboring private property.

70. Johnny Moore Mountain – Jackson County

a. Open for public access from August 15 through the end of February.
b. The southern portion of the property only is open year-round for fishing as posted.

71. Jumping Cow - Elbert County

a. Hunting is restricted to dove, turkey, doe pronghorn, antlerless elk, antlerless white-tailed deer, and antlerless mule deer.
b. Hunting and fishing access is allowed by permit only. Hunters and anglers must have a proper and valid license for their activity prior to applying for a permit. Permit holders shall have their permit on their person at all times while on the property. Permits may designate specific geographic hunting zones; in this case permits are restricted to the listed zone and are not valid property-wide. Access permits for hunters and anglers will be issued free of charge. Permits may be obtained via a drawing process. Applications are available from the DOW in Denver (303)291-7227. Application due dates are as follows:
    1. Dove, fall turkey, doe pronghorn, antlerless elk, antlerless white-tailed deer, and antlerless mule deer applications due the 3rd Monday in August.
    2. Spring turkey applications due 3rd Monday in March.
    3. Fishing applications due 14 days prior to intended access date.
c. Permitted hunters and anglers may take one other person (an observer) who is not hunting or fishing with them onto the property; however that person must remain with the permit holder at all times.
d. Permitted hunters other than those hunting dove and wild turkey may not enter the property prior to the first Monday after the opening day of their individual season.
e. Vehicular access to the property is restricted. Motor vehicle use is only allowed on marked existing roadways that lead to marked parking areas. All other access is restricted to foot and horseback only.
f. All gates on the property shall be left in the condition in which they are found after passing through the gateway.
g. Access is permitted from two hours prior to sunrise to one hour after sunset. In the event that an animal has been harvested by a hunter, the hunter may remain as long as is reasonable to recover and remove the animal from the property.
h. Camping is prohibited.
i. Fires are prohibited.

72. Karney Ranch - Bent County

a. Camping is prohibited.
b. Fires are prohibited.
c. Firewood collection is prohibited.
d. Off-highway vehicle (OHV) use is prohibited.
e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal.
f. Ornate box turtle collection and/or release is prohibited.
g. Night hunting with artificial light may be permitted as provided in regulation #W-303.E.10.
h. Foot access only. All vehicles are restricted to roads and parking lots.
i. Dogs are prohibited except as an aid to hunting.

j. No public access to signed safety zones.

73. Kemp Draw – Jackson County

a. Motorized vehicles are restricted to designated roads and Jackson County Road 21.
b. Open for public access from August 15 through the end of February.

74. LaGarde Creek – Larimer County

a. Open for fishing year-round.
b. Open for hunting from September 1 through the end of February.

75. La Jara – Conejos County

a. Open for fishing year-round.
b. Open for hunting from September 1 through the end of February.
c. Camping is permitted only as posted.
d. From the first day of archery big game season through the last day of the last regular rifle season, motor vehicle access is prohibited on that portion bounded on the north by a signed fenceline beginning at a point along La Jara Creek in the SW ¼ of section 32, T35N, R6E, extending east along this fence line approximately 2.2 miles to a signed corner post in the SW ¼ of section 34, T35N, R6E; on the east by a signed fenceline that extends from the above-described corner approximately 4 ¾ miles south to La Jara Creek; and on the south and west by La Jara Creek.

76. Landsman Creek – Kit Carson/Yuma County

a. Open for hunting from September 1 through May 31.
b. Access is by foot only.

77. Little Cochetopa Creek – Chaffee County

a. Open for public access from September 1 through May 31.

78. Little La Garita Creek – Saguache County

a. Open for wildlife watching year-round.
b. Open for hunting from September 1 through the end of February.

79. Little Sheep Mountain – Huerfano County

a. Public access is prohibited from June 1 through August 31.
b. Motorized vehicles are prohibited off of county road.

80. Los Creek – Saguache County

a. Open for public access from August 15 through the end of February.

81. Los Mogotes Peak – Conejos County

a. Public access is prohibited from March 1 through August 14.

82. Lost Creek – Weld County

a. Discharge of firearms is restricted to hunting with muzzleloaders, shotguns and rimfire rifles only.
b. Hunting prohibited in safety zones as posted.

83. MacFarlane Reservoir – Jackson County

a. Open for public access from August 15 through the end of February.
b. For big game hunters, motorized access is allowed on the two track route traveling north off of Jackson Co. Rd 28 one mile to the designated parking area. Big game hunting access beyond the parking area is limited to foot or horseback only.

c. For waterfowl and small game hunters, motorized access to MacFarlane Reservoir is allowed on the designated two track route only.
d. All other two track roads are closed to motorized travel.

84. Manzanares Creek – Huerfano County

a. Open for public access from August 15 through May 31.
b. Motorized vehicle use is restricted to county roads only.

85. Maxwell Park – Chaffee County

a. Public access is prohibited from March 1 through August 14.
b. Maximum of four vehicles in the parking area and maximum of three people per vehicle.
c. Access is through parking areas only.

86. Maybell – Moffat County

a. Open for fishing and wildlife watching year-round.
b. Camping is prohibited.
c. Open for hunting from August 15 through the end of February.
d. Access is limited to foot and horseback only on that portion of the property west of Moffat County Rd 19.

87. Maynard Gulch – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.
c. Vehicle parking is prohibited, except in designated areas.
d. Hunter numbers are regulated through a mandatory check station, when necessary to control overcrowding, resource damage or trespassing on neighboring private property.

88. McArthur Gulch – Park County

a. Public access is prohibited from June 1 through August 31.
b. Hunting is limited to elk and deer hunting from September 1 through the end of the third combined rifle season and turkey hunting during the spring turkey season.
c. Hunting is prohibited with centerfire rifles.
d. Hunting is prohibited in the safety zone around the ranch house and outbuildings, as posted.

89. McCoy Gulch – Fremont County

a. Public access is prohibited from June 1 through August 31.

90. Meadow Creek – Larimer County

a. Open year round for wildlife-related activities north of Larimer CR 80C.
b. Open September 1 to the end of February for hunting south of Larimer CR 80C.
c. South of Larimer CR 80C, access is by foot and horseback travel only.
d. Vehicle access north of Larimer CR 80C is only allowed during specific times of year when the Middle Cherokee Management Area is open to vehicle travel.

91. Menefee Peak – Montezuma County

a. Public access is prohibited from June 1 through August 31.

92. Middle Carter (Gunsight)- Grand County

a. Except as otherwise allowed in this regulation, public access is limited to hunting only.
b. Camping and fires are permitted within 300 feet of Chimney Rock road (CR 27/FS 103) as posted.

93. Middle Park – Grand County

a. Motorized vehicle access and parking is restricted as posted.

94. Milk Creek – Grand County

a. Motorized vehicles are restricted to County Road 184 (Hwy 40, MM 163) and parking area (MM 165) unless posted otherwise.
b. Motorized vehicle access through gate in Section 11 is restricted to use on designated track when road is dry.
c. Parking is restricted in Section 14 as posted.

95. Mineral Hot Springs – Saguache County

a. Open for public access from August 15 through the end of February.

96. Mishak Lakes – Saguache County

a. Open for public access from August 15 through the end of February.

97. Monument Butte – Moffat County

a. Motorized vehicles are prohibited off of county road.

98. Moody Creek – Routt County

a. Hunting is prohibited north of Moody Creek.

99. Moonhill – Routt County

a. Hunting is prohibited with centerfire rifles.
b. Motorized vehicles are prohibited.
c. Snowmobiles are prohibited.
d. Bicycles are prohibited.
e. Firewood cutting is prohibited.

100. Moosehead Mountain – Moffat County

a. Open for public access from August 15 through the end of February.

101. Morapos Creek – Moffat County

a. Access from parking lot on BLM land off County Road on south side of the property only. No access from other sides of the property.

102. Morrison Creek – Routt County

a. Motorized vehicles are prohibited off of county road.

103. Mud Springs – Park County

a. Open for public access from September 1 through the end of February.
b. Hunting is restricted to big game and small game hunting only.

104. Newlin Creek – Fremont County

a. Open for public access from September 1 through May 31.
b. Hunting is prohibited with centerfire rifles.
c. Hunting is prohibited within a buffer zone bounded on the east by the property boundary, on the north and south by the property boundary and extending 1/4 mile west of the east property line.

105. North Canyon – Baca County

a. Public access is prohibited from March 1 through August 14.
b. Access is by foot only.

106. North Rabbit Creek – Larimer County

a. Open year-round for fishing.
b. Open year-round for small game hunting.
c. Open August 15 to January 31 for big game hunting.
d. Access is by foot and horseback only, except during big game seasons when vehicle access is allowed to Rabbit Creek SWA.
e. Parking is not permitted on the property.
f. All activities not listed above are prohibited from September 1 to May 1.

107. Overland Trail – Logan County

a. Public access is prohibited from June 1 – August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Public access is from Overland Trail SWA parking area only.
d. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
e. The launching or takeout of vessels is prohibited during waterfowl seasons.

108. Owl Creek – Jackson County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.

109. Owl Mountain – Jackson County

a. Open for public access from August 15 through the end of February.

110. Oxbow – Moffat County

a. Open for public access from August 15 through the end of February.
b. Watchable wildlife activities from March 1 to August 15 will remain above the natural bluff that occurs approximately 75 yards from the water on the northern edge of the property.
c. Open for youth mentor hunting seasonally, as posted. Contact Colorado Parks and Wildlife Craig office for information.

111. Parkdale – Fremont County

a. Open for public access for fishing year-round. For all other wildlife recreation, open for public access from September 1 through the end of February.

112. Pass Creek – Larimer County

a. Access is by foot only.
b. Access is permitted from south side of the property where it joins USFS land.

113. Pat Canyon/Whitby – Baca County

a. Access is by foot only.
b. Motorized vehicles are prohibited.

114. Peck Mesa – Moffat County

a. Open for public access from August 1 through the end of February.
b. Only portable hunting blinds are allowed.
c. Motorized vehicle use is restricted to Moffat County Road 10 only.

115. Pfister Draw – Larimer County

a. Motorized vehicles are prohibited.

116. Pine Tree Gulch – Moffat County

a. Access to the property is from parking lot on County Road 57 only.

117. Pinkham Mountain – Jackson County

a. Open for public access from August 15 through the end of February.

118. Pinnacle Rock – Fremont County

a. Public access is prohibited from June 1 through August 31.

119. Pinon Hills – Conejos County

a. Open for watchable wildlife year-round.
b. Open for hunting from September 1 through the end of February.

120. Pole Gulch – Moffat County

a. Public access is prohibited from March 1 through July 31
b. Only portable hunting blinds are allowed.

121. Poudre River – Larimer County

a. Open for fishing year-round, as posted.
b. Open for hunting from September 1 through May 15.
c. All public access is prohibited east of US Hwy 287.
d. Access is allowed from Colorado Highway 14 and U.S. Forest Service lands.

122. Prospect – Weld County

a. Access to the property is from the designated parking area only.

123. Ptarmigan – Grand County

a. Open for watchable wildlife year-round.
b. Open for hunting from September 1 through the end of February.
c. Motorized vehicles are prohibited, except snowmobiles on one foot of snow.

124. Quakey Mountain – Gunnison County

a. Open for public access from August 15 through the end of February.

125. Rabbit Ears – Jackson County

a. Open for fishing year-round.
b. Open for hunting from August 15 through the end of February.
c. As posted, there is a closure area on the west side from August 15 to September 1.

126. Rajadero Canyon – Conejos County

a. Motorized vehicles are prohibited off of existing trails.

127. Rattlesnake Hill – Moffat County formerly Temple Gulch

a. Hunting is prohibited within a one quarter mile safety zone along the east boundary of the property, as posted.

128. Red Canyon – Jackson County

a. Open for public access from August 15 through the end of February.
b. Access to the property is only from the parking area on USFS road.
c. Trailer access is prohibited past the parking area.

129. Red Lion Ranch – Logan County

a. Public access is prohibited from June 1 through August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. All recreational activities, except deer hunting, are prohibited on the opening weekend of the regular plains rifle deer season and on the opening day and first weekend of the late plains rifle deer season.
d. The launching or takeout of vessels is prohibited during waterfowl seasons.

130. Ridge Road – Jackson County

a. Open for public access from August 15 through the end of February.

131. Rosita – Custer County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Discharge of firearms is restricted to hunting with muzzleloaders and shotguns.

132. Sage Creek – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.

133. Saguache Creek – Saguache County

a. Open for public access from August 15 through the end of February.

134. Saint Charles – Pueblo County

a. Discharge of firearms is prohibited within a quarter mile of any building.
b. Hunting is prohibited, except from August 15 through the end of February.
c. Access to the property is from parking areas only.

135. Sakariason – Las Animas County

a. Access is restricted as posted on the west side of the property.
b. Hunting is prohibited, except from September 1 through May 31.

136. Sand Creek – Jackson County

a. Open for public access from August 15 through the end of February.
b. Camping is permitted only as posted.

137. Sand Gulch #1 – Fremont County

a. Open for public access from September 1 through May 31.
b. Motorized vehicles are prohibited off of the BLM access road.

138. Sand Gulch #2 – Fremont County

a. Open for public access from September 1 through May 31.

139. Sand Gulch #3 – Fremont County

a. Open for public access from September 1 through May 31.

140. Sand Gulch #4 – Fremont County

a. Open for public access from September 1 through May 31.

141. Sandy Bluffs – Yuma County

a. Public access is prohibited from June 1through August 31.
b. Public access is prohibited from 9:00 pm – 4:00 am.
c. Public access is prohibited east of US 385.

142. San Luis Hills – Conejos County

a. Open for public access from August 15 through the end of February.

143. San Luis Lakes – Alamosa County

a. Open for public access from July 15 through the end of February.
b. Access allowed from the San Luis Lakes State Wildlife Area only. Access is by foot or horseback only.
c. Bicycles are prohibited.
d. Game carts are allowed.

144. Schultz Canyon – Huerfano County

a. Public access is prohibited from June 1 through August 31.

145. Shaw Creek – Rio Grande County

a. Open for public access from September 1 through the end of February, and through March 31 for mountain lion hunting only.
b. Access is by foot and horseback only.

146. Short Creek Baldy – Fremont County

a. Open for public access from September 1 through May 31.

147. Sikes Ranch – Baca County

a. Camping is prohibited.
b. Fires are prohibited.
c. Off-highway vehicle (OHV) use is prohibited.
d. Wood cutting or gathering is prohibited.
e. Public access is allowed one hour before sunrise until one hour after sunset, except that when an animal is harvested the successful hunter is allowed to remain as long as is necessary to remove the animal, and except when authorized by a night hunting permit.
f. Trapping is allowed by permit only. Permit holders shall have their permit on their person at all times while trapping. Permits may be obtained by calling the Lamar Service Center at 719-336-6600 or the local District Wildlife Manager at 719-980-0025.
g. Public access is prohibited in the building envelope and designated safety zones, as posted.
h. Parking is allowed in designated parking lots only.
i. All motorized travel is restricted to the primary access route (CR O).

148. 63 Ranch – Park County

a. Open for hunting from August 15 through the end of February.
b. Open for fishing year-round.

149. South Middle Creek – Huerfano County

a. Public access is prohibited from June 1 through August 31.

150. South Nipple Rim – Moffat County

a. Open for hunting from August 15 through the end of February.
b. Open year-round for watchable wildlife.
c. Discharge of firearms is prohibited with 100' of buildings/corrals as posted.

151. State Line – Baca County

a. Access is by foot only.

152. Steel Canyon – Saguache County

a. Open for watchable wildlife year-round.
b. Open for hunting from August 15 through the end of February.

153. Steinhoff Hill – Larimer County

a. Big game hunting is prohibited, except by means of archery.
b. Small game hunting is prohibited, except by means of archery or shotguns not firing single slugs.

154. Stokes Gulch – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.

155. Stonehouse Gulch – Saguache County

a. Open for public access from August 15 through the end of February.

156. Stoney Face Mountain – Fremont County

a. Open for public access from September 1 through May 31.

157. Sweetwater – Kiowa County

a. Open for fishing from the last day of Waterfowl Season (or as posted) through October 31.
b. Open for hunting Sept. 1 through the last day of Waterfowl Season (or as posted) to March 30.

158. Table Mountain – Fremont County

a. Camping is prohibited, except during big game season in designated areas only.
b. Horseback riding is prohibited, except during big game season.
c. Public access is prohibited from June 1 through August 31.

159. Tallahassee Road – Fremont County

a. Open for public access from September 1 through May 31.

160. Taylor Draw – Jackson County

a. Open for public access from August 15 through the end of February.

161. Ted's Canyon – Moffat County

a. Open for public access from August 15 through the end of February.
b. Hunting is restricted to big game and small game hunting only.

162. Texas Creek #1 – Fremont County

a. Open for public access from September 1 through May 31.
b. Access is by foot and horseback only, except on 217 A Road.

163. Three Sisters – Jackson County

a. Open for public access from August 15 through the end of February.
b. Access to the property is from parking area at the end of County Road 12E only.

164. Tomichi Dome – Gunnison County

a. Open for fishing year-round.
b. Open for other public access from August 15 through the end of February.
c. Camping is permitted only as posted.

165. Turkey Gulch – Fremont County

a. Open for hunting from September 1 through May 31.

166. Turkey Track Ranch – El Paso County

a. Access to the property is from designated parking area only. No access is allowed from county roads.
b. Public access prohibited from March 1 – August 14.
c. Access is by foot only.
d. Building permanent blinds prohibited.

167. Vincente Canyon – Conejos County

a. Open for hunting from August 15 through May 31
b. Open for fishing year-round.
c. Camping is allowed only as posted.

168. Warmer Gulch – Park County

a. Open for public access from September 1 through May 31.

169. Waugh Mountain – Fremont/Park County

a. Open for public access from the first day of archery pronghorn season through May 31.

170. Weber Canyon – Montezuma

a. Open for public access from September 1 through the last day of the spring turkey season.

b. Public access from March 1 through the last day of the spring turkey season is for mountain lion and turkey hunting only.

171. Werner Arroyo – Saguache County

a. Open for public access from August 15 through the end of February.

172. West Bear Gulch – Fremont County

a. Public access is prohibited from June 1 through August 31.

173. West Carter Mountain – Grand County

a. Motorized vehicles are restricted to Chimney Rock Road unless posted otherwise.
b. Camping and campfires are allowed within 300 feet of Chimney Rock road (CR 27/FS 103) as posted.

174. Whetstone Mountain – Gunnison County

a. Open for public access from August 15 through the end of February.
b. Access is by foot and horseback only.

175. Willow Creek – Moffat County

a. Open for public access from September 1 through May 31.

176. Windy Ridge – Grand County

a. Motorized vehicle access is restricted to County Road 184.
b. Motorized vehicle access through gate in Section 11 is restricted to use on designated track when road is dry.
c. Parking is restricted in Section 14 as posted.

177. Yampa River – Routt County

a. Open for public access from the first day of archery deer and elk season through May 31.
b. Access to the property is from parking area provided in SWA only.

178. Zapata Falls – Alamosa County

a. Open for public access year-round.
b. Overnight parking is prohibited.

ARTICLE IV – STATE FISH UNITS

#904 – REGULATIONS APPLICABLE TO ALL STATE FISH UNITS

A. Prohibited Activities

1. Except as otherwise provided in these regulations, the following provisions, as well as the provisions in #900.B.2 and #900.C, apply to all Division State Fish Units:

a. To fish in any waters within any Division fish hatchery, rearing, or distribution unit, including but not limited to, streams, rearing ponds, holding areas, and raceways, except in designated areas of these properties, which are managed for public fishing.
b. Waders or other fishing equipment are prohibited.
c. Camping is prohibited.
d. Fires are prohibited.
e. Hunting is prohibited.
f. Target practice is prohibited.
g. Pets and other domestic animals are prohibited.
h. Rock climbing is prohibited.
i. Vessel launching and takeout are prohibited.
j. Water contact is prohibited.
k. Feeding the fish is prohibited, except with fish food provided by the Division.
l. Throwing anything besides Division provided fish food into the water is prohibited.
m. Overnight parking is prohibited.

#905 – PROPERTY SPECIFIC REGULATIONS

A. <u>Finger Rock State Fish Unit – Routt County</u>

1. Hunting is limited to outside of the designated safety zones, as posted.
2. Discharge of firearms or bows is limited to outside of the designated safety zones, as posted.

B. <u>Pitkin State Fish Unit – Gunnison County</u>

1. Fishing is prohibited, except in Quartz Creek.

C. <u>Poudre River State Fish Unit - Larimer County</u>

1. Discharge of firearms or bows is limited to outside of the designated safety zones, as posted.

D. <u>Rifle Falls State Fish Unit - Garfield County</u>

1. Hunting is limited to outside of the designated safety zones, as posted.

E. <u>Roaring Judy State Fish Unit – Gunnison County</u>

1. Public access is prohibited from 1 hour after sunset to 1 hour before sunrise.
2. Discharge of firearms or bows is limited to outside of the designated safety zones, as posted.
3. West of Hwy 135, hunting is restricted to archery equipment for big game and shotguns for waterfowl.
4. Public access prohibited from December 1 – May 15 on that portion of the property east of Hwy 135.

ARTICLE V – BOATING RESTRICTIONS APPLICABLE TO ALL DIVISION CONTROLLED PROPERTIES, INCLUDING STATE TRUST LANDS LEASED BY COLORADO PARKS AND WILDLIFE

#906 - AQUATIC NUISANCE SPECIES (ANS)

A. All vessels and other floating devices of any kind, including their contents, motors, trailers and other associated equipment, are subject to inspection in accordance with inspection procedures established by the Division prior to launch onto, operation on or departure from any Division-controlled waters or vessel staging areas.

B. Any aquatic nuisance species found during an inspection shall be removed and properly disposed of in accordance with removal and disposal procedures established by the Division before said vessel or other floating device will be allowed to launch onto, operate on or depart from any Division-controlled waters or vessel staging areas.

C. Compliance with the above aquatic nuisance species inspection and removal and disposal requirements is an express condition of operation of any vessel or other floating device on Division-controlled waters. Any person who refuses to permit inspection of their vessel or other floating device, including their contents, motor, trailer, and other associated equipment or to complete any required removal and disposal of aquatic nuisance species shall be prohibited from launching onto or operating the vessel or other floating device on any Division-controlled water. Further, the vessel or other floating device of any person that refuses to allow inspection or to complete any required removal and disposal of aquatic nuisance species prior to departure from any Division-controlled water or vessel staging area is subject to quarantine until compliance with said aquatic nuisance species inspection and removal and disposal requirements is completed.

D. Any person operating a vessel or other floating device may be ordered to remove the vessel or device from any Division-controlled water by any authorized agent of the Division if the agent reasonably believes the vessel or other floating device was not properly inspected prior to launch or may otherwise contain aquatic nuisance species. Once removed from the water, the vessel or other floating device, including its contents, motor, trailer and associated equipment shall be subject to inspection for, and the removal and disposal of aquatic nuisance species.

E. It is unlawful for any person to, or to attempt to, launch onto, operate on or remove from any Division-controlled water or vessel staging area any vessel or other floating device without first submitting the same, including their contents, motors, trailers and other associated equipment, to an inspection for aquatic nuisance species, and completing said inspection, if such an inspection is requested by any authorized agent of the Division or required by any sign posted by the Division. Further, it is unlawful for any person to fail to complete the removal and disposal of aquatic nuisance species if such removal and disposal is requested by an authorized agent of the Division or required by any sign posted by the Division.

F. It is unlawful for any person to, or to attempt to, launch onto, operate on or remove from any Division-controlled water or vessel staging area any vessel or other floating device if they know the vessel or other floating device, including their contents, motors, trailers, or other associated equipment, contain any aquatic nuisance species.

APPENDIX A

I. States and Provinces Participating in the North American Weed Free Forage Program

A. The states and provinces participating in the North American Weed Free Forage Program are: Alabama, Alaska, Arizona, California, Colorado, Montana, North Dakota, South Dakota, Minnesota, Michigan, Missouri, Nebraska, North Carolina, New Mexico, Ohio, Oregon, Kansas, Kentucky, Wyoming, Iowa, Idaho, Indiana, Illinois, Utah, Nevada, Wisconsin, Washington and Alberta (Canada).

II. Noxious Weeds Inspected for by the North American Weed Free Forage Program

A. The following plants are considered to be noxious weeds subject to certification under the North American Weed Free Forage Program.

Absinth Wormwood (Artemisia absinthium) Bermudagrass (Cynodon dactylon) Buffalobur (Solanum rostratum) Canada thistle (Cirsium arvense) Common burdock (Arctium minus) Common crupina (Crupina vulgaris) Dalmation toadflax (Linaria dalmatica) Diffuse knapweed (Centaurea diffusa) Dyers woad (Isatis tinctoria) Field bindweed (Convolvus arvensis) Hemp (marijuana) (Cannabis sativa) Henbane, Black (Hyoscyanmus niger) Hoary cress (Cardaria spp.) Horsenettle (Solanum carolinense) Houndstongue (Cynoglossum officinale L.) Johnsongrass (Sorghum halapense) Jointed goatgrass (Aegilops cylindrica) Leafy spurge (Euphorbia esula) Loosestrife (Lythrum salicaria L.) Matgrass (Nardus stricta) Meadow knapweed (Centaurea pratensis) Medusahead (Taeniatherum caput-dusae) Milium (Milium vernale) Musk thistle (Carduus nutans) Orange hawkweed (Hieracium auranthiacum) Oxeye daisy (Chrysanthemum leucanthemum) Perennial pepperweed (Lepidium latifolium)	Perennial sorghum (Sorghum almum) Perennial sowthistle (Sonchus arvensis) Plumeless thistle (Carduus acanthoides) Poison hemlock (Conium maculatum) Puncturevine (Tribulus terrestris) Purple loosestrife (Lythrum salicaria) Quackgrass (Agropyron repens) Rush skeletonweed (Chondrilla juncea) Russian knapweed (Centaurea repens) Scentless chamomile (Anthemis arvensis) Scotch broom (Cytisus scoparius) Scotch thistle (Onopordum acanthium) Silverleaf nightshade (Solanum elaeagnifolium) Skeletonleaf bursage (Ambrosia tomentosa) Spotted knapweed (Centaurea maculosa) Squarrose knapweed (Centaurea virgata) St. Johnswort (Hypericum perforatum) Sulfur cinquefoil (Potentilla recta) Syrian beancaper (Zygophyllum fabago L.) Tansy ragwort (Senecio jacobaea) Toothed spurge (Euphorbia dentata) Yellow hawkweed (Hieracium pratense) Yellow starthistle (Centaurea solstitialis) Yellow toadflax (Linaria vulgaris) Common tansy (Tanecetum vulgare) Wild proso millet (Panicum miliaceum) Wild Oats (Avena fatua)

APPENDIX B

1. State Wildlife Areas governed by regulation #900

Wildlife properties governed by general provisions contained in regulation #900 include those listed in the following table and any new properties acquired during the year for which property specific regulations have not been adopted:

Property Name	**County**
Alberta Park Reservoir SWA	Mineral
Alma SWA	Park
Andrews Lake SWA	San Juan
Apishapa SWA	Las Animas
Arkansas River/Big Bend SWA	Chaffee
Beaver Creek SWA	Fremont
Big Meadows Reservoir SWA	Mineral
Blanca SWA	Alamosa
Bob Terrell SWA	Garfield
Brackenbury SWA	Larimer
Brush Creek SWA	Eagle
Burchfield SWA	Baca
Cabin Creek SWA	Gunnison
Coke Oven SWA	Pitkin
Creede SWA	Mineral
Deadman SWA	Prowers
Droney Gulch SWA	Chaffee
Frying Pan River SWA	Eagle
Georgetown SWA	Clear Creek
Huerfano SWA	Huerfano
Jackson SWA	Garfield
Johnson Village SWA (Fishing Easement)	Chaffee
La Jara Reservoir SWA	Conejos
Lake Fork Gunnison SWA (Fishing Easement)	Hinsdale
Leaps Gulch SWA	Gunnison
Mason Family SWA	Hinsdale
Masonic Park Fishing Easement	Rio Grande
Middle Taylor Creek SWA	Custer
Mt. Werner SWA (Fishing Easement)	Routt
Purgatoire River SWA	Bent
Oxbow SWA	Otero
Owl Mountain SWA	Jackson
Piceance SWA	Garfield/Rio Blanco
Pioneer Park SWA	Grand
Red Dog SWA	Prowers
Rock Creek SWA	Grand
Saguache Park	Saguache
San Luis Hills SWA	Costilla
San Miguel SWA	San Miguel

Sapinero SWA	Gunnison
Seaman Reservoir SWA	Larimer
Steamboat Springs SWA (Fishing Easement)	Routt
Twenty Mile Pond SWA (Fishing Easement)	Routt
Terrace Reservoir SWA	Conejos
Twin Sisters SWA	Larimer
Van Tuyl SWA (Cabin Creek and Lost Canyon Units)	Gunnison
Wheeler SWA	Garfield
Williams Hill SWA	Pitkin
Wright's Lake SWA (Fishing Easement)	Chaffee

2. State Trust Lands governed by regulation #902

Properties leased from the State Land Board (state trust lands) governed by general provisions contained in regulation #902 include those listed in the following table and any new properties acquired during the year for which property specific regulations have not been adopted:

Property Name	**County**
Adelaide	Fremont
Agate Mountain	Park
Agua Ramon	Rio Grande
Alamosa Canyon	Conejos
Alkali Arroyo	Otero
Alta	Conejos
American Gulch	Rio Grande
Antelope Flats	Morgan
Antelope Tank	Las Animas
Arrowhead	Larimer
Aspen Ridge	Chaffee
Aubury Creek	Baca
Badger Basin	Park
Badger Flats	Park
Badito	Huerfano
Baking Powder Ridge	Moffat
Bear Creek	Huerfano
Beaver Brook	Clear Creek
Beecher Island	Yuma
Ben Morgan Canyon	Moffat
Big Hole Butte	Moffat
Big Springs	El Paso
Black Wolf Creek	Yuma
Bloom Hills	Otero
Bonny Creek	Yuma
Box Elder	Moffat
Boxelder North	Moffat
Brammer	Morgan
Briggsdale	Weld
Brush Hollow	Fremont
Buckwater Draw	Moffat
Buffalo Gulch	Park
Bull Canyon	Moffat

Property Name	County
Bull Pasture	Otero
Burns Canyon	Chaffee
Bustos Flat	Huerfano
Carrica	Otero
Chiquito Peak	Conejos
Cimarron River	Baca
Citadel	Moffat
Coal Creek	Moffat
Coal Ridge	Moffat
Copper Mountain	Grand
Crooked Arroyo	Otero
Cross Mountain	Moffat
Crow Valley	Weld
David Canyon	Otero
Dead Horse Creek	San Miguel
Dearfield	Weld
Delmonica Gulch	Lake
Disappointment Creek	Dolores
Disappointment Valley	San Miguel
Dixie Bluffs	Otero
Dobbins Spring	Moffat
Douglas Mountain	Moffat
Dry Creek Basin	San Miguel
Dry Creek North	Larimer
Eagle Canyon	Larimer
East Alamosa	Alamosa
East Bend	Conejos
East Boone Draw	Moffat
East Carrizo Creek	Las Animas
East Timpas	Otero
Eastman Basin	Weld
Ecklund	Yuma
Edler	Baca
Eleven Mile	Park
Elk Springs #1	Moffat
Flagler	Kit Carson
Flying A	Pueblo
Foster Gulch	Custer
Gallegos	Conejos
Geary Creek	Weld
Gerrard	Rio Grande
Guillermo Ranch	Huerfano
Haight	Otero
Hamilton Mesa	San Miguel
Hartsel	Park
Hartsel South	Park
Hay Gulch Overlook	Yuma
Hiawatha	Moffat
Higbee Canyon	Otero
Hightower	Moffat
Horse Gulch	Moffat
Howard Creek	Weld

Property Name	County
Hungerford	Pueblo
Iles Grove	Moffat
Iron Springs	Otero
Jack Canyon	Otero
Jack Springs	Moffat
Jacks Creek	Saguache
Jeffway Gulch	Moffat
Jimmy Creek	Larimer
Johnson Gulch	Custer
Jubb Creek	Moffat
Juniper Hot Springs	Moffat
Karval	Lincoln
Keller	Bent
Keota	Weld
Kerber Creek	Saguache
Kinney Lake	Lincoln
Kirkwell	Baca
Klondike Basin	San Miguel
La Junta	Otero
Las Mesitas	Conejos
Laughlin Gulch	Saguache
Lazy D	Weld
Little Muddy	Adams
Little Snake	Moffat
Lone Rock	Baca
Lone Tree Gulch	Moffat
Maitland	Huerfano
Manhattan Creek	Larimer
Maverick Flats	Moffat
McKenna Peak	San Miguel
Middle Creek	Saguache
Middle Wolf Creek	Moffat
Miner’s Draw	Moffat
Mirage	Saguache
Moore Draw	Baca
Morgan Gulch	Moffat
North Devils Canyon	Otero
North Pawnee Creek	Weld
North Scandinavian Gulch	Moffat
Oil Well Flats	Fremont
Old Man’s Gulch	Eagle
Old Woman Creek	Saguache
Orchard	Weld
Oritz	Conejos
Packers Gap	Otero
Pawnee Coal Creek	Weld
Pawnee Valley	Logan
Pine Arroyo	Huerfano
Pinon Ridge	Moffat
Point of Rocks	Weld
Poison Spyder	San Miguel
Poitrey Canyon	Las Animas

Property Name	County
Poitrey Creek	Las Animas
Poncha Pass	Chaffee
Powder Wash	Moffat
Punche Valley	Conejos
Punkin Center	Lincoln
Queens	Kiowa
Railroad Gulch	Chaffee
Rattlesnake	Huerfano
Red Mountain	Grand
Red Rock	Otero
Red Wash	Moffat
Reservoir Draw	Moffat
Robinson Creek	Weld
Robinson Draw	Moffat
Rock Creek	Saugache
Rock Fall	Otero
Romeo	Conejos
Rosener	Morgan
Round Top	Otero
Russell Creek	Saguache
Rye Slough	Park
Saddle Mountain	Park
San Antonito	Conejos
Sand Arroyo	Baca
Sand Canyon	Baca
Sand Creek Central	Chaffee
Sand Creek South	Baca
Savory East	Las Animas
Scandinavian Gulch	Moffat
Settlement	Kit Carson
Sevenmile Ridge	Moffat
Sheephead Basin	Moffat
Sheepherder Springs	Moffat
Shelf Road	Teller
Simmons	Yuma
Simsberry Draw	Moffat
Sixteen Ditch	Jackson
Skull Creek	Moffat
Sleeping Giant	Routt
Slide Mountain	Grand
Snyder Prairie	Washington
South 80	Moffat
South Duffy Mountain	Moffat
South Fork Republican	Kit Carson, Yuma
South Fork Spring Canyon	Yuma
South Gardner	Huerfano
South Mountain	Dolores
South Pawnee Creek	Weld
South Pinon Hills	Conejos
South Roggen	Weld
Spencer Draw	Moffat
Spinney	Park

Property Name	County
Spring Creek Basin	San Miguel
Spring Gulch	Saguache
Spring Valley	Kit Carson
Sterling Prairie	Logan
Steven’s Gulch	Larimer
Stone Corral	Weld
Sugar Loaf	Conejos
Sultan Creek	San Juan
Sunny Moon	Baca
Taos Valley	Conejos
Tarryall Creek	Park
Tecolote Creek	Las Animas
Temple Canyon	Moffat
Texas Creek #2	Fremont
The Hogback	Huerfano
The Poso	Conejos
The Sloughs	Moffat
Thompson Draw	Moffat
Thornburg Draw	Moffat
Three Mile Mountain	Park
Timberlake	Otero
Tinaja Canyon	Huerfano
Tobe Creek	Las Animas
Treasurevault Mountain	Park
Treetop	Bent
Triangle	Moffat
Troublesome Valley Ranch	Grand
Trowel	Moffat
Trujillo Canyon	Conejos
Tunnel Drive	Fremont
Turkey Ridge	Pueblo, Huerfano
Turner’s Creek	Moffat
Two Buttes	Prowers
Twomile Creek	Weld
Utleyville	Baca
Vaughn Draw	Moffat
Vermillion Creek	Moffat
Villa Grove	Saguache
Weldon Valley	Morgan
West Lime Creek	San Juan
Whiskey Creek	Eagle
Whiterock	Otero, Pueblo
Wild Horse	Weld
Winter Valley Gulch	Moffat
Youghal	Moffat

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2 CCR 406-9

CHAPTER W-9 - WILDLIFE PROPERTIES

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:06:10

Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Natural Resources

Agency

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2 CCR 406-11

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2 CCR 406-11 CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE 1 - eff 01/01/2022

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FINAL REGULATIONS - CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE

ARTICLE II - LICENSE REQUIREMENTS, LICENSE EXEMPTIONS, LICENSE TYPES, APPLICATION AND RECORD REQUIREMENTS, AND LICENSE RENEWAL.

#1104 - LICENSE TYPES

A. Commercial Wildlife Park License

Commercial Wildlife Park Licenses are issued to a person or persons for the operation of privately owned wildlife parks and for the related commercial use of such wildlife including: buying, selling, propagating, brokering or trading of lawfully acquired captive wildlife; charging customers to hunt on such a park; or, exhibiting wildlife for educational or promotional purposes.

1. Big Game Hunting Park - Issued for hunting privately owned big game animals on private property. No new big game hunting park licenses shall be issued after July 1, 1996, except when a change of ownership occurs on an existing Big Game Hunting Park. The new applicant(s) must comply with all regulations in place at the time of the change of ownership when applying for the new license.

    a. Big Game Hunting Park Carcass tags will be provided by the Division at no cost. No hunting license is required for hunting captive wildlife within the park. Hunting can occur year-round. All wildlife removed from the park must be accompanied by a carcass tag, properly attached, showing number, sex, age, species, date taken, park number, hunter's name and address and, if available, eartag and/or tattoo number of each animal taken.
    b. All wildlife released into the park must be marked with USDA official metal eartags and/or eartags provided or approved by the Division. All alternative livestock (fallow deer and elk) released into the park must be tattooed as provided by State Board of Livestock Inspection Commission regulations.
    c. No live wildlife may be removed from the park.
    d. All big game killed on Big Game Hunting Parks will be subject to the "Slaughter Surveillance Program" for bovine tuberculosis testing as provided for in regulation #008, and to CWD testing requirements in #1110.

2. Wildlife Exhibitors Park - Issued for the exhibition of live wildlife (except birds) for educational or promotional activities.

    a. Exhibition of animals in the families *Canidae Felidae*, or *Ursidae* outside the licensed Wildlife Exhibitors Park premises is prohibited except under the following conditions:

        1. Animals must be caged at all times, except as provided in 1104(A)(2)(a)(2). Cages must be made from a minimum of 9 gauge wire, completely enclosed, including a top and a bottom; and shall be large enough to allow the animal being caged to stand up and turn around.

        2. Animals may be exhibited out of cage only when the exhibitor is covered by a current and in-force insurance policy in the face amount of no less than $500,000 coverage for general liability. Copies of the liability insurance policy shall be forwarded to the Special License Unit of the Division prior to the scheduled event.

        3. Animals must remain caged during any exhibition in any educational institution.

4. All incidents involving exhibited wildlife where injury to wildlife or people occurs must be reported to the Special Licensing Unit within 24 hours.

b. Exhibition of any wildlife for educational purposes is permitted under the following conditions:

1. A copy of the authorization from the educational institution, if exhibited at an educational institution, must be submitted to the Special Licensing Unit prior to presentation.

2. A copy of the lesson plan must be submitted on an annual basis to the Division Education Unit.

c. Wildlife Exhibitors Parks must be AZA accredited prior to and maintain such accreditation as a condition of the issuance of a license. Facilities previously licensed by the Division prior to January 1, 2006 may continue to operate under wildlife parks requirements without obtaining AZA certification.

3. Non-Resident Temporary Exhibitors License - Issued for the importation and exhibition of live regulated wildlife for educational, training or entertainment purposes from a facility outside Colorado that is properly licensed by the state of origin.

a. Each Non-Resident Temporary Exhibitors license shall be valid for no more than 30 days within a calendar year.

b. All animals must be housed, transported, and displayed in a safe and humane manner. Any applicant who has been convicted of animal cruelty shall not be issued a license.

4. Wildlife Producers Park - Issued for trading, selling, propagating, bartering, shooting, brokering, and transporting, live wildlife (except birds) and wildlife parts.

5. Upland Bird and Waterfowl Hunting and Producers Park -Issued for the propagation and release of commercially raised upland game birds and waterfowl for preserve shooting.

a. Boundaries of licensed areas shall be clearly identified with fencing or other distinguishing features and shall be signed at intervals of not more than 400 yards. All hunting shall be limited to the area identified on the license.

b. Total harvest of any bird species released on a commercial wildlife park shall be limited to no more than the number of flight capable birds released in a calendar year.

c. Only the following wildlife species may be released and hunted under the authority of this license: Ring-necked pheasant, Gambel's, scaled, and bobwhite quail, chukar, gray partridge, and mallard ducks. Exceptions to this list may occur with the approval of the Director of the Division.

d. Wildlife taken under an Upland and Waterfowl Hunting and Producers Park may be taken within the licensed park without a hunting license, unless otherwise restricted by Federal law and may be taken from January 1 through December 31. A receipt must be issued to any hunter leaving the park with wildlife stating numbers of wildlife taken, sex, species, park number and date.

6. Zoological Park License - Issued for the operation of facilities, other than AZA-accredited zoos, open to the public for wildlife exhibition. Zoological Park License costs $158.92 as provided in 33-4-102 C.R.S.

    a. Zoological Parks must meet all criteria of 33-4-102(13)(a) C.R.S. as amended.

B. Non-commercial Wildlife Park License

Non-commercial Wildlife Park licenses are issued to a person or persons for the purpose of keeping birds other than raptors, or for species acquired in accordance with section 2 below.

1. A licensee may only buy, propagate, give, trade, exchange, release, import or export any lawfully acquired birds or eggs in accordance with Parks and Wildlife Commission regulations. Such license activity may not be engaged in for the purpose of generating a profit.

2. Persons in possession of a private non-commercial wildlife park license or in lawful non-commercial possession of exotic mammals prior to January 1, 1983 may continue to possess only those individual mammals and their progeny born after January 1, 1982, under a non-commercial wildlife park license.

3. Non-commercial Wildlife Park licenses are nontransferable and shall be valid for the life of the licensee. Any change in the location of the facilities for a noncommercial park must be approved as a license amendment, in advance, by the Division.

C. Wildlife Sanctuary Licenses

As provided in § 33-1-106, C.R.S., Wildlife Sanctuary licenses are issued to wildlife sanctuaries as defined in § 33-1-102, C.R.S.

1. Types of Licenses

    a. Provisional Wildlife Sanctuary

        1. Issued to nonprofit entities for the conditional operation of a wildlife sanctuary as defined in 33-1-102, C.R.S. Provisional wildlife sanctuary licenses expire December 31st of the year issued and may be renewed for up to one additional year after which time the facility must meet the requirements to obtain and be issued a wildlife sanctuary license. In the event that a facility fails to meet this requirement, all wildlife in possession must be transferred from the facility according to the approved contingency plan and the facility must wait a minimum of 5 years before re-applying for a new provisional wildlife sanctuary license.

        2. Except for the provisions of Reg # 1105.A.8, the Division shall determine that the applicant has met the following requirements prior to the issuance of a provisional wildlife sanctuary license:

            aa. Documentation demonstrating experience in the care and handling of the type of wildlife for which the applicant is seeking authorization to possess on their license.
            bb. Letter of recommendation from a currently licensed Colorado wildlife sanctuary acknowledging the applicant's qualifications in the care and handling of captive wildlife.

    b. Wildlife Sanctuary

1. Prior to the annual issuance or renewal of a wildlife sanctuary license, the Division shall determine that the applicant possesses a current provisional wildlife sanctuary license or a current wildlife sanctuary license issued by the Division.

2. All Wildlife Sanctuary licenses may be issued only to nonprofit entities.

3. Wildlife sanctuaries must comply with all requirements of § 33-1-102(52) and § 33-4-102(14), C.R.S.

4. Except as provided herein, wildlife sanctuaries must be an accredited or certified "related facility" by the AZA or accredited or verified by the GFAS prior to and maintain such certification as a condition of the issuance of a wildlife sanctuary license. Facilities previously licensed by the Division as a commercial wildlife park prior to January 1, 2001, and incorporated as a 501(c)(3) non-profit which functioned as wildlife sanctuaries may continue to operate as wildlife sanctuaries under the wildlife parks facility requirements set forth in Regulation No. 1108. In addition, these existing facilities may expand operation onto contiguous property owned by them under those same facilities requirements and without AZA certification. Provided further that, when one of these existing facilities is impacted by an act of nature (e.g. fire or flood) that prevents it from reasonably continuing its operation at the present location, the facility may, with the approval of the Director, move to a new location and continue its operation without being subject to the generally applicable AZA certification requirement, provided the relocated facility complies with the wildlife parks facility requirements set forth in #1108 of these regulations, and all wildlife sanctuary operations at the present locations cease.

5. Wildlife possessed by a wildlife sanctuary shall be surgically sterilized within thirty days of arrival, except that pregnant animals shall be surgically sterilized immediately following weaning and animals eligible for participation in the AZA's Species Survival Plan ("SSP") need not be sterilized. However, documents supporting such SSP eligibility must be provided to the Division within 30 days of arrival at the wildlife sanctuary.

   Any nonprofit sanctuary facility previously licensed by the Division as a commercial wildlife park prior to January 1, 2001, shall submit a sterilization plan for wildlife possessed by such facility for approval by the Division. Such plan shall be submitted to the Division by January 1, 2006 and shall provide for surgical sterilization of all wildlife possessed at such facility as of November 1, 2005, in an expeditious manner, but in no event later than May 1, 2007. Wildlife brought onto such a facility after November 1, 2005, shall be surgically sterilized within thirty days of arrival, except that pregnant animals shall be surgically sterilized immediately following weaning.

   In lieu of surgical sterilization, wildlife sanctuaries may submit a birth control plan for animals located on the facility for approval by the Division. Such plans may be approved if they provide sufficient assurances against propagation of animals at the facility.

D. Except as provided herein, no wildlife taken from the wild shall be possessed by any commercial wildlife park, noncommercial wildlife park or wildlife sanctuary in Colorado. Wildlife taken from the wild outside of Colorado may be possessed by a wildlife sanctuary provided:

1. The wildlife has been determined by the wildlife management agency of the source state or country to be habituated and non-releasable and has otherwise authorized the export of the wildlife, and

2. The wildlife has been held in captivity in the source state or country for no less than 24 months. However, the Director may authorize the importation of wildlife that does not

meet the captivity period requirement if he/she determines it is proper for management of the Division and otherwise beneficial to the management, preservation or conservation of wildlife resources. In making such determination, the Director shall consider:

a. other placement or wildlife management options available to the exporting state or country,
b. capacity and resources of the importing wildlife sanctuary,
c. impact to state wildlife management programs, and
d. any other wildlife management criteria.

Provided however, that no more than one such importation per calendar year (based on a three-year rolling average) may be approved for any wildlife sanctuary.

For the purposes of this regulation, wildlife born in captivity, even if born to wildlife taken from the wild, are not considered “taken from the wild.”

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CHAPTER W-11 - WILDLIFE PARKS AND UNREGULATED WILDLIFE

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:06:54

Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Natural Resources

Agency

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2 CCR 406-15 CHAPTER W-15 - DIVISION AGENTS 1 - eff 01/01/2022

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FINAL REGULATIONS - CHAPTER W-15 - DIVISION AGENTS

ARTICLE VI - AGENT COMMISSION RATES

#1510 - Agent Commission Rates

See also §33-4-101 C.R.S. relative to Division agents and §33-4-102(1.6)(b) C.R.S. for price indexing information for nonresident big game licenses.

A. Commission Rates for Retail Agents:

1. Division agents shall be paid a 4.75% commission for each license sold electronically, except for those licenses with commissions as shown below in Table A.4.
2. Division agents shall be paid a 5% commission for each pass sold electronically.
3. Division agents who sell registrations shall be paid a flat rate of $1.00 per registration issued.
4. Other Commission Rates:

Table A.4: Division Product Type	**2021 Commission**	**% of license price in 2021**	**2022 Commission**	**% of license price in 2022**
Second Rod Stamp	$0.63	6.7%	$0.64	6.7%
Resident Fishing - 1 day	$0.84	6.7%	$0.85	6.7%
Nonresident Fishing – 1 day	$1.05	6.7%	$1.06	6.7%
Fishing - 5 day	$2.09	6.7%	$2.13	6.7%
Resident Small Game - 1 day	$0.84	6.7%	$0.85	6.7%
Nonresident Small Game – 1 day	$1.05	6.7%	$1.06	6.7%
Nonresident Deer	$14.79	3.6%	$15.07	3.6%
Nonresident Pronghorn	$14.79	3.6%	$15.07	3.6%
Nonresident Bear	$3.60	3.6%	$3.67	3.6%
Nonresident Mountain Lion	$12.60	3.6%	$12.83	3.6%
Nonresident Antlerless Elk	$18.54	3.6%	$18.88	3.6%
Nonresident Either-sex Elk	$24.71	3.6%	$25.17	3.6%
Nonresident Antlered Elk	$24.71	3.6%	$25.17	3.6%
Nonresident Rocky Mtn Bighorn Sheep	$82.76	3.6%	$84.29	3.6%
Nonresident Desert Bighorn Sheep	$82.76	3.6%	$84.29	3.6%
Nonresident Goat	$82.76	3.6%	$84.29	3.6%
Nonresident Moose	$82.76	3.6%	$84.29	3.6%

All 2021 licenses sold through March 2022 shall be sold at the 2021 license fee and commission rates.

B. Commission Rates for the System Agent: The system agent shall be paid the commissions shown in the Table B.1 below for each license sold through the system:

1. Commission pricing for any CPW Commissionable Product sold through IPAWS

Table B.1: Commission Rates	**IPAWS Products**
a. Contractor Commission Fee percent commission rate to cover AWO System operation and maintenance cost for those products less than $100 and not listed below in c.	3.7%
b. Contractor Commission Fee flat fee commission rate to cover AWO System operation and maintenance cost for those products $100 or greater and not listed below in c.	$4.25
c.1. All Wildlife Applications, regardless of Product Cost.	$4.25
c.2. Parks variable cost products, regardless of actual Product Cost.	3.7%
Breakout Costs	
Contractor credit card fee	2.2%
Contractor fulfillment fee	$1.45

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CHAPTER W-15 - DIVISION AGENTS

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

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Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Natural Resources

Agency

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FINAL REGULATIONS - CHAPTER W-16 – PARKS AND WILDLIFE PROCEDURAL RULES

ARTICLE I - MEETINGS

#1601 - Conduct of Meetings

See Article 4 of Title 24, CRS, for rule making and other applicable meeting and hearing requirements

A. Regular Meetings

1. Public Presentation - In addition to normally scheduled opportunities to testify on matters before the Commission, persons or groups wishing to participate in a regular Commission meeting may request to be placed on the agenda by submitting a written request to the Director at least 30 days before the meeting. The public may participate during the meeting at the discretion of the Chairman or presiding officer.

B. Adjudicatory Hearings

1. Review of Game Damage Settlements and Claim Denials

See §§ 33-3-101 to 204, CRS, for additional detail and requirements

a. Game Damage Claims Settled by Agreement Between Claimants and the Division
   1) Only settlements of game damage claims equaling or exceeding $5,000 in total value must be reviewed by the Commission, and then only where the damage is something other than forage loss to wild ruminants on privately owned or leased private land. All other settlements may be paid by the Division without Commission review.
   2) Review will be based on the written materials and documentary evidence provided to the Commission by the Division and, unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission on the settlement.
   3) Except as may otherwise be directed by the Commission, game damage settlements will be reviewed at the next regular meeting of the Commission following their receipt, provided the settlement, together with its supporting materials and documentation, is received by the Commission at least thirty days prior to the meeting. The settlement will be placed on the consent agenda unless the claimant makes an oral presentation to the Commission pursuant to #1601.A.1.

b. Game Damage Claims Recommended for Denial by the Division
   1) Any claimant seeking or otherwise requiring Commission review of a game damage claim recommended for denial by the Division, or a game damage claim where the claimant and the Division have otherwise failed to reach a settlement, shall file a written request for review with the Commission. The requirement for a written request for review applies to all claimants, including claimants that have waived arbitration of a forage loss to wild ruminants on privately owned or leased private land. Such request for review shall be mailed to the Commission within ten (10) days of claimant's receipt of the Division's written notice of denial or offer of settlement unacceptable to the claimant.
   2) The request for review shall include:
      a. the claimant's name, address and telephone number;

b. a narrative statement of the claim, including the amount at issue and a complete statement of the factual and statutory basis supporting payment of the claim as requested;
c. copies of the ten (10) day notification(s) and proof of loss filed with the Division;
d. copies of the written documentation submitted with, and in support of, the proof of loss;
e. any other documentary evidence supporting the claim or disputing the grounds stated as the basis for the Division's action in its notice of denial or offer of settlement, including photographs, and;
f. any other written materials supporting the claim or disputing the grounds stated as the basis for the Division's notice of denial or offer of settlement, including signed statements by third party witnesses.

3) Commission review will be based on the request for review and any written materials or documentary evidence provided to the Commission by the Division in response to the request for review submitted by the claimant, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.
4) Except as may otherwise directed by the Commission, such claims will be reviewed at the next regular meeting of the Commission following their receipt, provided the request for review is received by the Commission at least thirty days prior to the meeting. The denial will be placed on the consent agenda unless the claimant makes an oral presentation to the Commission pursuant to #1601.A.1.

2. License Suspension Appeals

See § 33-6-106, CRS for additional detail and requirements

a. All license suspensions will be heard initially and decided by a Commission hearing examiner. A copy of the hearing examiner's initial decision shall be sent to the licensee by certified mail, return receipt requested, to the last known address of such person. The hearing examiner's initial decision shall advise the licensee of their right to appeal the initial decision to the Commission. Any person seeking or otherwise requiring Commission review of the hearing examiner's initial decision shall file a written notice of appeal with the Commission within thirty (30) days of the licensee's receipt of the hearing examiner's initial decision, but no later than 45 days from the date contained in the certificate of service accompanying the initial decision. The notice of appeal must be sent to "CPW License Appeals" 6060 Broadway, Denver, CO 80216. If a timely appeal is not made to the Commission, the hearing examiner's initial decision shall become final, effective 45 days from the date contained in the certificate of service accompanying the initial decision. If a timely appeal is made to the Commission, the hearing examiner shall send notice to the licensee of the date of their scheduled hearing before the Commission and advise that the hearing examiner's initial decision to suspend is automatically stayed pending Commission review and final action.
b. The notice of appeal shall include:
   1) the person's name, address, telephone number and case file number;
   2) a narrative statement of the person's position, including a complete statement of the factual and statutory basis supporting relief from the decision of the hearing examiner and the relief requested;
   3) copies of any written documentation or documentary evidence submitted to the hearing examiner;
   4) copy of the hearing examiner's decision, including the findings of fact and conclusions of law, and;

5) a copy of the transcript of the hearing on the suspension of license privileges conducted by the hearing examiner. The person requesting review shall be responsible for the production of the transcript.

c. Commission review will be based on the notice of appeal and any additional written materials and documentary evidence provided to the Commission by the hearing examiner in response to the notice of appeal, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.

d. Except as may otherwise be directed by the Commission, license suspensions will be reviewed at the next regular meeting of the Commission following their receipt, provided the notice of appeal is received by the Commission at least thirty days prior to the meeting. The appeal will be placed on the consent agenda unless the licensee makes an oral presentation to the Commission pursuant to #1601.A.1. The final decision of the Commission is effective upon mailing to the licensee and must contain a certificate of mailing.

e. Written notice of the final decision of the commission shall be sent to the licensee by certified mail to the last known address of such person. The notice shall advise the licensee that he or she may appeal the Commission's suspension decision to the state district court as provided in § 24-4-106, C.R.S., by bringing an action for judicial review within 35 days after such action becomes effective.

f. When deciding upon the duration of any license privileges suspension term, the hearing examiner will consider the facts of the underlying violation(s) giving rise to the criminal conviction(s) and the administrative license suspension hearing, along with all relevant written materials and documentary evidence contained in the Division's records, all written materials and documentary evidence provided by the party prior to the administrative license suspension hearing, and all evidence provided during the hearing, and will give specific consideration to the absence or presence of the following factors:
   1) Whether the violation(s) caused or resulted in the take of wildlife, injury or death of a person, or damage to or destruction of public or private property;
   2) The number of violations arising from the same transaction or occurrence;
   3) Whether the violation(s) involved the take of species listed as endangered, threatened or of special concern;
   4) Whether the violation(s) involved the take of trophy wildlife;
   5) Whether the violation(s) showed an intentional, knowing, or negligent disregard for wildlife or public safety;
   6) Whether the violation(s) involved intentional, knowing or negligent action on behalf of the party;
   7) Whether the party has any prior violations of wildlife statutes or regulations, or violations of state or federal law committed while hunting, fishing, or engaging in a related activity;
   8) Whether the party has any prior license suspensions;
   9) Whether the violation(s) occurred while the party was subject to a prior suspension or otherwise unlicensed;
   10) Whether the violation(s) involved any assault or threat to or resisting a peace officer;
   11) Whether the party self-reported the violation(s) or otherwise attempted to remedy or ameliorate the harm caused by the violation(s);
   12) The experience and age of the party and other social factors or circumstances associated with the violation(s);
   13) Whether the party interfered with or hindered the investigation of the violation(s);
   14) The criminal penalties imposed as part of the violation(s);
   15) Whether the party acted alone or in concert with other parties;
   16) The species and the number of wildlife taken, and;
   17) Whether the violation(s) involved any specified illegal manner of take (use of bait, traps, snares, poison, etc.).

Based on all the evidence presented, the hearing examiner will determine the weight to be given to any factor and that factor's effect on the duration of the suspension term.

3. Mid-Suspension Review

a. Except as specified in subsection b. of this regulation, any person who has had their privilege of applying for, purchasing, or exercising the benefits conferred by any or all licenses issued by the division pursuant to articles 1 to 6 of title 33 ("license privileges") may file a petition for mid-suspension review seeking to modify the expiration date of their suspension. Such petitions may be filed once every five years either:
   1) After half of a suspension of at least 20 years, but less than a lifetime, has elapsed; or
   2) After fifteen years of a lifetime suspension have elapsed.

b. Applicability
   1) Any person who has had their license privileges suspended by the commission for less than 20 years may not file a petition for mid-suspension review.
   2) Any person who has had their license privileges suspended by the commission on two or more occasions may not file a petition for mid-suspension review.
   3) Any person who has been convicted of wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner's initial decision entered pursuant to § 33-6-106(7), CRS, may not file a petition for mid-suspension review.
   4) Any person who has been charged with wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner's initial decision entered pursuant to § 33-6-106(7), CRS, may not file a petition for mid-suspension review until such charges are finally resolved.

c. Contents of petition for mid-suspension review and course of proceedings
   1) The petition for mid-suspension review must include an affidavit signed by the petitioner under penalty of perjury stating:
      a. The petitioner has not had their license privileges suspended by the commission on two or more occasions;
      b. The petitioner has not been convicted of wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS, since the date of the hearing examiner's initial decision entered pursuant to 33-6-106(7), CRS; and,
      c. There are no pending charges against the petitioner for wildlife violations of another state, or any Canadian province, United States territory, or federal agency which is a member of the "Wildlife Violator Compact," §§ 24-60-2601 – 2604, CRS.
   2) The petition for mid-suspension review must include a detailed justification for the request. Time served on the suspension, and/or financial penalties incurred do not constitute good cause for modifying the expiration date of any suspension.
   3) The petition for mid-suspension review must demonstrate the petitioner's ongoing and concerted efforts to ameliorate the harm caused by their violation(s) in the form of education, mentoring, volunteering, wildlife conservation efforts, or other means.
   4) The division may file a response to the petition. Unless the commission directs otherwise, there will be no oral presentations or further submittals to the commission and the petition will be placed on the consent agenda with an appropriate recommendation by the Director.

d. Standard of review: The commission, in its discretion, may modify the duration of a previously-imposed license suspension if the petitioner proves the duration of their original suspension no longer serves the remedial purpose of protecting the state's wildlife. The commission shall consider the totality of the circumstances, which include, but need not be limited to, the following factors:
   1) The credibility of the petitioner's written statements or testimony, if any;
   2) The credibility of written statements by third parties;
   3) The adequacy of petitioner's ameliorative efforts;
   4) The risk of future wildlife offenses; and,
   5) Aggravating or mitigating factors leading to the original suspension.

4. Review of Petitions for Declaratory Orders

   See §§ 24-4-105(11), CRS for additional detail and requirements

   a. Any person may petition the Commission for a declaratory order to terminate a controversy or to remove uncertainty as to the applicability to the petitioner of any statutory provision or any rule or order of the Commission.
   b. The petition must be in writing and shall include:
      1) the petitioner's name, address and telephone number;
      2) the statutory provision, rule or order at issue;
      3) a narrative statement of all facts necessary to show the nature of the controversy or uncertainty and the manner in which the statutory provision, rule or order applies or potentially applies to the petitioner;
      4) whether the petitioner holds any permits, passes, or registrations issued pursuant to Articles 10 through 15 of Title 33, C.R.S., as amended.
   c. The Commission will determine, in its discretion and without notice to the petitioner, whether to rule upon the petition. In determining whether to rule upon a petition filed pursuant to this regulation, the Commission will consider the following matters, among others:

      1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision or of any regulation of the Commission.

      2) 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 Commission or a court involving one or more of the petitioners.

      3) 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 Commission or a court but not involving the petitioner.

      4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

      5) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, regulation, or order in question.

d. Commission review, if any, will be based on the petition and any additional written materials and documentary evidence provided to the Commission by the Division in response to the petition, and unless the Commission directs otherwise, there will be no oral presentations or further submittals to the Commission.
e. Except as may otherwise be directed by the Commission, petitions for declaratory orders will be reviewed at the next regular meeting of the Commission following their receipt, provided the petition is received by the Commission at least thirty days prior to the meeting.
f. If the Commission determines that it will rule on the petition, the following procedure will apply:
    1) The Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
        i. Any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition.
        ii. The Commission may order the petitioner to file a written brief, memorandum or statement of position.
        iii. The Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
        iv. The Commission may dispose of the petition on the sole basis of the matters set forth in the petition.
        v. The Commission 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 Commission may take administrative notice of the 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 Commission rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision and the reasons for such action.
    2) The Commission may, in its discretion, set the petition for hearing, upon due notice to the 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 Commission 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 statutory provision, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Commission to consider.
g. The parties to any proceeding pursuant to this regulation shall be the division and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set the same matters as required by # 600-4. Any reference to “petitioner” in this regulation also refers to any person who has been granted leave to intervene by the Commission.
h. Any declaratory order or other order disposing of a petition pursuant to this regulation shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

5. All Other Adjudicatory Hearings

See §§ 24-4-105 and 33-1-111, CRS for additional detail and requirements

a. Unless the Commission directs otherwise, all other adjudicatory matters within the jurisdiction of the Commission will be heard initially and decided by an administrative law judge within the Division of Administrative Hearings.
b. Any person requesting an adjudicatory hearing on a matter within the jurisdiction of the Commission shall file a written request for a hearing with the Commission.
c. The request for an adjudicatory hearing shall include:
    1) the person's name, address and telephone number;
    2) a narrative statement of the person's position, including a complete statement of the factual basis and legal justification for any relief requested;
    3) copies of any written documentation or documentary evidence supporting the person's position;
d. Except as may otherwise be directed by the Commission, requests for adjudicatory hearings will be reviewed at the next regular meeting of the Commission following their receipt, provided the request is received by the Commission at least thirty days prior to the meeting.
e. The person will be notified of the assignment of the matter to the Division of Administrative Hearings or whether the Commission will hear the matter itself.
f. All further proceedings will be conducted in accordance with §§ 24-4-105, CRS

ARTICLE IV – REFUNDS, REIMBURSEMENT AND RESTORATION OF PREFERENCE POINTS

#1670 Refunds and Restoration of Preference Points

See also §§ 33-4-102 (6) for statutory provisions related to refunds

A. General Refund Procedures – Except as provided herein, anyone may request and be given a refund for a license no later than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening day of the season for which the license was issued for all other licenses, minus a $15.00 processing fee. The $15.00 processing fee will not be charged for refunds requested on youth licenses, in the case of Division error, or if any of the following circumstances prevent the license holder from exercising the intended benefits of the license: extreme medical circumstances involving the license holder or a license holder's immediate family member, death of the license holder, death of the license holder's immediate family member, military orders, or jury duty. Requests must have a valid U.S. postmark, or be submitted at a Division office at least fourteen (14) days prior to the opening day of the applicable turkey season or thirty (30) days prior to the opening day of any other season for which the license was issued. Youth are exempt from the (14) days prior requirement for turkey licenses and the (30) days prior requirement for big game licenses and may submit a request up to the day before the start of the season.

1. All refunds shall be requested on a form provided by or in the format requested by the Division.

2. All requests for license refunds must be accompanied by the entire license and carcass tag when applicable.

3. Refunds may be requested by mail or in person at any Division office.

4. Refunds shall only be issued to the person whose credit card was used or name appears on the license.

5. Licenses purchased through non-Division license agents will be refunded at cost less license agent fee.

6. No refunds shall be made in any circumstance where the license holder was hunting in the field during an active season for the license and designated species as specified in Commission rules and regulations.

7. No refunds shall be made on any special licenses listed in 33-4-102(2), C.R.S., or any auction or raffle licenses as provided for in 33-4-116 or 33-4-116.5, C.R.S., or on any exchanged license, or on any license that costs less than $15.00 with the exceptions of resident youth turkey and resident youth big game licenses, or to any person whose license privileges have been suspended by the Commission.

8. When the $15.00 processing fee exceeds the original refund amount, no refund shall be issued and the remainder of the processing fee shall be waived.

9. All limited licenses returned to the Division for a refund or preference point restoration will be available for reissue after the request has been processed using the current leftover list and following all other license purchase regulations, except for the following limited licenses:

    a. Turkey, deer, elk, pronghorn and bear hunt codes which required five (5) or more resident preference points to draw as determined by the current year's limited license draw;

    b. Bighorn sheep, mountain goat, and moose licenses;

    c. All public Ranching for Wildlife licenses.

10. The following limited licenses returned for refund or preference point restoration will be reissued by the Division manually:

    a. Turkey, deer, elk, pronghorn and bear hunt codes which required five (5) or more resident preference points to draw as determined by the current year's limited license draw;

    b. Bighorn sheep, mountain goat, and moose licenses;

    c. All public Ranching for Wildlife licenses.

    If the next in line regular draw list applicant accepts one of the aforementioned first choice licenses that has been returned and reissued, all accumulated preference points for that species become void. If a license cannot be manually reissued to one of the first five people on the regular draw list, the license will become available for reissue using the current leftover license list. Public Ranching for Wildlife licenses will not be reissued within fourteen (14) days of the start date for the respective hunt code or be available for sale off the leftover license list.

11. Requests for refunds after the opening of the season will be accompanied by a signed affidavit that the license has not been used and circumstances precluded the licensee from being able to use the license. In addition, to be eligible for a refund the failure to apply for a refund less than thirty (30) days prior to the opening day of the season for which the license was issued cannot be due to a lack of diligence on the part of the licensee. The Division's License Administration Manager will render a decision on the refund request on behalf of the Division and the Commission and such decision shall constitute final agency action. Circumstances for which reimbursement will be considered shall be limited to:

    a. Extreme medical circumstances involving the license holder or a license holder's immediate family member;

b. Death of the license holder or death of a license holder's immediate family member;

c. Active and reserve members of the United States armed forces whose military orders overlap with the season dates of the returned license; or

d. Individuals on jury duty whose jury duty service overlaps with the season dates of the returned license.

B. Other Refunds

1. Refunds or antlerless licenses may be issued in any unit approved by the Division for the same species in the same year to hunters who harvest a deer, elk or moose in which Chronic Wasting Disease (CWD) is detected through the Division's CWD monitoring or testing programs. Where there is no open season or insufficient time remains to reasonably exercise the benefits of a license granted in the same year, the Division may issue the licensee an antlerless license for the same species in the following year in the same Game Management Unit where the CWD detected animal was harvested, or if antlerless hunting is not permitted in the applicable GMU, the Division may designate a substitute GMU. If the season closes prior to October 31 in the unit, the license will be valid through October 31. The provisions of this regulation shall apply to any hunter who harvests a moose after January 1, 2006 in which CWD is detected. Licenses issued pursuant to this provision shall not be considered part of the quota otherwise established by the Commission for that GMU.

2. Except for cases of Division error, no refunds shall be issued for any annual license, one-day, or five-day license, mountain lion license or preference point fee.

C. Restoration of Preference Points

1. License preference points used to obtain the license will not be restored except as follows:

   a. No later than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening day of the season for all other licenses, preference points may be restored to the pre-drawing level in lieu of a refund at the licensee's request.

   b. Less than fourteen (14) days prior to the opening day of the applicable turkey season for turkey licenses or thirty (30) days prior to the opening of the season for all other licenses, the License Administration Manager may restore license preference points to the pre-drawing level and/or issue a monetary refund if any of the following circumstances prevent the license holder from exercising the intended benefits of the license::

      1. Extreme medical circumstances involving the license holder or a license holder's immediate family member;

      2. Death of a license holder's immediate family member;

      3. Active and reserve members of the United States armed forces whose military orders overlap with the season dates of the returned license; or

4. Individuals on jury duty whose jury duty service overlaps with the season dates of the returned license.

D. Requests for refunds and/or restoration of license preference points due to extreme medical circumstances involving the license holder or a license holder's immediate family member, the death of a license holder's immediate family member, military orders that prevents the service member from exercising the intended benefits of the license or jury duty will be accompanied by sufficient evidence demonstrating that the license has not been used and circumstances precluded the licensee from being able to use the license. In addition, sufficient documentation is required to prove extreme medical circumstances, death, military orders or jury duty service.

E. Time Restriction

1. A refund or preference point restoration will be denied when the request is submitted more than thirty (30) days after the opening of the season for which the license was issued. Provided further that all time limits will be extended for active and reserve members of the United States armed forces whose military service requirements precluded their application for a refund or preference point restoration within said periods.

2. When additional documentation is requested and required by the Division to approve a refund and/or restoration of preference points request, the requestor will have thirty (30) days from the mailing date indicated on the notification letter to submit all the required documentation. If required documentation is not submitted prior to the 30-day deadline, the request will be considered closed and denied. No requests from the previous year will be considered after January 31, annually.

F. Director Disaster Relief Authority

1. When, in the determination of the Director, existing Parks and Wildlife regulations will have a significant negative impact following a natural disaster that displaces persons from their homes, or closes areas to public access and results in a time-critical demand for use of park resources or a complete (or near complete) loss of hunting opportunity, the Director is authorized to take emergency administrative actions, including, but not limited to:

   a. Issuance of license fee refunds.

   b. Restoration of preference points.

   c. Exchange of big game hunting licenses for leftover or over-the-counter licenses.

   d. Issue similar guaranteed licenses for another license year.

   e. Suspension of length of stay camping limits on Division-owned or controlled properties.

   f. Imposition of administrative requirements associated with the application for relief granted under this section.

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Tracking number: 2021-00626

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

Colorado Parks and Wildlife (406 Series, Wildlife)

on 11/18/2021

2 CCR 406-16

CHAPTER W-16 - PARKS AND WILDLIFE PROCEDURAL RULES

The above-referenced rules were submitted to this office on 11/22/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 14:08:57

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-3

Rule title

3 CCR 702-3 FINANCIAL ISSUES 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-3

FINANCIAL ISSUES

Amended Regulation 3-3-3

CREDIT FOR REINSURANCE

Section 1 Authority

This regulation is promulgated pursuant to the authority granted by Sections 10-1-109(1), 10-3-529(4), 10-3-705, 10-6-129, 10-14-505 and 10-16-109, and provides standards regarding reinsurance agreements under Sections 10-3-701 et. seq., 10-6-122, 10-11-113, 10-14-304, 8-44-204, 8-44-205, 8-45-117, 24-10-115.5, and 29-13-102, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to set forth rules and procedural requirements that the Commissioner deems necessary to carry out the provisions of the Section 10-3-701 et. seq., C.R.S., regarding the conditions and circumstances under which a domestic insurer may reduce their liabilities, or establish an asset associated with risks reinsured. The actions and information required by this regulation are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state. This regulation addresses credit for reinsurance associated with a valid reinsurance

contract. The criteria as to what constitutes a valid reinsurance agreement, limitations on the amount of credit that can be claimed and other requirements as regards financial reporting are addressed in Colorado Insurance Regulations 3-3-4 and 3-3-5.

Section 3 Applicability

This regulation shall apply to all licensed insurers, as well as to each domestic group captive insurer, fraternal benefit society, health maintenance organization, licensed self-insurance pool, prepaid dental care plan organization, non-profit hospital, medical-surgical and health service corporation, Pinnacol Assurance, interinsurance exchange/reciprocal exchange and title insurance company.

Section 4 Credit for Reinsurance—Reinsurer Licensed in this State

Pursuant to Section 10-3-702(2), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

Section 5 Credit for Reinsurance—Accredited Reinsurers

A. Pursuant to Section 10-3-702(3), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must:

1. File a properly executed Form AR-1 (attached as an exhibit to this regulation) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

2. File with the Commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

3. File annually with the Commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

4. Maintain a surplus as regards policyholders in an amount not less than $20,000,000, or obtain the affirmative approval of the Commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

B. If the Commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Commissioner may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the Commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Commissioner.

Section 6 Credit for Reinsurance—Reinsurer Domiciled in Another State

A. Pursuant to Section 10-3-702(4), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

1. Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under Section 10-3-701, et, seq., and this regulation;

2. Maintains a surplus as regards policyholders in an amount not less than $20,000,000; and

3. Files a properly executed Form AR-1 with the Commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the Commissioner determines equal or exceed the standards of Section 10-3-701, et. seq., and this regulation.

Section 7 Credit for Reinsurance—Reinsurers Maintaining Trust Funds

A. Pursuant to Section 10-3-702(5), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in Section 10-3-704(2), C.R.S., for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the Commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000, except as provided in Paragraph (2) of this subsection.

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

3. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

a. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

b. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

c. In addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

4. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Commissioner:

a. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

b. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

5. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

a. Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

b. Maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and

c, File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

6. Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the Commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

1. The trust instrument shall provide that:

a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;

c. The trust shall be subject to examination as determined by the Commissioner;

d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

e. No later than February 28 of each year the trustee of the trust shall report to the Commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

2. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

a. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

b. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

c. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

D. For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

    a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

    b. Reserves for losses reported and outstanding;

    c. Reserves for losses incurred but not reported;

    d. Reserves for allocated loss expenses; and

    e. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:

    a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

    b. Aggregate reserves for accident and health policies;

    c. Deposit funds and other liabilities without life or disability contingencies; and

    d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to Section 10-3-702, C.R.S., and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Section 10-3-704(1), C.R.S., clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Section 10-3-704(1), C.R.S., and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Paragraphs (1)(e), (3), (6)(b) or (7) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Section 10-3-702, C.R.S. shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

    a. The United States or by any agency or instrumentality of the United States;

    b. A state of the United States;

    c. A territory, possession or other governmental unit of the United States;

    d. An agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise

appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions of Paragraph (1), (2) or (3) of this subsection shall be subject to the following additional limitations:

a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

b. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

c. The aggregate total investment in mortgage-related securities shall not exceed twenty- five percent (25%) of the assets of the trust; and

d. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution’s obligations are eligible as investments under Paragraphs (2)(a) and (2)(c) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

5. As used in this regulation:

a. “Mortgage-related security” means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(1) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(a) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Sections 1709 and 1715b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Section 1703; or

(2) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection;

b. “Promissory note,” when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity interests

a. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

(1) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent (1%) of

the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust;

7. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

8. Investment companies

a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

(1) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Paragraph (1), (2) or (3) of this subsection or invests in securities that are determined by the Commissioner to be substantively similar to the types of securities set forth in Paragraph (1), (2) or (3) of this subsection; or

(2) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Paragraph (6)(a) of this subsection;

b. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(1) An investment in an investment company qualifying under Subparagraph (a)(1) of this paragraph shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(2) Investments in an investment company qualifying under Subparagraph (a)(2) of this paragraph shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Paragraph (6)(a) of this subsection.

9. Letters of Credit

a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 11 of this regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Section 8 Credit for Reinsurance—Certified Reinsurers

A. Pursuant to Section 10-3-702(6), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Commissioner. The security shall be in a form consistent with the provisions of Section 10-3-702(6), C.R.S., and Section 10-3-703, et. seq., and Sections 12, 13, or 14 of this regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1.

Ratings	Security Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The Commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as

reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

a. Line 1: Fire

b. Line 2: Allied Lines

c. Line 3: Farmowners multiple peril

d. Line 4: Homeowners multiple peril

e. Line 5: Commercial multiple peril

f. Line 9: Inland Marine

g. Line 12: Earthquake

h. Line 21: Auto physical damage

5. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification Procedure.

1. The Commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

2. The Commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The Commissioner shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

a. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Commissioner pursuant to Subsection C of this section.

b. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association

including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.

c. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(1) Standard & Poor's;

(2) Moody's Investors Service;

(3) Fitch Ratings;

(4) A.M. Best Company; or

(5) Any other Nationally Recognized Statistical Rating Organization.

d. The certified reinsurer must comply with any other requirements reasonably imposed by the Commissioner.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A

Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B- C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

c. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

d. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as exhibits to this regulation);

e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

f. Regulatory actions against the certified reinsurer;

g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subparagraph (h) below;

h. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the Commissioner will consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

k. Any other information deemed relevant by the Commissioner.

5. Based on the analysis conducted under Subparagraph (4)(e) of a certified reinsurer's reputation for prompt payment of claims, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Commissioner shall, at a minimum, increase

the security the certified reinsurer is required to post by one rating level under Subparagraph (4)(a) if the Commissioner finds that:

a. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed $100,000 for each cedent; or

b. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds $50,000,000.

6. The assuming insurer must submit a properly executed Form CR-1 (attached as an exhibit to this regulation) as evidence of its submission to the jurisdiction of this state, appointment of the Commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under Section 24-72-204(3)(a)(IV), C.R.S. and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

a. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

b. Annually, Form CR-F or CR-S, as applicable;

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subsection (d) below;

d. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the two (2) years filed with the certified reinsurer's supervisor;

e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

g. Any other information that the Commissioner may reasonably require.

8. Change in Rating or Revocation of Certification.

a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner shall upon written notice assign a new rating to

the certified reinsurer in accordance with the requirements of Subparagraph (4)(a).

b. The Commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

c. If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Commissioner, the Commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

d. Upon revocation of the certification of a certified reinsurer by the Commissioner, the assuming insurer shall be required to post security in accordance with Section 11 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the Commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

1. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Commissioner shall publish notice and evidence of such recognition in an appropriate manner. The Commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Commissioner, include but are not limited to the following:

a. The framework under which the assuming insurer is regulated.

b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Commissioner in particular.

f. The history of performance by assuming insurers in the domiciliary jurisdiction.

g. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

i. Any other matters deemed relevant by the Commissioner.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Commissioner shall consider this list in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification with respect to the criteria provided under Subsection 8C(2)(a) to (i).

4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR- 1 and such additional information as the Commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of any change in its status or rating within 10 days after receiving notice of the change.

3. The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subsection B(8) of this section.

4. The Commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Commissioner suspends or revokes the certified reinsurer's certification in accordance with Subsection B(8) of this

section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

E. Mandatory Funding Clause. In addition to the clauses required under Section 15, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Section 9 Credit for Reinsurance—Reciprocal Jurisdictions

A. Pursuant to Section 10-3-702(6.5), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction, and which meets the other requirements of this regulation.

B. A "Reciprocal Jurisdiction" is a jurisdiction, as designated by the Commissioner pursuant to Subsection D, that meets one of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

3. A qualified jurisdiction, as determined by the Commissioner pursuant to Section 10-3-702(6), C.R.S. and Section 8C, which is not otherwise described in Paragraph (1) or (2) above and which the Commissioner determines meets all of the following additional requirements:

a. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

b. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

c. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by

the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the Commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

d. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Commissioner in accordance with a memorandum of understanding or similar document between the Commissioner and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a Reciprocal Jurisdiction.

2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, and confirmed as set forth in Subsection C(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:

a. No less than $250,000,000; or

b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(1) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000; and

(2) A central fund containing a balance of the equivalent of at least $250,000,000.

3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

a. If the assuming insurer has its head office or is domiciled in a Reciprocal Jurisdiction as defined in Section 9B(1), the ratio specified in the applicable covered agreement;

b. If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in Section 9B(2), a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

c. If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in Section 9B(3), after consultation with the Reciprocal Jurisdiction and considering any recommendations published through the NAIC Committee Process, such

solvency or capital ratio as the Commissioner determines to be an effective measure of solvency.

4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (attached as an exhibit to this regulation), of its agreement to the following:

   a. The assuming insurer must agree to provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in Paragraphs (2) or (3) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

   b. The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the Commissioner as agent for service of process.

      (1) The Commissioner may also require that such consent be provided and included in each reinsurance agreement under the Commissioner's jurisdiction.

      (2) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

   c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

   d. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

   e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the Commissioner and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of Section 10-3-702(6), C.R.S., Section 10-3-703, C.R.S. and Section 12, 13 or 14 of this regulation. For purposes of this regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

   f. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in Paragraph (5) of this subsection.

5. The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, the following documentation to the Commissioner:

   a. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

   b. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

   c. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

   d. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in Paragraph (6) of this subsection.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

   a. More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the Commissioner;

   b. More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100,000, or as otherwise specified in a covered agreement; or

   c. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm to the Commissioner on an annual basis that the assuming insurer complies with the requirements set forth in Paragraphs (2) and (3) of this subsection.

8. Nothing in this provision precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

D. The Commissioner shall timely create and publish a list of Reciprocal Jurisdictions.

1. A list of Reciprocal Jurisdictions is published through the NAIC Committee Process. The Commissioner's list shall include any Reciprocal Jurisdiction as defined under Section 9B(1) and (2), and shall consider any other Reciprocal Jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of Reciprocal Jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

2. The Commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a Reciprocal Jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee Process, except that the Commissioner shall not remove from the list a Reciprocal Jurisdiction as defined under Section 9B(1) and (2). Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to Section 10-3-701 et. seq., C.R.S. or this regulation.

E. The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

1. If an NAIC accredited jurisdiction has determined that the conditions set forth in Subsection C have been met, the Commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The Commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of Subsection C.

2. When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the Commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

F. If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 11.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of Section 11.

G. Before denying statement credit or imposing a requirement to post security with respect to Section 9F of this regulation or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in Subsection C of this section;

2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of 90 days or less, as set out in Paragraph (2), if the Commissioner determines that no or insufficient action was taken by the assuming insurer, the Commissioner may impose any of the requirements as set out in this subsection; and

4. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

H. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

Section 10 Credit for Reinsurance Required by Law

Pursuant to Section 10-3-702(7), C.R.S., the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 10-3-702(2,3,4,5,6, or 6.5), C.R.S., but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and any lawful national government.

Section 11 Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 through 10

A. Pursuant to Section 10-3-703, C.R.S., the Commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 10-3-702, et. seq., C.R.S. in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Section 10-3-704(2), C.R.S. This security may be in the form of any of the following:

1. Cash;

2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

3. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Section 10-3-704(1), C.R.S., effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

4. Any other form of security acceptable to the Commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section -15 and the applicable portions of Sections 12, 13 or 14 of this regulation have been satisfied.

Section 12 Trust Agreements Qualified under Section 11

A. As used in this section:

1. “Beneficiary” means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

2. “Grantor” means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

3. “Obligations,” as used in Subsection B(11) of this section means:

a. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

b. Reserves for reinsured losses reported and outstanding;

c. Reserves for reinsured losses incurred but not reported; and

d. Reserves for allocated reinsured loss expenses and unearned premiums.

B. Required conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution as defined in Section 10-3-704(2), C.R.S.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee’s office in the United States.

4. The trust agreement shall provide that:

a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

b. No other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

c. It is not subject to any conditions or qualifications outside of the trust agreement; and

d. It shall not contain references to any other agreements or documents except as provided for in Paragraphs (11) and (12) of this subsection.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to:

a. Receive assets and hold all assets in a safe place;

b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

d. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

11. Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for the assuming insurer’s share under the specific reinsurance agreement regarding any losses and allocated loss

expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution as defined in Section 10-3-704(2), C.R.S. apart from its general assets, in trust for such uses and purposes specified in Subparagraphs (a) and (b) above as may remain executory after such withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of Section 11 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for:

(1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(2) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs (a) and (b) of this paragraph as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value

and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

C. Permitted conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection D(1)(b) of this section.

4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. Additional conditions applicable to reinsurance agreements:

1. A reinsurance agreement may contain provisions that:

a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding

insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(b) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(2) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement also may contain provisions that:

a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(1) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(2) After withdrawal and transfer, the current fair market value of the trust account is no less than 102 percent of the required amount.

b. Provide for the return of any amount withdrawn in excess of the actual amounts required for Paragraph (1)(d) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on such amounts;

c. Permit the award by any arbitration panel or court of competent jurisdiction of:

(1) Interest at a rate different from that provided in Subparagraph (b) of this paragraph;

(2) Court or arbitration costs;

(3) Attorney's fees; and

(4) Any other reasonable expenses.

E. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

F. Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 2015 will continue to be acceptable until January 1, 2016, at which time the agreements will have to fully comply with this regulation for the trust agreement to be acceptable.

G. The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection A of this section shall not be construed to affect any actions or rights that the Commissioner may take or possess pursuant to the provisions of the laws of this state.

Section 13 Letters of Credit Qualified under Section 11

A. The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in Section 10-3-704(1), C.R.S. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Subsection H(1) of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

C. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

D. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days notice prior to expiration date or nonrenewal.

E. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of Publication 600 or any other successor publication, occur.

G. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in Subsection A of this section, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The “evergreen clause” shall provide for thirty (30) days notice prior to expiration date for nonrenewal.

H. Reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(1) To pay or reimburse the ceding insurer for:

(a) The assuming insurer’s share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(b) The assuming insurer’s share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in Subsection H(1)(b)(1) of this section as may remain after withdrawal and for any period after the termination date.

c. All of the provisions of Paragraph (1) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in Paragraph (1) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subparagraph (1)(b) of this subsection; or

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

Section 14 Other Security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section 15 Reinsurance Contract

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 4, 5, 6, 7, 8, 9 or 11 of this regulation or otherwise in compliance with Section 10-3-702, et. seq. after the adoption of this regulation unless the reinsurance agreement:

A. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to Section 10-3-531, C.R.S.;

B. Includes a provision pursuant to Section 10-3-702, et. seq., whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and

C. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

Section 16 Contracts Affected

All new and renewal reinsurance transactions entered into after January 1, 2015, shall conform to the requirements of Sections 10-3-701 through 10-3-706, C.R.S., and this regulation if credit is to be given to the ceding insurer for such reinsurance.

Section 17 Severability

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

Section 18 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 19 Effective Date

This regulation shall become effective on January 1, 2022.

Section 20 History

Regulation effective January 1, 2007.
Repealed and repromulgated regulation effective January 1, 2015.
Amended regulation effective January 1, 2022.

FORM AR-1

CERTIFICATE OF ASSUMING

INSURER

I, _____, _____
_____ (name of officer)
(title of officer)

of_____, the assuming
insurer (name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

_____, hereby certify
that (name of state)

_____("Assuming
Insurer"): (name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in_____
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)
as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of_____to examine
(ceding insurer's state of
domicile) its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____
(ceding insurer's state of domicile)
reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____

_____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer (name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____, in order to be considered for approval in this state, hereby certify that (name of state)

_____ ("Assuming Insurer"): (name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____ (ceding insurer's state of domicile) for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____ (ceding insurer's state of domicile) as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with Section 10-3-701, et. seq.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with Colorado Insurance Regulation 3-3-3(Section 8(B)(7)(d)).

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: _____

_____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming
insurer (name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____, in order to
(name of state)

be considered for approval in this state, hereby certify that _____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in Colorado for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the Commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

2. Designates the Insurance Commissioner of Colorado as its lawful attorney in and for the Colorado upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.

5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in Colorado. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the Commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.

6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.

7. Agrees to provide the documentation in accordance with Colorado Insurance Regulation 3-3-3(Section 9(C)(5)), if requested by the Commissioner.

Dated: _____

_____
(name of assuming insurer)

BY:

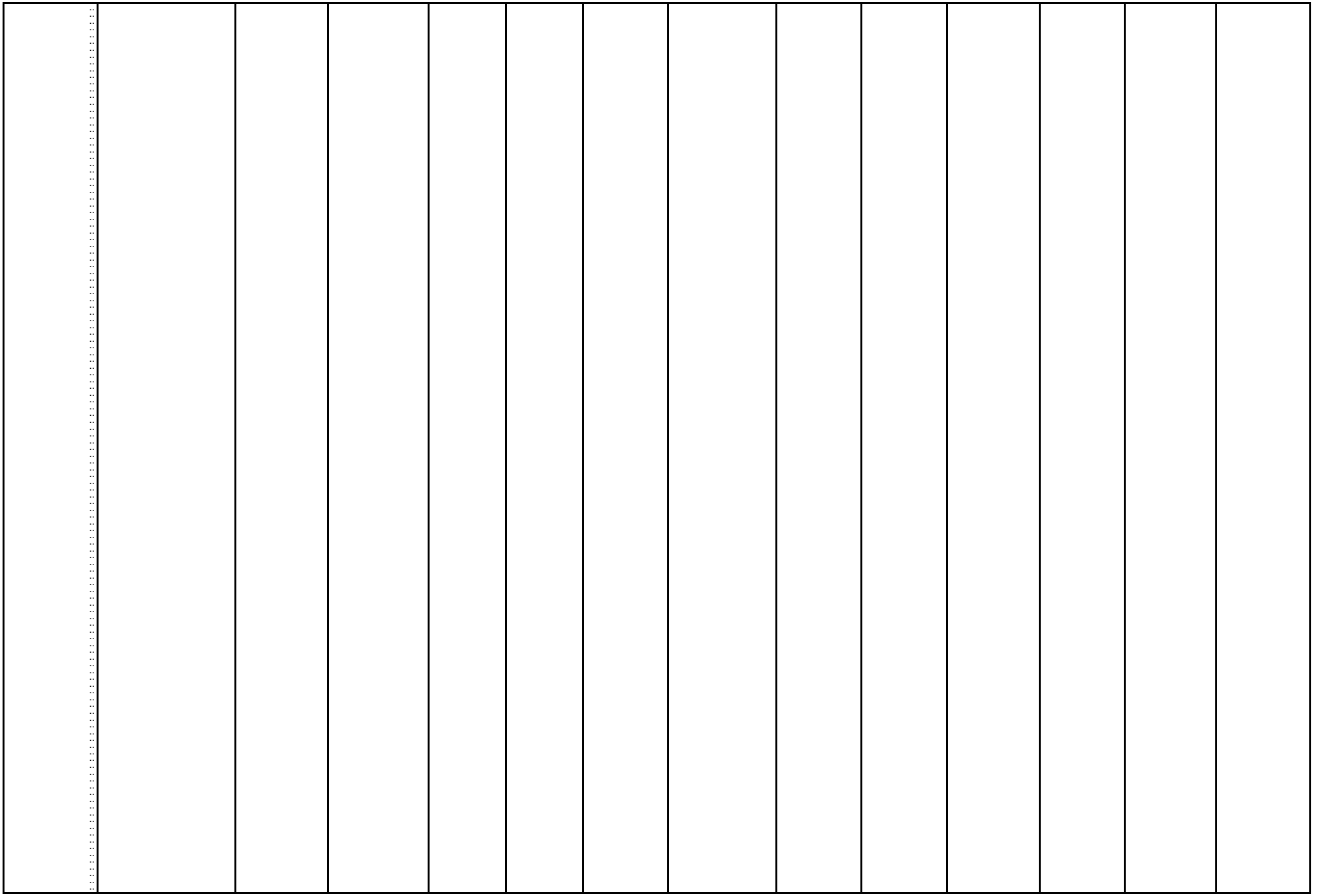
_____
(name of officer)

_____
(title of officer)

Form CR-F – PART 1

Assumed Reinsurance as of December 31, Current Year (000 Omitted)

1 2	3	4	5	Reinsurance On			9	10	11	12	13	14	15
				6	7	8							
Company Code or ID Number	Name of Reinsured	Domiciliary Jurisdiction	Assumed Premium	Paid Losses and Loss Adjustment Expenses	Known Case Losses and LAE	Cols. 6 + 7	Contingent Commissions Payable	Assumed Premiums Receivable	Unearned Premium	Funds Held By or Deposited With Reinsured Companies	Letters of Credit Posted	Amount of Assets Pledged or Compensating Balances to Secure Letters of Credit	Amount of Assets Pledged or Collateral Held in Trust



9999999 Totals													

Form CR-F – PART 2

Ceded Reinsurance as of December 31, Current Year (000 Omitted)

1	2	3	4	5	6	Reinsurance Recoverable On									Reinsurance Payable		18	19
						7	8	9	10	11	12	13	14	15	16	17		
Company Code or ID Number		Name of Reinsurer	Domiciliary Jurisdiction	Reinsurance Contracts Ceding 75% or More of Direct Premiums Written	Reinsurance Premiums Ceded	Paid Losses	Paid LAE	Known Case Loss Reserves	Known Case LAE Reserves	IBNR Loss Reserves	IBNR LAE Reserves	Unearned Premiums	Contingent Commissions	Cols. 7 through 14 Totals	Ceded Balances Payable	Other Amounts Due to Reinsurers	Net Amount Recoverable From Reinsurers Cols. 15 – [16 + 17]	Funds Held by Company Under Reinsurance Treaties
9999999 Totals																		

Form CR-S – PART 1 – SECTION 1

Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsured Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Reinsured	5 Location	6 Type of Reinsurance Assumed	7 Amount of In Force at End of Year	8 Reserve	9 Premiums	10 Reinsurance Payable on Paid and Unpaid Losses	11 Modified Coinsurance Reserve	12 Funds Withheld Under Coinsurance
Totals											

Form CR-S – PART 1 – SECTION 2

Reinsurance Assumed Accident and Health Insurance Listed by Reinsured Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Reinsured	5 Domiciliary Jurisdiction	6 Type of Reinsurance Assumed	7 Premiums	8 Unearned Premiums	9 Reserve Liability Other Than For Unearned Premiums	10 Reinsurance Payable on Paid and Unpaid Losses	11 Modified Coinsurance Reserve	12 Funds Withheld Under Coinsurance
Totals											

Form CR-S – PART 2

Reinsurance Recoverable on Paid and Unpaid Losses Listed by Reinsuring Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Paid Losses	7 Unpaid Losses
Totals—Life, Annuity and Accident and Health						

Form CR-S – PART 3 – SECTION 1

Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities
Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31,
Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Type of Reinsurance Ceded	7 Amount in Force at End of Year	Reserve Credit Taken		10 Premiums	Outstanding Surplus Relief		13 Modified Coinsurance Reserve	14 Funds Withheld Under Coinsurance
							8 Current Year	9 Prior Year		11 Current Year	12 Prior Year		
Totals													

Form CR-S – PART 3 – SECTION 2

Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Type	7 Premiums	8 Unearned Premiums (Estimated)	9 Reserve Credit Taken Other than for Unearned Premiums	Outstanding Surplus Relief		12 Modified Coinsurance Reserve	13 Funds Withheld Under Coinsurance
									10 Current Year	11 Prior Year		
Totals												

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00630

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

Division of Insurance

on 11/09/2021

3 CCR 702-3

FINANCIAL ISSUES

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 10:59:16

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor 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 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE ACCIDENT AND HEALTH

Amended Regulation 4-2-74

CONCERNING DATA REPORTING REQUIREMENTS FOR CARRIERS' OUT-OF-NETWORK REIMBURSEMENTS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), 10-16-109, and 10-16-704(14), and 10-16-708, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish data reporting requirements for carriers concerning the use of out-of-network providers and facilities and the impact on premium affordability as required by HB 19-1174, 10-16-704(14), C.R.S.

Section 3 Applicability

This regulation applies to carriers offering individual, small group and large group health benefit plans, including student health plans and managed care plans, that receive bills from out-of-network providers and facilities on or after January 1, 2020, and that are subject to the requirements of 10-16-704(3)(d) and (5.5), C.R.S.

Section 4 Definitions

A. "Ambulance services" shall have the same meaning as found at § 25-3.5-103(3), C.R.S., and for the purposes of this regulation, does not include publicly funded fire agencies.

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

C. "Facility type" means, for the purposes of this regulation and reporting purposes, the following facility categories:

1. Hospitals licensed pursuant to part 1 of article 3 of title 25; and,

2. Freestanding Emergency Departments, as defined at § 25-1.5-114(5)(a), C.R.S.

D. “Geographic area” means, for the purposes of this regulation, the geographic area established by the Division for out-of-network reimbursements pursuant to § 10-16-704, C.R.S. and found in Colorado Insurance Regulation 4-2-66.

E. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.\

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

G. “Publicly funded fire agency” means, for the purposes of this regulation, an ambulance service provider that has been established as part of a fire protection district, health services district, municipality, special tax district, or other government entity.

H. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.

Section 5 Data Reporting Requirements for Out-of-network Reimbursements

A. On or before March 1 of each year, carriers shall report the data in Sections 5.B through 5.F for January 1 through December 31 of the preceding year.

B. Provider data

Carriers shall provide the Division with the following aggregated out-of-network claims data, by geographic area, concerning claims processed for non-emergency services received at an in-network facility by an out-of-network provider, and concerning claims processed for emergency services received at an out-of-network facility, that include:

1. The total amount charged by and paid to the following out-of-network provider types:

   a. Anesthesiologists;

   b. Radiologists;

   c. Surgical Assistants;

   d. Emergency Room Physicians; and

   e. Pathologists.

2. The total amount charged by and paid to the top five out-of-network provider types, by total spend, exclusive of the provider types identified in Section 5.B.1., that with Section 5.B.2. results in reporting on a total of ten out-of-network provider types;

3. The number of claims denied or resolved by the out-of-network provider types identified in Section 5.B.1. and 2., including a list of reasons for claims denial and the number of claims denied for each reason based on the below classifications;

   a. Duplicate charge; claims denied because of a duplicate charge from the provider.

   b. Enrollment and eligibility: claims denied because the member was no longer eligible, member had coverage with another carrier, or member failed to make a premium payment.

c. Missing or incorrect claim: claims denied because of an invalid diagnosis code, incomplete information, claim was filed outside of a specified time limit, incorrectly billed, or because the provider was unresponsive.

d. Prior authorization: claims denied because the service was not authorized by the carrier or authorization was denied;

e. Benefit issue: claims denied because the service was determined not medically necessary, or the claim was incorrectly submitted without being bundled with another service; the service or procedure was not covered, or the service was outside the providers' scope of practice.

4. The total number of out-of-network claims processed;

5. The total number and amount allowed prior to the application of the covered person's cost-sharing requirements for each of the payment methodologies contained in § 10-16-704(3)(d), C.R.S., including the number and amount of any negotiated alternative reimbursements;

6. The ratio of total out-of-network claims to in-network claims processed by number and dollar amount;

7. The ratio of total out-of-network claims to in-network claims processed by number. The ratio of total out-of-network claims to in-network claims processed by dollar amount as a percentage of Medicare reimbursement; and,

8. The ratio of total out-of-network claims to in-network claims for the provider types identified in Section 5.B.1. and 2.

C. Facility Data

Carriers shall provide the Division with the following data elements, by geographic area, concerning claims for covered emergency services at out-of-network facilities:

1. For services, by facility type:

a. Aggregated claims data that includes:

(1) The total amount charged;

(2) The total amount paid;

(3) The total number of claims denied or resolved; and,

(4) A list of reasons for claims denial and the number of claims denied for each reason based on the below classifications:

(a) Duplicate charge; claims denied because of a duplicate charge from the provider;

(b) Enrollment and eligibility: claims denied because the member was no longer eligible, member had coverage with another carrier, or member failed to make a premium payment;

(c) Missing or incorrect claim: claims denied because of an invalid diagnosis code, incomplete information, claim was filed outside of a specified time limit, incorrectly billed, or because the provider was unresponsive;

(d) Prior authorization: claims denied because the service was not authorized by the carrier or authorization was denied;

(e) Benefit issue: claims denied because the service was determined not medically necessary, or the claim was incorrectly submitted without being bundled with another service; the service or procedure was not covered, or the service was outside the providers' scope of practice.

b. The total number of out-of-network claims processed;

c. The total number and amount allowed prior to the application of the covered person's cost-sharing requirements for each of the payment methodologies contained in § 10-16-704(5.5)(b) C.R.S., including the number and amount of any negotiated alternative reimbursements;

d. The ratio of total out-of-network claims to in-network claims processed by number and dollar amount; and,

e. The ratio of total out-of-network claims to in-network claims processed by number. The ratio of total out-of-network claims to in-network claims processed by dollar amount as a percentage of Medicare reimbursement.

2. The financial data elements specified in this Section 5.C. for Denver Health and Hospital Authority shall be submitted in a separate report.

D. Ambulance Service Provider Data

Carriers shall provide the Division with the following data elements, by geographic area, concerning claims from out-of-network ambulance service providers processed in the previous calendar year, excluding those ambulance services provided by publicly funded fire agencies, for covered emergency services as defined in § 10-16-704(5.5)(e)(II), C.R.S.:

1. De-identified aggregated claims data that includes:

a. The total amount charged;

b. The total amount paid; and

c. The total number of claims denied or resolved.

2. The total number of out-of-network claims processed;

3. The total number and amount allowed prior to the application of the covered person's cost-sharing requirements for each of the methodologies contained in Colorado Insurance Regulation 4-2-66, Concerning the Payment Methodology for Non-Contracted Service Agencies that Provide Emergency Ambulance Services, including the number and amount of any negotiated alternative reimbursements; and,

4. The ratio of total out-of-network claims to in-network claims processed by number. The ratio of total out-of-network claims to in-network claims processed by dollar amount as a percentage of Medicare reimbursement.

5. Total number of unique contracted ambulance service providers and unique non-contracted ambulance service providers who submitted out-of-network claims to the carrier for payment.

E. Network Data

Each carrier shall submit the following data elements, by geographic area, regarding its health benefit plan networks marketed during the immediately prior plan year:

1. A narrative description of how the carrier's networks have changed due to the passage of HB 19-1174 and the factors that contributed to those changes, including a description of the changes in carrier's networks for providers listed in Section 5.B.1. and ambulance service providers.

2. Total number of unique non-contracted providers who submitted out-of-network claims to the carrier for payment by provider type, including ambulance service providers;

3. Total number of contracted providers for each unique provider type reported in sections 5.B.1 and 2.; and

4. Beginning with the report due by December 31, 2020, an explanation of the changes in the previous year's report for the numbers currently being reported for sections 5.E.2. and 3.

F. Premium Impact Comparison and Analysis

Carriers shall provide a detailed analysis of the impact of using out-of-network providers and facilities on premium affordability for consumers based on the data reported in Section 5., presented by market (individual, small group, large group), and by geographic area. The premium analysis shall compare premiums to determine the premium impact resulting from the passage of HB 19- 1174, and what the premium impact would be if that bill had not been passed, and must include, at a minimum:

1. Estimated total dollar amount of savings for out-of-network claims due to HB 19-1174;

2. An explanation of how total out-of-network paid claims savings due to the passage of HB19-1174 impacted premiums for consumers.

Section 6 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 7 Enforcement

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

Section 8 Effective Date

This amended regulation shall be effective December 30, 2021

Section 9 History

New regulation effective December 15, 2020.
Amended regulation effective December 30, 2021

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Tracking number: 2021-00516

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

Division of Insurance

on 11/05/2021

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 11/05/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 10:37:20

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor 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 01/15/2022

Effective date

01/15/2022

DEPARTMENT OF REGULATORY AGENCIES
Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Amended Regulation 4-2-43

ENROLLMENT PERIODS RELATING TO INDIVIDUAL AND GROUP HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-105(2)(b), 10-16-105.7(1)(e), 10-16-105.7(3)(a)(II)(G), 10-16-105.7(3)(b)(II)(F), 10-16-105.7(3)(c), 10-16-108.5(8), and 10-16-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules governing enrollment periods for individual and group health benefit plans in accordance with Article 16 of Title 10 of Colorado Revised Statutes and the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the “Affordable Care Act” (ACA).

Section 3 Applicability

This regulation shall apply to all carriers offering individual and/or group health benefit plans subject to the individual and/or group laws of Colorado and the requirements of the ACA.

Section 4 Definitions

A. “Calendar year” means, for the purpose of this regulation, a year beginning on January 1 and ending on December 31.

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

C. “Creditable coverage” shall have the same meaning as found at § 10-16-102(16), C.R.S.

D. “Days” mean, for the purpose of this regulation, calendar days, not business days.

E. “Designated beneficiary agreement” shall have the same meaning as found at § 15-22-103(2), C.R.S.

F. “Exchange” shall have the same meaning as found at § 10-16-102(26), C.R.S.

G. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

H. “Qualified health plan” or “QHP” means, for the purposes of this regulation, a health benefit plan that has been reviewed and approved by the Division of Insurance as meeting the standards necessary to be considered an ACA-compliant health benefit plan.

I. “Qualified individual” means, for the purpose of this regulation, an individual who has been determined eligible to enroll through the Exchange in a QHP in the individual market.

J. “Short-term limited duration health insurance policy” or “short-term policy” shall have the same meaning as found at § 10-16-102(60), C.R.S.

Section 5 Individual Enrollment Periods

A. Carriers offering individual health benefit plans must accept every eligible individual who applies for coverage, agrees to make the required premium payments, and to abide by the reasonable provisions of the plan, although carriers may choose to restrict enrollment to open or special enrollment periods.

B. Carriers offering individual health benefit plans must display continuously and prominently on their website:

1. Notice of open enrollment dates;

2. Notice of special enrollment for qualifying and triggering events;

3. Notice of the enrollment periods for each qualifying and triggering event; and

4. Instructions on how to enroll.

C. Open enrollment periods.

1. The open enrollment period for plans effective on or after January 1 shall begin on November 1 of the prior year and extend through January 15 of the immediately following year.

2 Carriers must ensure that coverage is effective on January 1 for health benefit plans purchased on or before December 15 of the open enrollment period.

3. Individual health benefit plans purchased beginning December 16 through January 15 shall be effective no later than February 1 of the plan year.

4. The benefit year for individual health benefit plans purchased during the annual open enrollment period is a calendar year.

5. During open enrollment periods, carriers must offer guarantee-issue child-only health benefit plans to all applicants under the age of 21.

D. Special enrollment periods.

Carriers must establish special enrollment periods for individuals who experience triggering events, pursuant to § 10-16-105.7, C.R.S.

1. Following a triggering event, a carrier must provide a special enrollment period of sixty (60) days.

2. When an individual is notified or becomes aware of a triggering event that will occur in the future, they may apply for enrollment in a new health benefit plan during the thirty (30) calendar days prior to the date of the triggering event, unless otherwise noted in Section 5.D.4., with coverage beginning no earlier than the day the triggering event occurs, to avoid a gap in coverage. The individual may be required to provide written documentation to support the date of the triggering event. The effective date of this enrollment must comply with the coverage effective dates found in Section 5.D.6. of this regulation.

3. When a qualified individual is notified or becomes aware of a triggering event that will occur in the future, they may apply for enrollment in a new health benefit plan during the sixty (60) calendar days prior to the date of the triggering event, with coverage beginning no earlier than the day the triggering event occurs, to avoid a gap in coverage. The individual may be required to provide written documentation to support the date of the triggering event. The effective date of this enrollment must comply with the coverage effective dates found in Section 5.D.6. of this regulation.

4. Triggering events are:

    a. An individual or their dependent involuntarily losing existing creditable coverage for any reason other than fraud, misrepresentation, or failure to pay a premium. Such individual or dependent may apply for enrollment in a new health benefit plan during the sixty (60) calendar days before the effective date of the loss of coverage;

    b. An individual or their dependent loses pregnancy-related Medicaid coverage. The date of the loss of coverage is the last day the consumer would have pregnancy-related Medicaid coverage;

    c. When an Exchange enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by state law in the state in which the divorce or legal separation occurs, or if the Exchange enrollee, or their dependent, dies;

    d. An individual or their dependent losing other coverage as described under Section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. § 301 et seq.). Such individual or dependent may apply once during a calendar year for enrollment in a new health benefit plan during the sixty (60) calendar days before and after the effective date of the loss of coverage;

    e. An individual gaining a dependent or becoming a dependent through marriage, civil union, birth, adoption, or placement for adoption, placement in foster care, through a child support order or other court order, or by entering into a designated beneficiary agreement if the carrier offers coverage to designated beneficiaries;

    f. An individual’s or their dependent’s enrollment or non-enrollment in a health benefit plan that is unintentional, inadvertent or erroneous and is the result of an error, misrepresentation, or inaction of the carrier, producer, or the Exchange;

g. An individual or their dependent demonstrating to the Commissioner that the health benefit plan in which the individual is enrolled has substantially violated a material provision of its contract in relation to the individual or their dependent;

h. A qualified individual who:

(1) Becomes newly eligible, or an Exchange enrollee who is newly eligible or ineligible, for the federal advance premium tax credit or has a change in eligibility for cost-sharing reductions available through the Exchange;

(2) Has a dependent enrolled in the same qualified health plan who is determined to be newly eligible or ineligible for the federal advance premium tax credit or has a change in eligibility for cost-sharing reductions available through the Exchange;

(3) Becomes newly eligible, or their dependent becomes newly eligible, for enrollment in a QHP through the Exchange because they have been released from incarceration;

(4) Was previously ineligible for federal premium tax credit solely because of a household income below one hundred percent (100%) of the Federal Poverty Level and who, during the same timeframe, was ineligible for Medicaid because they were living in a non-Medicaid expansion state, who either experiences a change in household income or moves to a different state resulting in the qualified individual becoming newly eligible for advance payments of the federal premium tax credit;

(5) Is enrolled, or has a dependent enrolled, in an eligible employer-sponsored plan and is determined to be newly eligible for the federal advance premium tax credit based in part on a finding that such individual is ineligible for coverage in an eligible employer-sponsored plan that provides minimum creditable coverage, including as a result of their employer discontinuing or changing coverage within the next sixty (60) days, provided the enrollee is able to terminate their existing coverage. This enrollee may apply for enrollment in a new health benefit plan during the sixty (60) calendar days before and after the effective date of the loss of coverage;

(6) Is found eligible for financial assistance for health coverage by Connect for Health Colorado, having indicated by the tax deadline on a Colorado Individual Income Tax Form that they are interested in learning more about free or reduced health coverage.

(7) Did not receive timely notice of an event that triggers eligibility for a special enrollment period, and otherwise was reasonably unaware that a triggering event described in Section 5.D.4 occurred, the Exchange must allow the individual, their dependent to select a new plan within sixty (60) days of the date that they knew, or reasonably should have known, of the occurrence of the triggering event; or

(8) Becomes eligible, or their dependent becomes eligible for advance payments of the premium tax credit and whose household income is expected to be no greater than 150 percent of the federal poverty level, may enroll in a QHP or change from one QHP to another one time per month during periods of time when the applicable individual's applicable

percentage for purposes of calculating the premium assistance amount is set at zero.

i. An individual or their dependent gaining access to other creditable coverage as a result of a permanent change in residence;

j. A parent or legal guardian dis-enrolling a dependent, or a dependent becoming ineligible for the Child Health Plan Plus (CHP+);

k. An individual becoming ineligible under the Colorado Medical Assistance Act (C.R.S. § 25.5-4-101 et seq.);

l. An individual, who was not previously a citizen, a national, or a lawfully present individual, gaining such status;

m An Indian, as defined by Section 4 of the Indian Health Care Improvement Act (25 U.S.C. § 1601 et seq.), or their dependent on the same application, may enroll in a qualified health plan or change from one qualified health plan to another one (1) time per month;

n. An individual or their dependent currently enrolled in an individual or group non-calendar year health benefit plan may apply for enrollment in a new health benefit plan during the sixty (60) calendar days prior to the effective date of the involuntary loss of coverage, which is the last day of the plan or policy year;

o. An individual who is a victim of domestic abuse or spousal abandonment, as defined by 26 C.F.R. § 1.36B-2T, including a dependent or unmarried victim within a household, who is enrolled in creditable coverage and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment;

p. An individual who is a dependent of a victim of domestic abuse or spousal abandonment, on the same application as the victim, may enroll in coverage at the same time as the victim;

q. An individual or their dependent who applies for coverage during the annual open enrollment period or due to a triggering event, and is assessed as potentially eligible for Medicaid or the Child Health Plan Plus (CHP+), and is determined ineligible for Medicaid or CHP+ either after open enrollment has ended or more than sixty (60) days after the triggering or qualifying event, or applies for coverage through a State Medicaid or CHP+ agency during the annual open enrollment period, and is determined ineligible for Medicaid or CHP+ after open enrollment has ended;

r. An individual, or their dependent, who has purchased an off-Exchange plan, adequately demonstrates to the Commissioner that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP;

s. An individual, or their dependent, who has purchased an on-Exchange plan, adequately demonstrates to the Exchange that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP;

t. An individual, or their dependent, adequately demonstrates to the Exchange, in accordance with 45 C.F.R. § 155.420(d)(9), that the individual meets other exceptional circumstances as the Exchange may provide;

u. An individual who has purchased a short-term limited duration health insurance policy in the past twelve (12) months and is unable, at the end of their policy term, to purchase another short-term policy from the same carrier due to that short-term policy carrier ceasing its sales of all short-term policies in Colorado on or after April 1, 2019. Such individuals may apply for enrollment in a new individual health benefit plan in accordance with Section 5.D. 1. and 2. of this regulation , or during the sixty (60) calendar days after the effective date of this regulation; or

v. In the event, an individual, or their dependent, is enrolled in COBRA (Consolidated Omnibus Budget Reconciliation Act) continuation coverage for which an employer is paying all or part of the premiums, or for which a government entity is providing subsidies, and the employer completely ceases its contributions to the qualified individual's or dependent's COBRA continuation coverage or government subsidies completely cease. The triggering event is the last day of the period for which COBRA continuation coverage is paid for or subsidized, in whole or in part, by an employer or government entity.

5. Special Enrollment Period Eligibility Verification and Prior Coverage Requirements

a. Carriers may establish a special enrollment period eligibility verification process to confirm that an individual applying for coverage through a special enrollment period is eligible for the requested special enrollment period. Carriers may delay the processing of an application or any enrollment documents or premium payments until after completion of verification of eligibility for the requested special enrollment period.

(1) For special enrollment period eligibility verification, carriers shall make the list of required documentation, relevant premium payment information, and the verification process and deadlines available on their website in a conspicuous manner, and encourage individuals to provide the required documentation with their request for a special enrollment.

(2) A carrier shall notify the applicant within fourteen (14) days of receipt of the application if the applicant did not provide sufficient documentation necessary to verify eligibility for the special enrollment period requested. The notice shall include information that a failure to provide the documentation will result in a denial of enrollment, and that coverage will not be issued until the required documentation confirming eligibility for the special enrollment period has been received.

(3) Individuals shall have no less than thirty (30) days from the date of the insufficient documentation notice to provide a carrier with sufficient documentation to establish eligibility for the requested special enrollment period.

(4) Carriers must make a verification determination within fourteen (14) days of receiving sufficient documentation in order to make an eligibility determination. If the verification determination is not made within the fourteen (14) day period, the individual shall be deemed verified and coverage shall be issued.

(5) A carrier must provide written notice to the individual of the outcome of the verification determination.

(6) The carrier may retroactively terminate or cancel an individual's enrollment if the carrier determines that the individual committed fraud or intentionally misrepresented their eligibility for a special enrollment period.

(7) A carrier is not required to provide thirty (30) days notice prior to denying, terminating, or cancelling an individual determined not to be eligible for a special enrollment period.

(8) A carrier shall notify an individual determined ineligible for a special enrollment period for an on-Exchange plan that they may appeal that decision with the Exchange, and the carrier shall respond to documentation requests from the Exchange concerning an appeal within seven (7) days of receiving that request.

(9) A carrier shall notify an individual determined ineligible for a special enrollment period for an off-Exchange plan that they may appeal that decision with the carrier and that they may appeal a carrier's final determination to the Division once the carrier's internal appeal process has been completed.

b. A carrier shall provide written confirmation of an individual's loss of creditable coverage to that individual within ten (10) business days of receiving such a request. The written confirmation must include the date of the loss of coverage and the reason for the loss of coverage.

c. The following documents shall constitute proof of a triggering event and sufficient documentation of eligibility for a special enrollment period:

(1) Evidence of gaining or becoming a dependent shall be considered sufficient if the individual produces one of the following documents:

(a) A marriage license, civil union certificate or common law documentation, if the gaining or becoming a dependent occurs due to marriage or civil union;

(b) A birth certificate, adoption documents, or foster care documents, if the gaining or becoming a dependent occurs due to birth, adoption, placement for adoption, or placement in foster care; or

(c) A court order or designated beneficiary documents, if the gaining or becoming a dependent occurs due to a court order.

(2) Evidence of losing a dependent or no longer being considered a dependent shall be considered sufficient if the individual produces:

(a) A copy of the death certificate or the obituary.

(b) Copies of the final divorce or separation documents.

(c) Proof of age and evidence of loss of creditable coverage when an individual turns 26 and is no longer eligible to be covered under a parent's health benefit plan.

(3) Evidence of a change in citizenship or immigration status shall be considered sufficient if the individual produces official documentation of the change.

(4) The following triggering events shall be confirmed by self-attestation:

(a) Evidence of an involuntary loss of credible coverage;

(b) Evidence of a permanent change in residence;

(c) Evidence of a material violation of a carrier's contract confirming eligibility for a special enrollment from the Division;

(d) Evidence of a status as American Indian/Native American; or

(e) Evidence of the termination of a short-term policy with an expiration date on or after April 1, 2019, that indicates that the carrier has exited the market, which includes, but is not limited to, written communication from the carrier or from a broker; or

(f) Evidence of the cessation of subsidies for COBRA or state continuation coverage.

(5) Any other documentation reasonably sufficient to verify eligibility for the special enrollment period requested.

d. Prior coverage requirements.

(1) For special enrollment period requests due to marriage or civil union, carriers may require that at least one individual demonstrate that they possessed minimum essential coverage for at least one (1) or more days during the sixty (60) days immediately preceding the date of the special enrollment period triggering event.

(2) For special enrollment period requests due to a permanent move, the requesting individual must demonstrate that they possessed minimum essential coverage for at least one (1) or more days during the sixty (60) days immediately preceding the date of the permanent move.

(3) If the requesting individual is unable to demonstrate that they possessed minimum essential coverage, carriers may require the requesting individual to demonstrate:

(a) They lived outside of the United States or in a United States territory for one (1) or more days during the sixty (60) days immediately preceding the date of the special enrollment period triggering event;

(b) They are an Indian, as defined by Section 4 of the Indian Health Care Improvement Act; or

(c) They lived for one (1) or more days during the sixty (60) days preceding the qualifying event or during his or her most recent preceding enrollment period in a service area where no qualified health plan was available through the Exchange.

e. The special enrollment period eligibility verification requirements do not apply to the special enrollment period found in Section 5.D.4.h.6.

6. Coverage effective dates will be:

a. In the case of marriage, civil union, or in the case where an individual loses creditable coverage, coverage must be effective no later than the first day of the month following plan selection.

b. In the case of birth, adoption, placement for adoption, or placement in foster care, coverage must be effective on either:

(1) The date of the event; or

(2) The first day of the month following the birth, adoption, placement for adoption, or placement in foster care, if requested by the primary individual policyholder.

c. In the case of an involuntary loss of existing creditable coverage in accordance with Section 5.D.4.a. of this regulation, coverage shall become effective either:

(1) On the first day of the month following the triggering event if plan selection is made on or before the effective date of the triggering event;

(2) In accordance with the effective dates specified in Section 5.D.6.f. and g. of this regulation if a plan selection is made after the effective date of the triggering event; or

(3) At the option of the Exchange, on the first day of the month following plan selection when plan selection is made after a triggering event.

d. In the case of gaining a dependent or becoming a dependent through a court order, coverage shall become effective either:

(1) On the date the court order is effective; or

(2) In accordance with the effective dates specified in Section 5.D.6.f. and g. of this regulation at the election of the primary individual policyholder.

e. The effective date of coverage for triggering events found in Section 5.D.4.f. and g. of this regulation must be an appropriate date based upon the circumstances of the special enrollment period.

f. In the case of eligibility for financial assistance for health coverage by Connect for Health Colorado after having indicated interest in learning more about free or reduced health coverage on a Colorado Individual Income Tax Form, coverage must be effective no later than the first day of the month following plan selection.

g. In the case of eligibility for advance payments of the premium tax credit and a household income no greater than 150 percent of the federal poverty level,

coverage must be effective no later than the first day of the month following plan selection.

h In the case of all other triggering events where individual coverage is purchased between the first and fifteenth day of the month, coverage shall become effective no later than the first day of the following month.

i. In the case of all other triggering events where individual coverage is purchased between the sixteenth and last day of the month, coverage shall become effective no later than the first day of the second following month.

Section 6 Group Enrollment Periods

A. Carriers that offer small group health benefit plans must guarantee-issue small group health benefit plans throughout the year to any eligible small group that applies for a plan, agrees to make the required premium payments, and abide by the reasonable provisions of the plan, except as noted below.

B. Special enrollment periods for small employers.

1. For small employers that are unable to comply with employer contribution or group participation rules at the time of initial application, carriers may limit the availability of coverage for a group it has declined to an enrollment period that begins on November 15 and ends on December 15 of each year.

2. Coverage must be effective consistent with the dates listed below, unless the initial premium payment is not received by the carrier's cut-off date.

a. Carriers cannot establish a waiting period of more than ninety (90) days.

b. If a fully completed application that includes plan selection is received by the carrier between the first and the fifteenth day of the month, the first effective day of the health benefit plan will be no later than the first day of the following month.

c. If a fully completed application that includes plan selection is received between the sixteenth and last day of the month, the first effective day of the health benefit plan will be no later than the first day of the second following month.

C. Special enrollment periods for employees of small and large employer group plans.

1. Carriers must establish special enrollment periods in the group health benefit plan for individuals who experience any of the following qualifying events pursuant to § 10-16-105.7(3)(b)(II), C.R.S.:

a. Loss of coverage due to:

(1) The death of a covered employee;

(2) The termination or reduction in the number of hours of the employee's employment;

(3) The covered employee becoming eligible for benefits under Title XVIII of the Federal Social Security Act (42 U.S.C. § 301 et seq.); or

(4) The divorce or legal separation from the covered employee's spouse or partner in a civil union.

b. Becoming a dependent through marriage, civil union, birth, adoption, or placement for adoption, or placement in foster care;

c. Becoming a dependent of a covered person by entering into a designated beneficiary agreement, or pursuant to a court or administrative order mandating that the individual be covered;

d. Losing other creditable coverage due to:

(1) Termination of employment or eligibility for coverage, regardless of eligibility for COBRA or state continuation;

(2) A reduction in the number of hours of employment;

(3) Involuntary termination of coverage; or

(4) Reduction or elimination of his or her employer's contributions toward the coverage.

e. Losing coverage under the Colorado Medical Assistance Act (C.R.S. § 25.5-4-101 et seq.) and then requesting coverage under an employer's group health benefit plan within sixty (60) days of the loss of coverage;

f. An employee or dependent becoming eligible for premium assistance under the Colorado Medical Assistance Act (C.R.S. § 25.5-4-101 et seq.) or the Child Health Plan Plus (CHP+); or

g. A parent or legal guardian dis-enrolling a dependent, or a dependent becoming ineligible for the Child Health Plan Plus (CHP+), and the parent or legal guardian requests enrollment of the dependent in a health benefit plan within sixty (60) days of the disenrollment or determination of ineligibility.

2. Individuals in the group market shall have a thirty (30) day special enrollment period that begins on the date the qualifying event occurs, except as provided in Section 6.C.1.e, and g. of this regulation, which provide a sixty (60) day special enrollment period.

3. When an individual in the group market is notified or becomes aware of a qualifying event that will occur in the future, they may apply for coverage during the thirty (30) calendar days prior to the effective date of the qualifying event, with coverage beginning no earlier than the day the qualifying event occurs to avoid a gap in coverage. The individual must be able to provide written documentation to support the effective date of the qualifying event at the time of enrollment. The effective date of this enrollment must comply with the coverage effective dates found in Section 6.C.4. of this regulation.

4. Coverage effective dates.

a. In the case of birth, adoption, placement for adoption, or placement in foster care, coverage must be effective on the date of the event.

b. In the case of marriage, civil union, or other qualifying events, coverage must be effective no later than the first day of the following month after the date the Exchange or the carrier receives a completed enrollment form.

Section 7 Severability

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

Section 8 Incorporated materials

26 C.F.R. §1.36B-2(b)(2), published by Government Printing Office shall mean shall mean 26 C.F.R. § 1.36B-2(b)(2) as published on the effective date of this regulation and does not include later amendments to or editions of 26 C.F.R. § 1.36B-2(b)(2). A copy of 26 C.F.R. § 1.36B-2(b)(2) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of 26 C.F.R. § 1.36B-2(b)(2) may be requested from the Colorado Division of Insurance for a fee. A copy may also be obtained online at www.ecfr.gov.

45 C.F.R. § 155.420(d)(9), published by Government Printing Office shall mean shall mean 45 C.F.R. § 155.420(d)(9) as published on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. § 155.420(d)(9). A copy of 45 C.F.R. § 155.420(d)(9) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of 45 C.F.R. § 155.420(d)(9) may be requested from the Colorado Division of Insurance for a fee. A copy may also be obtained online at www.ecfr.gov.

Section 9 Enforcement

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

Section 10 Effective Date

This regulation shall become effective on January 15, 2022

Section 11 History

Emergency regulation 13-E-13 effective October, 31, 2013.
Regulation effective February 1, 2014.
Amended regulation effective August 15, 2014.
Amended regulation effective November 1, 2015.
Emergency regulation 17-E-01 effective August 1, 2017.
Amended regulation effective December 1, 2017.
Emergency regulation 18-E-04 effective September 5, 2018.
Amended regulation effective January 1, 2019.
Amended regulation effective September 1, 2019.
Amended regulation effective January 15, 2022.

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

Division of Insurance

on 11/16/2021

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 11/16/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:57:54

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Dental Board

CCR number

3 CCR 709-1

Rule title

3 CCR 709-1 DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF REGULATORY AGENCIES

Colorado Dental Board

DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS

3 CCR 709-1

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

…

1.6 Licensure of Dentists and Dental Hygienists

This Rule is promulgated pursuant to sections 12-20-202(3), 12-20-204, 12-220-105(3), and 12-220-106, C.R.S.

A. General Requirements for Licensees and Applicants

…

5. Change of name and address

…

b. The Board requires one of the following forms of documentation to change a licensee's name or correct a social security number or individual taxpayer identification number:

(1) Marriage license;

(2) Divorce decree;

(3) Court order;

(4) Documentation from the Internal Revenue Service verifying the licensee's valid individual taxpayer identification number, or

(5) A driver's license or social security card with a second form of identification may be acceptable at the discretion of the Division of Professions and Occupations.

…

11. Under section 12-20-404(3)(a)(I), C.R.S., any person whose license to practice is revoked is ineligible to apply for any license under the Dental Practice Act for at least two years after the date of revocation of the license. Any subsequent application for licensure is an application for an original license.

…

B. Original Licensure for Dentists

…

2. Each applicant must verify that the applicant:

a. Obtained or will obtain prior to practicing as a licensed dentist in this state commercial professional liability insurance coverage with an insurance company authorized to do business in Colorado pursuant to Article 5 of Title 10, C.R.S., in a minimum indemnity amount of $500,000 per incident and $1,500,000 annual aggregate per year, or is covered under a financial responsibility exemption listed in Rule 1.2.

…

E. Original Licensure for Dental Hygienists

…

2. Each applicant will also be required to verify that the applicant:

a. Obtained or will obtain prior to practicing as a licensed dental hygienist in this state professional liability insurance in the amount of not less than $50,000 per claim and an aggregate liability for all claims during a calendar year of not less than $300,000, or is covered under a financial responsibility exemption listed in Rule 1.5. Coverage may be maintained by the dental hygienist or through a supervising licensed dentist;

…

F. Dental Hygienists Licensure by Endorsement through the Occupational Credential Portability Program

1. In order to be qualified for licensure by endorsement through the Occupational Credential Portability Program pursuant to section 12-20-202(3), C.R.S., an applicant shall submit a completed Board approved application along with the required fee and verify that the applicant holds an active license to practice dental hygiene in good standing in another state or United States territory.

…

H. Reinstatement/Reactivation Requirements for Dentists and Dental Hygienists with Expired, Inactive, or Retired Licenses

1. In order to reinstate or reactivate a license back into active status, each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that the applicant:

a. Obtained or will obtain prior to active practice in this state professional liability insurance as required pursuant to section 12-220-307, C.R.S., or is covered under a financial responsibility exemption listed in Rule 1.5.

…

I. Temporary Licenses

1. By invitation only:

   a. A dentist or dental hygienist who lawfully practices dentistry or dental hygiene in another state or United States territory may be granted a temporary license to practice dentistry or dental hygiene in this state pursuant to section 12-220-106(1)(d), C.R.S., if:

   …

   (2) The governmental entity or nonprofit private foundation as defined in section (I)(1)(a)(1) of this Rule certifies the name of the applicant and the dates within which the applicant has been invited to provide dental or dental hygiene services in this state, the applicant's full dental or dental hygiene license history with verification of licensure in each state, and an active license in at least one state on a form provided by the Board; and

   (3) Such applicant's practice in this state, if granted by the Board, is limited to that required by the entities specified in section (I)(1)(a)(1) and (2) of this Rule and shall not exceed 120 consecutive days in a twelve-month period, renewable once in a one year period for a maximum of 240 consecutive days in a one year period.

…

(Amended and Re-numbered November 5, 2020; Effective December 30, 2020; Amended November 4, 2021; Effective December 30, 2021)

…

1.9 Record Keeping Requirements

…

H. Use of Lasers – refer to Rule 1.22(F) for these documentation requirements.

(Promulgated as Emergency Rule XXVIII on July 7, 2004; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended April 28, 2016, Effective June 30, 2016; Amended and Re-numbered November 5, 2020; Effective December 30, 2020; Amended November 4, 2021; Effective December 30, 2021)

…

1.13 Limited Prescriptive Authority for Dental Hygienists

This Rule is promulgated pursuant to sections 12-20-204, 12-220-105(3), 12-220-106, and 12-220-503(1)(g), C.R.S.

…

(Effective June 30, 1996 as Rule XXIV; Amended December 2, 2002; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended January 22, 2015, Effective March 30, 2015; Amended April 30, 2015, Effective June 30, 2015; Amended January 17, 2018, Effective March 17, 2018; Amended an Re-numbered November 5, 2020; Effective December 30, 2020)

…

1.17 Advertising

This Rule is promulgated pursuant to sections 12-20-204, 12-220-105(3), and 12-220-106, C.R.S.

This Rule applies to advertising in all types of media that is directed to the public. No dentist or dental hygienist shall advertise in any form of communication in a manner that is misleading, deceptive, or false.

…

C. Specialty Practice and Advertising.

…

2. Pursuant to section 12-220-201(1)(ii), C.R.S., the Board may discipline a dentist for advertising or otherwise holding oneself out to the public as practicing a dental specialty in which he or she has not successfully completed the education specified for the dental specialty as defined by the American Dental Association (ADA).

   a. Dental specialties currently defined by the ADA and recognized by the Board include the following:

      (1) Dental public health;

      (2) Endodontics;

      (3) Oral and maxillofacial pathology;

      (4) Oral and maxillofacial radiology;

      (5) Oral and maxillofacial surgery;

      (6) Orthodontics and dentofacial orthopedics;

      (7) Pediatric dentistry;

      (8) Periodontics;

      (9) Prosthodontics;

      (10) Oral Medicine;

      (11) Oro Facial Pain; and

      (12) Dentist Anesthesiologist.

   b. Dentists advertising a specialty that is defined by the ADA must clearly state in all such advertising and/or public promotions that their specialty has been defined by the American Dental Association, provide the full name of the CODA approved school where their residency was completed, and upon request, promptly provide additional information to the public.

3. The Board may also recognize dental specialties not defined by the ADA. Dentists advertising a specialty that is not defined by the ADA must clearly state in all such advertising and/or public promotions that their specialty has not been defined by the American Dental Association. Advertising dentists must also provide the full name of the

entity that has defined their specialty and upon request, promptly provide additional information to the public.

4. ADA defined dental specialists are those dentists who have successfully completed a Commission on Dental Accreditation (CODA) approved specialty program. The Board recognizes that dentists advertising a non-ADA defined specialty may or may not have successfully completed a CODA approved specialty program. Therefore:

   a. Dentists who have successfully completed a CODA approved specialty program, whether defined or not defined by the ADA, may advertise the practice of that specialty subject to the provisions of paragraphs (2) or (3) of this Rule, including providing the full name of the CODA approved school where their residency was completed.

   b. In addition to the requirements of paragraphs (2) and (3) of this Rule, dentists who have not completed a CODA approved specialty program and are advertising a non-ADA defined specialty, must clearly state in all advertising and/or public promotions that their specialty program is not approved by the Commission on Dental Accreditation. Such dentists must also identify their specific training completed (credential awarded) in order to receive their specialty designation and upon request, promptly provide additional information to the public.

…

(Effective August 1, 2000; Temporarily Expired December 2, 2002; Effective July 1, 2003; Amended October 27, 2004; Amended October 26, 2006, Effective December 30, 2006; Amended April 25, 2007, Effective July 1, 2007; Amended October 24, 2007, Effective December 31, 2007; Amended October 22, 2008, Effective November 30, 2008; Amended January 21, 2010, Effective March 30, 2010; Re-numbered December 30, 2011; Amended July 13, 2016, Effective September 14, 2016; Amended November 5, 2020; Effective December 30, 2020; Amended November 4, 2021; Effective December 30, 2021)

…

1.21 Fining Schedule for Violations of the Dental Practice Act and Board Rules

Pursuant to section 12-220-202(5), C.R.S., when a licensed dentist, including one issued an academic license, or dental hygienist violates a provision of the Dental Practice Act or a Board Rule, the Board may impose a fine on the licensee. The amount of an administrative fine assessed will be based on the following criteria:

- Severity of the violation;

- Type of violation; and

- Whether the licensee committed repeated violations

…

(Adopted January 22, 2015, Effective March 30, 2015; Amended January 20, 2016, Effective March 16, 2016; Amended April 28, 2016, Effective June 30, 2016; Amended November 5, 2020; Effective December 30, 2020; Amended November 4, 2021; Effective December 30, 2021)

…

1.29 CONFIDENTIAL AGREEMENTS TO LIMIT PRACTICE FOR PHYSICAL ILLNESS, PHYSICAL CONDITION, OR BEHAVIORAL OR MENTAL HEALTH DISORDER

This Rule is promulgated pursuant to sections 12-20-204, 12-30-108, 12-220-105(3), 12-220-106, 12-220-201(1)(j), and 12-220-207, C.R.S.

A. These requirements apply to a dentist or dental hygienist who holds an active license issued by the Board, including a dentist issued an academic license

B. No later than thirty days from the date a physical illness, physical condition, or behavioral or mental health disorder impacts a licensee's ability to practice with reasonable skill and safety, 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 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 to that practice that have been made as a result of the illness, condition, or disorder;

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, condition, or disorder, and, if so, the date of initial contact and whether services are ongoing.

C. Compliance with this Rule is a prerequisite for eligibility to enter into a Confidential Agreement with the Board pursuant to sections 12-220-207 and 12-30-108, C.R.S. However, mere compliance with this Rule does not require the Board to negotiate regarding, or enter into, a Confidential Agreement. Rather, the Board will evaluate all facts and circumstances to determine if a Confidential Agreement is appropriate.

D. If the Board discovers that a licensee has a physical illness, physical condition, or behavioral or mental health disorder that impacts the licensee's ability to practice with reasonable skill and safety and the licensee has not notified the Board as required under these Rules of such illness, condition, or disorder, the licensee shall not be eligible for a Confidential Agreement and may be subject to disciplinary action for failure to notify under section 12-220-201(1)(j), C.R.S.

(Adopted November 5, 2020; Effective December 30, 2020; Amended November 4, 2021; Effective December 30, 2021)

1.30 REQUIRED DISCLOSURE TO PATIENTS - CONVICTION OF OR DISCIPLINE BASED ON SEXUAL MISCONDUCT

This Rule is promulgated pursuant to sections 12-20-204, 12-220-105(3), 12-220-106, and 12-30-115, C.R.S.

A. On or after March 1, 2021, a licensee shall provide a written disclosure to a patient, as defined in section 12-30-115(1)(a), C.R.S., instances of sexual misconduct , including a conviction or guilty plea as set forth in section 12-30-115(2)(a) C.R.S., or final agency action resulting in probation or limitation of licensee's ability to practice as set forth is section 12-30-115(2)(b), C.R.S.

…

1.31 RULES REGARDING THE USE OF BENZODIAZEPINE

The authority for promulgation of these rules and regulations by the Colorado Dental Board is set forth in sections 12-20-204(1), 12-220-105(3), 12-220-106, and 12-30-109(6), C.R.S.

The purpose of these Rules and regulations is to implement rules required by section 12-30-109(6), C.R.S., related to requirements for prescribing benzodiazepines to patients for whom licensees have not previously prescribed benzodiazepines within the last twelve months.

A. Licensees must limit any prescription for a continuous benzodiazepine to a 30-day supply, for any patient to whom the licensee has not prescribed a benzodiazepine in the last 12 months.

B. Prior to prescribing the second fill of a benzodiazepine, a licensee must comply with the requirements of section 12-280-404(4), C.R.S. Failure to comply with section 12-280-404(4), C.R.S., constitutes unprofessional conduct or grounds for discipline under section 12-220-201(1), C.R.S.

C. The limitation stated in section (A) of this Rule does not apply to patients for whom licensees prescribe benzodiazepines for the following conditions:

   1. Epilepsy;

   2. A seizure, a seizure disorder, or a suspected seizure disorder;

   3. Spasticity;

   4. Alcohol withdrawal; or

   5. A neurological condition, including a post-traumatic brain injury or catatonia.

D. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of the practice of dentistry based on an individual patient's needs, in tapering benzodiazepine prescriptions.

(Promulgated as an Emergency Rule on November 4, 2021; Effective on November 1, 2021)

Editor's Notes

History

Rules XVII, XXVI eff. 07/01/2007.
Rules XXVI, XXIX, XXX eff. 12/31/2007.
Rule XXVI eff. 11/30/2008.
Rule III eff. 05/30/2009.
Rule III eff. 12/30/2009.
Rules III, XIV-XXX eff. 03/30/2010.
Rules I-IX, XI-XIII, XV-XXII eff. 12/30/2011.
Rules I-III, IX, XI-XIII, XXIII-XXIV eff. 03/30/2015. Rule XVI repealed eff. 03/30/2015.
Rules XIII, XIV, XXIV eff. 06/30/2015.
Rule XXIII eff. 03/16/2016.

Rules I, III, IV, V, IX, X, XIV, XV, XVI, XVIII, XX, XXI, XXIII, XXIV, XXV eff. 06/30/2016. Rules VI, VII, VIII, XIX, XXII repealed eff. 06/30/2016.

Rule XVII eff. 09/14/2016.

Rule XIII eff. 03/17/2018.

Rule XXIV eff. 07/03/2018.

Rule XXVI eff. 08/14/2018.

Rules III, XXVI eff. 07/01/2019.

Rule 1.3 J eff. 12/30/2019.

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.

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.

Rules 1.1-1.13, 1.15-1.18, 1.21, 1.22, 1.29, Appendix A eff. 12/30/2020. Rules 1.19, 1.22 repealed eff 12/30/2020.

Rule 1.31 emer. rule eff. 01/11/2021.

Rule 1.32 emer. rule eff. 03/02/2021; expired 06/30/2021.

Rules 1.27, 1.28 emer. rules eff. 04/27/2021.

Rule 1.31 emer. rule eff. 05/11/2021.

Rule 1.30 E-F eff. 06/30/2021.

Rules 1.27, 1.28 emer. rules eff. 07/12/2021.

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Office of the Attorney General

Tracking number: 2021-00631

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

Division of Professions and Occupations - Colorado Dental Board

on 11/04/2021

3 CCR 709-1

DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/04/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 11:00:53

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Board of Examiners of Nursing Home Administrators

CCR number

3 CCR 717-1

Rule title

3 CCR 717-1 RULES AND REGULATIONS FOR NURSING HOME ADMINISTRATORS 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF REGULATORY AGENCIES

State Board of Examiners of Nursing Home Administrators

NURSING HOME ADMINISTRATORS RULES AND REGULATIONS

3 CCR 717-1

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

…

1.4 CHANGE OF NAME AND ADDRESS

This Rule is promulgated pursuant to sections 12-20-204 and 12-265-107(1)(a), C.R.S.

…

B. The Board requires one of the following forms of documentation to change a licensee's name or correct a social security number or individual taxpayer identification number:

1. Marriage license;

2. Divorce decree;

3. Court order; or

4. Documentation from the Internal Revenue Service verifying the licensee's valid individual taxpayer identification number; or

5. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the Director of Support Services.

C. Except for letters of admonition, notifications by the Board to a licensee or applicant, required or permitted, under section 12-265-101, *et seq.*, C.R.S., or under section 24-4-101, *et seq.*, C.R.S. (State Administrative Procedure Act), shall be served personally, by first class mail, or electronically to the last address of record provided in writing to the Board and maintained by the Division of Professions and Occupations. Service by mail or electronic mail shall be deemed sufficient and proper upon a licensee or applicant. Letters of admonition must be served by certified mail pursuant to section 12-265-113(3), C.R.S.

…

1.6 EDUCATION, TRAINING, OR SERVICE GAINED DURING MILITARY SERVICE AND MILITARY SPOUSES

This Rule is promulgated pursuant to sections 12-20-202(4), 12-20-204, and 12-265-107(1)(a), C.R.S.

…

1.8 LICENSURE BY ENDORSEMENT

This Rule is promulgated pursuant to sections 12-20-202(3), 12-20-204, 12-265-107(1)(a), and 12-265-112, C.R.S.

…

1.9 TEMPORARY LICENSURE

This Rule is promulgated pursuant to sections 12-20-204, 12-265-107(1)(a), and 12-265-110, C.R.S.

A. …

1. If the applicant is the current Director of Nursing at the facility and is eligible for a temporary license for an emergency situation as stated below in section (B), then the applicant is not required to submit an application for licensure prior to consideration for any temporary license.

…

C. …

…

3. …

b. A letter from the general hospital board of directors or similar authority verifying that the applicant is currently employed as the hospital administrator and that the hospital needs the applicant to serve as the nursing home administrator for one of the reasons set forth in section (B) above.

…

5. A temporary license issued to a hospital administrator under this section (C) shall be void at such time the license holder is no longer employed by the general hospital.

…

1.11 REINSTATEMENT OF AN EXPIRED LICENSE

This Rule is promulgated pursuant to sections 12-20-202, 12-20-204 and 12-265-107(1)(a), C.R.S.

…

Editor's Notes

History

Rules 1-6 eff. 07/30/2008.
Rules 1-7 eff. 10/30/2008.
Entire rule eff. 08/30/2009.
Entire rule eff. 03/30/2010.
Entire rule eff. 07/15/2010.
Rule 2.B.1 eff. 07/01/2011.

Entire rule eff. 04/30/2012.
Entire rule eff. 09/01/2012.
Rule III.E.1.a eff. 10/30/2012.
Rules II.A.5.b-c, II.C.2.c.ii, II.C.3, II.E.1, III.C.1, III.D.3 eff. 12/30/2012.
Entire rule eff. 09/14/2013.
Rules 1.3.B.1.e, 1.3.D.1, 1.3.D.4.c eff. 05/15/2020.
Rules 1.1 Q, 1.2 B eff. 01/14/2021.
Entire rule eff. 07/15/2021.

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Office of the Attorney General

Tracking number: 2021-00629

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

Division of Professions and Occupations - State Board of Examiners of Nursing Home Administrators

on 11/10/2021

3 CCR 717-1

RULES AND REGULATIONS FOR NURSING HOME ADMINISTRATORS

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 10:57:34

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-2

Rule title

4 CCR 725-2 RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2

RULES GOVERNING THE PRACTICE OF REAL ESTATE APPRAISERS OF THE BOARD OF REAL ESTATE APPRAISERS

CHAPTER 1: DEFINITIONS

1.22 Distance Education: Any education process based on the geographical separation of student and instructor. Components of distance education include synchronous, asynchronous, and hybrid.

1.32 Real Property Appraiser Qualification Criteria (Criteria): Pursuant to section 12-10-606(1) and (2), C.R.S. as amended, the Board incorporates by reference in compliance with section 24-4-103(12.5), C.R.S., the Real Property Appraiser Qualification Criteria adopted by the AQB of TAF on August 24, 2021, including the Required Core Curricula, Guide Notes, and Interpretations relating to the real property appraiser classifications described in Board Rules 1.13, 1.14, and 1.15. This Board Rule 1.32 excludes and does not incorporate by reference the following: the trainee real property appraiser classification and qualification requirements; the supervisory appraiser requirements; supervisory appraiser/trainee appraiser course objectives and outline; or any later amendments or additions of the Criteria. A certified copy of the Real Property Appraiser Qualification Criteria is on file and available for public inspection at the Office of the Board at 1560 Broadway, Suite 925, Denver, Colorado 80202. Copies of the Real Property Appraiser Qualification Criteria may be examined at the Internet website of TAF at www.appraisalfoundation.org, and copies may be ordered through that mechanism. TAF may also be contacted at 1155 15th Street, NW, Suite 1111, Washington, DC 20005, or by telephone at (202) 347-7722 or telefax at (202) 347-7727. The Real Property Appraiser Qualification Criteria is effective as of January 1, 2022.

1.58 Synchronous Distance Education: The instructor and students interact simultaneously online, similar to a phone call, video chat, live webinar, or web-based meeting.

1.59 Asynchronous Distance Education: The instructor and student interaction is non-simultaneous; the students progress at their own pace and follow a structured course content and quiz/exam schedule.

1.60 Hybrid Course Education: Learning environments that allow for both in-person (synchronous) and online (asynchronous) interaction.

1.61 Bio-Metric Proctoring: A student's identity is continually verified through processes, such as facial recognition, consistency in keystroke cadence, and the observation of activity in the testing location. Aberrant behavior or activity can be readily observed.

CHAPTER 3: STANDARDS FOR REAL ESTATE APPRAISAL QUALIFYING EDUCATION PROGRAMS

3.5 The number of hours credited must be equivalent to the actual number of contact hours of in- class or synchronous distance education instruction and testing. An hour of education is defined as at least fifty (50) minutes of instruction out of each 60-minute segment. For asynchronous distance education, the number of hours credited must be that number of hours allowed by the CAP as defined in Board Rule 1.39. For hybrid course education, the number of hours credited will be equivalent for each specific course delivery method. Parts of the course that are delivered in-class or synchronously and delivered asynchronously must meet their respective requirements as set forth in this Board Rule 3.5.

3.14 To be acceptable for qualifying appraisal education, asynchronous distance education offerings must incorporate methods and activities that promote active student engagement and participation in the learning process. Among those methods and activities acceptable are written exercises which are graded and returned to the student, required responses to computer based presentations, provision for students to submit questions during teleconferences, and examinations proctored by an independent third party, who is an official approved by the college or university, or by the sponsoring organization. Bio-metric proctoring is acceptable. Simple reading, viewing or listening to materials without active student engagement and participation in the learning process is not sufficient to satisfy the requirements of this Board Rule 3.14.

3.16 To be acceptable for qualifying real estate appraisal education, synchronous distance education and asynchronous distance education courses must meet the other requirements of Chapter 3 of these Rules, and must include a written, closed book final examination proctored by an independent third party, or other final examination testing procedure acceptable to the Board. Bio-metric proctoring is acceptable. Examples of acceptable examination proctors include public officials who do not supervise the student, secondary and higher education school officials, and public librarians. Failure to observe this requirement may result in rejection of the course and/or course provider by the Board for that applicant, and may result in the Board refusing or withdrawing approval of any courses offered by the provider.

3.18 Course providers must provide each student who successfully completes a qualifying real estate appraisal education course in the manner prescribed in Board Rule 3.7 a course completion certificate. The Board will not mandate the exact form of course completion certificates; however, the following information must be included:

A. Name of course provider;

B. Course title, which must describe topical content, or the Real Property Appraiser Qualification Criteria Core Curriculum module title;

C. Course number, if any;

D. Course dates;

E. Number of approved education hours;

F. Statement that the required examination was successfully completed;

G. Course location, which for synchronous distance education and asynchronous distance education modalities must be the principal place of business of the course provider;

H. Name of student; and

I. For all USPAP courses begun on and after January 1, 2003, the name(s) and AQB USPAP instructor certification number(s) of the instructor(s).

3.19 The provisions of Board Rule 3.3 notwithstanding, qualifying education courses begun on and after January 1, 2004 and offered through asynchronous distance education modalities must be approved through the CAP as defined in Board Rule 1.39. The Board will not accept asynchronous distance education courses begun on and after January 1, 2004 that have not been approved through the CAP.

CHAPTER 5: STANDARDS FOR REAL ESTATE APPRAISAL EXPERIENCE

5.8 There need not be a client in a traditional sense (e.g., a client hiring an appraiser for a business purpose) in order for an appraisal to qualify for experience. Experience gained for work without a traditional client can meet any portion of the total experience requirement.

Practicum courses that are approved by the CAP or the Board can satisfy the nontraditional client experience requirement. A practicum course must include the generally applicable methods of appraisal practice for the credential level. Content includes, but is not limited to: requiring the student to produce credible appraisals that utilize an actual subject property; performing market research, containing sales analysis; and applying and reporting the applicable appraisal approaches in conformity with the USPAP. Assignments must require problem solving skills for a variety of property types for the credential level. Experience credit will be granted for the actual classroom hours of instruction, and hours of documented research and analysis as awarded from the practicum course approval process.

CHAPTER 7: CONTINUING EDUCATION REQUIREMENTS

7.6 Continuing appraisal education must be at least two (2) class hours in duration including examination time (if any). Continuing appraisal education programs and courses are intended to maintain and improve the appraiser’s skill, knowledge, and competency. Continuing appraisal education courses and programs may include, without limitation, these real estate and real estate appraisal topics:

A. Ad valorem taxation;

B. Arbitration, dispute resolution;

C. Courses related to the practice of real estate appraisal or consulting;

D. Development cost estimating;

E. Ethics and standards of professional practice, USPAP;

F. Valuation bias, fair housing, and/or equal opportunity;

G. Land use planning, zoning;

H. Management, leasing, timesharing;

I. Property development, partial interests;

J. Real estate law, easements, and legal interests;

K. Real estate litigation, damages, condemnation;

L. Real estate financing and investment;

M. Real estate appraisal related computer applications;

N. Real estate securities and syndication;

O. Developing opinions of real property value in appraisals that also include personal property and/or business value;

P. Seller concessions and impact on value;

Q. Energy efficient items and “green building” appraisals; and/or

R. Other topics as the Board may approve, upon its own motion or upon petition by the course provider or the licensee in a form acceptable to the Board.

7.12 Continuing real estate appraisal education must be successfully completed by the licensee. Successful completion means either in-class or synchronous distance education attendance at the offering and participation in class activities. Successful completion of courses undertaken through asynchronous distance education requires compliance with the provisions of Board Rule 7.14. The teaching of continuing real estate appraisal education will constitute successful completion, if also in compliance with Board Rule 7.8; however, credit will be given for only one (1) presentation of a particular offering during each licensing period.

7.13 The number of hours credited will be equivalent to the actual number of contact hours of in-class or synchronous distance education instruction and testing. An hour of appraisal education and training is defined as at least fifty (50) minutes of instruction out of each 60-minute segment. For asynchronous distance education offerings, the number of hours credited must be that number of hours allowed by the CAP as defined in Board Rule 1.39. For hybrid course education, the number of hours credited will be equivalent for each specific course delivery method. Parts of the course that are delivered in-class or synchronously and delivered asynchronously must meet their respective requirements as set forth in this Board Rule 7.13.

7.14 Asynchronous distance education offerings must include methods and activities which promote active student engagement and participation in the learning process. Among those methods and activities acceptable are written exercises which are graded and returned to the student, required responses in computer based presentations, provision for students to submit questions during teleconferences, and examinations proctored by an independent third party. Bio-

metric proctoring is acceptable. Simple reading, viewing, or listening to materials is not sufficient engagement in the learning process to satisfy the requirements of this Board Rule 7.14.

7.22 Course providers must provide each student who successfully completes a continuing education course in the manner prescribed in Board Rule 7.12 a course completion certificate. The Board will not mandate the exact form of course certificates; however, the following information must be included:

A. Name of course provider;

B. Course title, which must describe topical content;

C. Course number, if any;

D. Course dates;

E. Number of continuing education hours;

F. Statement that the required examination was successfully completed, if an examination is a regular part of the course;

G. Course location, which for synchronous distance education and asynchronous distance education modalities must be the principal place of business of the course provider;

H. Name of student; and

I. For USPAP courses begun on and after January 1, 2003, the name and AQB USPAP instructor certification number of the instructor.

7.23 The provisions of Board Rule 7.4 notwithstanding, real estate appraisal continuing education offered through asynchronous distance education must be approved through the CAP, unless the provider is a government agency that has sought an exemption from the Board.

CHAPTER 13: DISCIPLINARY PROCEDURES

13.12 A controlling appraiser, or an approved designee of a licensed appraisal management company, must inform the Board in writing within ten (10) days regarding the following:

A. An owner of an appraisal management company, possessing more than ten percent ownership of the licensed entity, has been convicted of, entered a plea of guilty to, entered a plea of nolo contendere, entered an alford plea, or receiving a deferred judgment and sentence to any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, or any other like crime under Colorado law, federal law, or the laws of other jurisdictions; and

B. An owner of an appraisal management company, possessing any percentage ownership of the licensed entity, has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any jurisdiction.

CHAPTER 17: LICENSING REQUIREMENTS FOR APPRAISAL MANAGEMENT COMPANIES

17.7 The controlling appraiser, or an authorized representative, must notify the Board within ten (10) business days of any change in ownership of the appraisal management company including a change in ownership that increases an existing individual's total ownership to more than ten (10) percent.

17.19 Applicants for licensure, renewal, or reinstatement as an appraisal management company must complete the following:

A. The controlling appraiser must report and certify:

1. The number of licensed or certified appraisers that provided an appraisal in connection with a Covered Transaction on the appraisal management company's Panel in Colorado during the Reporting Period;

2. The total number of licensed or certified appraisers on the Panel in Colorado, whether or not the appraisers provided an appraisal in connection with a Covered Transaction, during the Reporting Period; and

3. The total number of licensed or certified appraisers on the Panel in all states that the appraisal management company is licensed during the Reporting Period.

B. Submit to the Division the AMC Registry Fee for appraisal management companies that meet the Panel Size Threshold and the appraisal management company minimum requirements as set forth in section 12-10-607(9), C.R.S., along with the application for initial licensure, renewal, or reinstatement.

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Office of the Attorney General

Tracking number: 2021-00599

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

Division of Real Estate

on 11/04/2021

4 CCR 725-2

RULES OF THE COLORADO BOARD OF REAL ESTATE APPRAISERS

The above-referenced rules were submitted to this office on 11/05/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 11:05:21

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

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Marriage and Family Therapist Examiners

CCR number

4 CCR 736-1

Rule title

4 CCR 736-1 MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF REGULATORY AGENCIES

Board of Marriage and Family Therapist Examiners

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

4 CCR 736-1

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

…

1.8 REPORTING CHANGE OF ADDRESS TELEPHONE NUMBER, OR NAME (C.R.S. §§ 12-20-204, 12-245-204, 12-245-206)

…

B. Any of the following documentation is required to change a Licensee's name or correct a social security number or individual taxpayer identification number; marriage license, divorce decree, court order, or documentation from the Internal Revenue Service verifying the licensee's valid individual taxpayer identification number. A driver's license, social security card, or individual taxpayer identification number with a second form of identification may be acceptable at the discretion of the Division.

…

Editor's Notes

History

Rule 17(a) emer. rule eff. 10/26/2007; expired eff. 01/26/2008.

Rule 17 eff. 03/01/2008.

Purpose and Scope, rules 12, 15, 19, 20 emer. rules eff. 01/01/2011.

Purpose and Scope, rules 12, 15, 19, 20 eff. 02/01/2011.

Entire rule emer. rule eff. 12/09/2011.

Entire rule eff. 02/01/2012.

Rule 12 eff. 05/02/2016.

Rules 1.6 A, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A emer. rules eff. 10/23/2020.

Rules 1.6 A, 1.12, 1.14 A, 1.14 C.1, 1.14 C.6.a, 1.16 A, 1.22, Appendix A eff. 12/15/2020.

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Office of the Attorney General

Tracking number: 2021-00586

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

Division of Professions and Occupations - Board of Marriage and Family Therapist Examiners

on 10/29/2021

4 CCR 736-1

MARRIAGE AND FAMILY THERAPIST EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/29/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 10:06:43

Philip J. Weiser
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by Eric R. Olson
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Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Center for Health and Environmental Data (1006, 1009 Series)

CCR number

5 CCR 1006-1

Rule title

5 CCR 1006-1 VITAL STATISTICS 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Center for Health and Environmental Data

VITAL STATISTICS

5 CCR 1006-1

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

Adopted by the Board of Health on November 17, 2021. Effective January 14, 2022.

*****

SECTION 5.5 Amendment of the Sex Designation

Before changing the sex designation on the birth certificate, the State Registrar must:

A. Confirm the registrant is eighteen years of age or older, or an emancipated minor, or, if the registrant is under the age of eighteen, confirm that the person requesting the amendment is a parent on the birth record, a legal guardian, or an attorney or other authorized agent, as determined by the State Registrar.

B. Confirm the name on the birth certificate and the name of the individual for whom the amendment is requested match, or can be linked through the submitted documentation in instances such as where the registrant is changing their name and sex designation at the same time, and

C. 1. Receive: a certified copy of an order of a court of competent jurisdiction changing the sex of the applicant, or

2. a. A written request from the person, or from the person's parent, if the person is a minor, or from the person's guardian or legal representative, signed under penalty of law, to issue a new birth certificate with a gender designation that differs from the sex designated on the person's original birth certificate; and,

b. A statement, in a form or format designated by the State Registrar, from the person or from the person's parent, if the person is a minor, or from the person's guardian or legal representative, signed under penalty of law, confirming the sex designation on the person's birth certificate does not align with the person's gender identity; and,

[Publication Instructions: Replace the current text in Section 5.5, C, 2, c with the following text and Remove Section 5.5, C, 2, c, I and II]

c. If the person is a minor under the age of eighteen, a statement, in a form or format designated by the State Registrar, signed under penalty of law, from a professional medical or mental health care provider licensed in good standing in Colorado or an equivalent license in good standing from another jurisdiction,

that: the sex designation on the birth certificate does not align with the minor's gender identity.

3. The State Registrar shall change the sex designation pursuant to a request made under Section 5.5(C)(2) only once during an individual's lifetime. Any further amendment to the sex designation on a birth record or certificate requires a court order pursuant to Section 5.5(C)(1).

4. Pursuant to Section 25-2-113.8(7), C.R.S., if a new birth certificate is issued pursuant to this Section 5.5, the certificate will also be amended to reflect any legal name change made before or simultaneous with the change in gender designation, as long as appropriate documentation of the name change is submitted.

*****

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Office of the Attorney General

Tracking number: 2021-00592

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

State Board of Health

on 11/17/2021

5 CCR 1006-1

VITAL STATISTICS

The above-referenced rules were submitted to this office on 11/19/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 09:38:28

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor 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 08

Rule title

6 CCR 1011-1 Chapter 08 CHAPTER 8 - FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES 1 - eff 01/14/2022

Effective date

01/14/2022

1

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health Facilities and Emergency Medical Services Division

STANDARDS FOR HOSPITALS AND HEALTH FACILITIES CHAPTER 8 - FACILITIES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

6 CCR 1011-1 Chapter 8

(Publication Instruction: Replace 6 CCR 1011-1, Chapter 8 with the following language. Please Note: The title of this chapter is incorrect on the Secretary of State webpage—please correct the webpage to match the chapter title listed above.)

Adopted by the Board of Health on November 17, 2021. Effective January 14, 2022.

Part 1 – Statutory Authority and Applicability

1.1 The statutory authority for the promulgation of these rules is set forth in Sections 25-1.5-103, 25-3-100.5, *et seq.*, and 25.5-10-214(2) and (5), C.R.S.

1.2 A facility for persons with intellectual and developmental disabilities, as defined herein, shall comply with all applicable federal, state, and local statutes and regulations, including, but not limited to:

(A) This Chapter 8 as it applies to the type of facility licensed.

(B) 6 CCR, 1011-1, Chapter 2 – General Licensure Standards, unless otherwise modified herein.

(C) 6 CCR, 1011-1, Chapter 24 – Medication Administration Regulations.

(D) 6 CCR 1007-2, Part 1, Regulations Pertaining to Solid Waste Disposal Sites and Facilities, Section 13, Medical Waste.

(E) 6 CCR 1007-3, Part 262, Standards Applicable to Generators of Hazardous Waste.

Part 2 – Definitions

2.1 "Administrator" means a person who is responsible for the overall operation and daily administration, management, and maintenance of the facility.

2.2 "Department" means the Colorado Department of Public Health and Environment or its designee.

2.3 "Facility for Persons with Intellectual and Developmental Disabilities" means a facility specially designed for the active treatment and habilitation of persons with intellectual and developmental disabilities or a group home.

2.4 "Governing Body" means the individuals or service agency that has the ultimate authority and legal responsibility for the management and operation of the facility.

2.5 "Group Home" means a group living situation accommodating at least four (4), but no more than eight (8), persons which is licensed by the state and in which services and supports are provided to persons with intellectual and developmental disabilities. Group home means the same as "community residential home," as the term is used in Section 25.5-10-214, C.R.S.

2.6 "Intellectual and Developmental Disability" means a disability that manifests before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected person, and that is attributable to an intellectual or developmental disability or related conditions, including Prader-Willi syndrome, cerebral palsy, epilepsy, autism, or other neurological conditions when the condition or conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability.

2.7 "Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)" means a residential facility that is certified by the Centers for Medicare and Medicaid Services (CMS) to provide active treatment, and habilitative, therapeutic, and specialized support services to adults with intellectual and developmental disabilities.

2.8 "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.

2.9 "Resident" means an individual living in and receiving services from a facility for persons with intellectual and developmental disabilities.

2.10 "Self-administer" means the ability of a resident to take medication independently without any assistance from another person.

2.11 "Service Plan" means a written document that specifies identified and needed services, regardless of funding source or provider, to assist a person to remain safely in the community. For the purposes of this chapter, the term service plan includes, but is not limited to: service plans, individualized plans, individual service and support plans, and person-centered support plans as used within 10 CCR 2505-10.

2.12 "Special diet" means a diet with specific requirements, provided in accordance with a practitioner's or registered dietitian's order.

2.13 "Staff" means individuals providing services on behalf of and/or under the control of the facility, either as an employee, through a contract between the facility and the individual, or through a staffing agency.

2.14 "Volunteer" means an unpaid individual providing services on behalf of and/or under the control of the facility.

Part 3 – Licensing Requirements

3.1 A facility for persons with intellectual and developmental disabilities shall be licensed as either an Intermediate Care Facility for Individuals with Intellectual Disabilities or a Group Home, depending upon the size of the facility and the services offered.

3.2 General License Requirements

(A) A facility for persons with intellectual and developmental disabilities shall demonstrate compliance with local building and zoning codes prior to initial licensure and license renewal.

(B) A facility for persons with intellectual and developmental disabilities shall comply with the licensure requirements of 6 CCR 1011-1, Chapter 2.

3.3 License Fees

All license fees are non-refundable. More than one fee may apply depending upon the circumstances. The total fee shall be submitted with the appropriate license application.

(A) Initial License

(1) Group Home: $2,612.62.

(2) Intermediate Care Facility for Individuals with Intellectual Disabilities: $6,270.31.

(B) License Renewal. Effective July 1, 2022, the annual renewal fee shall be:

(1) Group Home: $391.90.

(2) Intermediate Care Facility for Individuals with Intellectual Disabilities: $1,672.08.

(C) Change of Ownership. Change of ownership shall be determined in accordance with the criteria set forth in 6 CCR 1011-1, Chapter 2, Part 2.6. The change of ownership fee shall be:

(1) Group Home: $2,612.62.

(2) Intermediate Care Facility for Individuals with Intellectual Disabilities: $6,270.31.

(D) Revisit Fee

(1) A facility's renewal license fee may be increased as the result of a licensure inspection or substantiated complaint investigation where a deficient practice is

cited that has either caused harm, or has the potential to cause harm, to a consumer and the agency has failed to demonstrate appropriate correction of the cited deficiencies at the first on-site revisit.

(2) The fee shall be 50 percent of the facility's renewal license fee and shall be assessed for the second on-site revisit and each subsequent on-site revisit pertaining to the same deficiency.

Part 4 – Governing Body

4.1 The facility shall have a governing body that is responsible for the management and oversight of the facility, including: policy, budget, and operational direction.

(A) The governing body shall establish a policy that defines its composition and authority.

(B) The governing body may oversee more than one facility, in which case it shall maintain separate documentation concerning the oversight of each facility, recognizing the unique characteristics of each location.

4.2 The governing body shall develop written policies, including, but not limited to, those required in other parts of these rules:

(A) Admission and discharge policies that fully comply with state and federal law and that meet the requirements of Part 8.1 of these rules, including that the facility shall only admit those individuals whose needs can be met within the accommodations and services the facility provides.

(B) Policies regarding the hiring or continued service of any administrator, staff, or volunteer whose criminal history records include a conviction or plea, or otherwise demonstrate conduct that could pose a risk to the health, safety, or welfare of the resident. At a minimum, the policies shall require consideration of:

(1) The history of convictions and pleas of guilty or no contest;

(2) The nature and seriousness of the crime(s);

(3) The time that has elapsed since the convictions or pleas;

(4) Whether there are any mitigating or aggravating factors; and

(5) The nature of the position to which the individual will be assigned.

(C) Personnel policies, as required by Part 6.

(D) Resident rights policies, in compliance with Part 9.1.

(E) Resident funds policies, as required by Part 10.1.

(F) Policies that ensure the appropriate procurement, storage, administration, and disposal of medications, in accordance with Part 14.6.

(G) Policies for medical services and therapeutic services, as required by Part 15.1.

(H) A policy for monitoring residents' weights, in accordance with Part 15.6.

(I) Policies for the provision of nursing services, in accordance with Part 16.1.

4.3 The governing body shall establish a system for monitoring and reviewing the physical, behavioral, and social needs and care of the residents receiving services at the facility.

4.4 The governing body shall ensure compliance with the requirements in Part 19 – Emergency Management Plan and Procedures.

4.5 The governing body shall appoint an administrator who meets the minimum administrator requirements at Part 5.2, to whom the governing body shall delegate authority to implement the facility policies and procedures, and is responsible for the day-to-day management of the facility.

4.6 The governing body shall ensure that a name-based criminal history record check is performed for the administrator prior to their employment, as follows:

(A) If the administrator has lived in Colorado for more than three (3) years at the time of application, the facility shall obtain a name-based criminal history record check conducted by the Colorado Bureau of Investigation.

(B) If the administrator has lived in Colorado for three (3) years or less at the time of application, the facility shall obtain a name-based criminal history record check for each state in which the applicant has lived during the past three years, conducted by the respective state's bureau of investigation or equivalent state-level law enforcement agency or other name-based report, as determined by the Department.

(C) If the criminal history record check reveals any convictions or pleas, the information shall be considered in accordance with the policies developed by the governing body in accordance with Part 4.2(B) of these rules.

(D) If the governing body becomes aware of information that indicates the administrator could pose a risk to the health, safety, and/or welfare of the residents, the governing body shall request an updated criminal history record check from the Colorado Bureau of Investigation and/or other relevant law enforcement agency.

Part 5 – Administrator

5.1 The administrator shall be responsible on a full time basis to the governing body for planning, organizing, developing, and controlling the operations of the facility, including, but not limited to:

(A) Ensuring that a recognized system of accounting is used to accurately reflect the financial operations of the facility and that a fiscal audit, including resident funds that are managed by the facility, is performed at least annually by a qualified independent auditor.

(B) Ensuring the maintenance of facility records, including, but not limited to, a daily census of current residents, admission and discharge records, and a master resident database.

(C) Ensuring a designee is available to fulfill the requirements of the administrator during periods when the administrator is not on-site or otherwise available via another method within a reasonable amount of time.

5.2 The administrator shall meet the minimum qualifications, as appropriate for the type of facility.

(A) The administrator of an intermediate care facility for individuals with intellectual disabilities shall meet at least one of the following combinations of education, experience, and/or credentials:

(1) An active, unrestricted Colorado Nursing Home Administrator License;

(2) A bachelor's degree from an accredited college or university in education, social work, psychology, or a related field with at least four (4) years of work experience in the intellectual disability/developmental disability (ID/DD) field or other relevant human services field, including at least two (2) years of related supervisory experience; or

(3) An Associate's Degree in Nursing, with a current Colorado license as a Registered Nurse and at least four (4) years of work experience in the ID/DD field, including at least two (2) years of related supervisory experience.

(B) The administrator of a group home shall meet one of the combinations of education, experience, and/or credentials listed below:

(1) Either of the combinations of education and experience in (2) or (3) in subpart (A), above;

(2) A bachelor's degree from an accredited college or university in education, social work, psychology, or a related field, with at least one year of work experience in human services;

(3) An associate's degree from an accredited college in education, social work, psychology, or a related field, with at least two years of work experience in human services;

(4) Four years of work experience in human services; or

(5) Current employment as a group home administrator as of December 31, 2021.

5.3 The administrator shall be responsible for developing procedures and processes for the implementation of all facility policies developed by the governing body and for ensuring compliance with the requirements of these rules, including, but not limited to:

(A) Personnel requirements found in Part 6;

(B) Staff training and evaluation, in compliance with Parts 7;

(C) Resident rights, investigation, and reporting requirements found in Part 9.2;

(D) An infection prevention and control program and related infection-control processes as required in Part 12;

(E) Policies and procedures related to controlled medication receipt, storage, administration and disposal, as required in Part 14.6;

(F) Policies and procedures regarding medical services and therapeutic services, in accordance with Part 15.1;

(G) Policies for monitoring the weight of residents, as required in Part 15.6; and

(H) The emergency preparedness plan, including family/guardian notification and training documentation requirements, as required in Part 19.

Part 6 – Personnel and Staffing

6.1 The administrator shall ensure staff members and volunteers are qualified by education, training, and/or experience.

6.2 The administrator, or their designee, shall ensure that a name-based criminal history record check is performed for each staff member or volunteer providing direct care, supervision, or having unsupervised contact with a resident, prior to their employment or acceptance as a volunteer.

(A) If the applicant has lived in Colorado for more than three (3) years at the time of application, the facility shall obtain a name-based criminal history record check conducted by the Colorado Bureau of Investigation.

(B) If the applicant has lived in Colorado for three (3) years or less at the time of application, the facility shall obtain a name-based criminal history record check for each state in which the applicant has lived during the past three years, conducted by the respective state's bureau of investigation or equivalent state-level law enforcement agency or other name-based report, as determined by the Department.

(C) If the criminal history record check reveals any convictions or pleas, the information shall be considered in accordance with the policies developed by the governing body in accordance with Part 4.2(B) of these rules.

(D) If the administrator becomes aware of information that indicates a staff member or volunteer could pose a risk to the health, safety, and welfare of the residents, the administrator shall request an updated criminal history record check from the Colorado Bureau of Investigation and/or other relevant law enforcement agency.

(E) If the facility contracts with a staffing agency for the provision of resident services, it shall require the staffing agency to meet the requirements of this part.

6.3 The facility 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 or volunteer prior to direct contact with residents; and

(B) The imposition of work restrictions on direct care staff or volunteers who are known to have any illness in a communicable stage, including, at a minimum, that such individuals be barred from direct contact with residents or resident food.

6.4 The facility shall maintain personnel records on each staff member and volunteer. Such records shall be available for Department review and shall include, but not be limited to:

(A) Application and/or resume, date of hire or acceptance of volunteer service, and date duties started;

(B) Documentation of orientation and training, including first aid and CPR certification, if applicable;

(C) Verification of credentials;

(D) Results of criminal history record checks and follow-up, if applicable; and

(E) Evidence regarding the absence or control of communicable diseases, including tuberculosis or hepatitis B, as applicable.

6.5 The administrator shall develop a written plan of organization detailing the authority, responsibility, and functions of different types of personnel.

6.6 There shall be written personnel policies including, but not limited to:

(A) Job descriptions and assigned responsibilities;

(B) Conditions of employment or volunteer service;

(C) Management of employees and volunteers; and

(D) Restrictions of on-site access by staff or volunteers with drug or alcohol use that would adversely impact their ability to provide resident care and services.

6.7 The administrator shall ensure that each staff member is provided notice of the personnel policies when hired and shall ensure the policy is explained during the initial orientation and after any policy changes are made.

6.8 The administrator shall ensure that there is sufficient trained staff on duty to meet the needs or potential needs of all residents at all times, considering individual needs such as the risk of accident, hazards, or other challenging events.

(A) The administrator shall ensure that the facility does not depend upon residents to perform staff functions.

(B) A facility may use volunteers, but any volunteer shall not be included in the facility's staffing plan in lieu of employees.

(C) The facility shall ensure that at least one staff member with current certification in first aid is available on site when residents are present, unless such residents are unsupervised in accordance with their service plan.

(D) The facility shall ensure that at least one staff member with current certification in cardiopulmonary resuscitation (CPR) and obstructed airway techniques is available on site when residents are present, unless such residents are unsupervised in accordance with their service plan.

6.9 Each staff member and volunteer shall be physically and mentally able to adequately and safely perform all functions essential to their assigned responsibilities.

Part 7 – Training

7.1 The administrator shall develop and implement a policy and procedure for the initial orientation and on-going training of staff and volunteers to ensure that all duties and responsibilities are accomplished in a competent manner. The policy and procedure shall include, but not be limited to:

(A) Ensuring 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:

(1) The care and services provided by the facility;

(2) Assignment of duties and responsibilities specific to the staff member or volunteer;

(3) Infection prevention and control and universal precautions, as required in Part 12.2;

(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; and

(f) Serious illness, injury, and/or death of a resident.

(5) Reporting requirements, including occurrence reporting procedures within the facility and reporting abuse, neglect, mistreatment, or exploitation;

(6) Resident rights;

(7) Prevention of abuse and neglect; and

(8) An overview of the facility's policies and procedures and how to access them for reference.

(B) Ensuring each staff member or volunteer receives training on the following topics prior to that staff member or volunteer having unsupervised contact with residents:

(1) Training specific to each individual resident, as relevant to their job duties, including, but not limited to:

(a) Medical protocols and therapy programs;

(b) Needs related to activities of daily living;

(c) Specialized services;

(d) Individual interests and preferences;

(e) Individual evacuation capabilities; and

(f) Dietary and nutritional needs.

(2) Person-centered care;

(3) Maintenance of a clean, safe, and healthy environment, including appropriate cleaning techniques, as applicable;

(4) Food safety, in compliance with Part 13.3, as applicable to job duties; and

(5) Medication administration policies, procedures, and responsibilities.

(C) Training and drills for Emergency Management as required in 19.2.

(D) Training and orientation documentation requirements, including that such orientation and training be documented in the staff member's or volunteer's personnel file.

7.2 The administrator shall develop and implement a process for staff monitoring.

(A) There shall be an annual written evaluation of staff competency specific to the duties required at the facility and resident needs.

(B) If a staff member fails the annual competency evaluation, the administrator shall, at a minimum, provide and document retraining, and reevaluate to demonstrate competency is achieved.

7.3 The administrator shall document that orientation and training in emergency procedures has been provided for each new staff member, each volunteer, and each newly admitted resident capable of self-evacuation. Training shall occur within seven (7) working days of employment or moving into to the group home.

Part 8 – Admissions

8.1 The facility shall have and implement a written policy that specifies that it will only admit those individuals whose needs can be met within the accommodations and services the facility provides.

8.2 The facility shall ensure that it obtains the essential information pertinent to the care and support of the resident, including a medical evaluation report, either prior to or upon admission of a resident.

8.3 The facility shall only admit residents to regularly designated bedrooms.

8.4 The facility shall ensure the number of residents admitted to each bedroom does not exceed the number for which the room is designed and equipped.

Part 9 – Resident Rights

9.1 Each facility shall develop and implement written policies and procedures for residents' rights which shall address the client rights set forth in 6 CCR 1011-1, Chapter 2, Part 7, and Sections 25.5-10-218 through 225, C.R.S. Such policies and procedures shall also include specific provisions regarding:

(A) The right to have medications administered in a manner consistent with state and federal law and regulation.

(B) The right to resident notice at least 30 days prior to the effective date when there is a decision to terminate services or transfer the resident, regardless of who initiated the termination or transfer.

(C) Assurance that any resident transfer, including between facilities or within the same facility, shall be in the best interests of the resident and not for the convenience of the facility.

(D) An effective monitoring mechanism to detect instances of abuse, mistreatment, neglect, and exploitation. Monitoring shall include, at a minimum, a review of:

(1) Incident and/or occurrence reports;

(2) Verbal and written reports from residents, advocates, families, guardians, friends of residents, or others;

(3) Verbal and written reports of unusual or dramatic changes in behaviors or residents; and

(4) A plan for unannounced supervisory visits to each residence or facility on all shifts, no less than quarterly.

(E) Procedures for identifying, reporting, reviewing, and investigating all allegations of abuse, mistreatment, neglect, and exploitation consistent with applicable legal and regulatory requirements.

(F) Procedures for timely and appropriate disciplinary action up to and including termination of staff and appropriate legal recourse against any staff member or volunteer who has engaged in abuse, mistreatment, neglect, or exploitation of a resident.

9.2 The facility administrator shall ensure implementation of the following:

(A) All staff members and volunteers are aware of applicable state law and facility policies and procedures related to abuse, mistreatment, neglect, and exploitation.

(B) The facility adheres to federal and state law along with the facility's own policies and procedures for residents' rights.

(C) The facility demonstrates that the residents are informed of their rights and those rights are protected.

(D) The facility ensures immediate reporting to the facility administrator or designee by any staff member or volunteer who observes or is aware of abuse, mistreatment, neglect, or exploitation of a resident, and documentation of prompt action to protect the safety of the affected resident and all other residents in the facility.

(E) The facility reports any alleged incident or occurrence to the individual(s) legally authorized to receive the information within 24 hours and to the Department by the next business day, consistent with 6 CCR 1011-1, Chapter 2, Part 4.2.

(F) All alleged incidents of abuse, mistreatment, neglect, exploitation, or injuries of unknown origin shall be thoroughly investigated within five (5) working days.

(1) An investigative report shall be prepared that includes, at a minimum:

(a) The preliminary results of the investigation;

(b) A summary of the investigative procedures utilized;

(c) The investigative findings, including recommendations;

(d) The administrative review; and

(e) Timeline for the action(s) to be taken.

(2) If the alleged incident is subject to external investigation by law enforcement, adult protective services, or other appropriate oversight authority, the facility shall submit an addendum to the documentation of its investigation within five (5) working days after the completion of such external investigation.

Part 10 – Resident Funds

10.1 The facility shall develop and implement written policies and procedures consistent with legal and regulatory requirements regarding resident funds. These procedures shall include the ability for residents to access funds at any time.

10.2 The facility shall establish and maintain an accounting system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(A) The facility shall ensure that its accounting system precludes any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(B) The facility shall regularly monitor its accounting system to ensure the policies and procedures are being appropriately implemented and resident funds are protected from misuse.

10.3 Upon request, the facility shall make a resident's financial record available to the resident or other individual legally authorized to receive the information within a reasonable amount of time, not to exceed thirty (30) days.

Part 11 – Resident Records

11.1 All records specifically required by these standards shall be made available to the Department for purposes of enforcing these regulations. If records are maintained electronically, they shall be made available to the Department in a manner that allows for a timely, efficient, and complete review.

11.2 Initial Record Requirements

(A) The following minimum information shall be recorded in the resident's program or medical record upon admission to the facility for persons with intellectual or developmental disabilities:

(1) Name, previous address, and birth date;

(2) Name, address, and phone number of legal guardian (if any), person to contact in an emergency, primary care practitioner, dentist, and case manager; and

(3) Special needs, allergies, special diet requirements, and current medication. If a resident has an allergy to any substance, a notice shall be placed in a conspicuous place on the resident's record.

(B) To the extent possible, the following shall also be obtained:

(1) The results of assessments conducted within the previous 12 months;

(2) All service plans, as appropriate, developed within the previous 12 months;

(3) Record of prescriptions of medications prescribed within the previous 12 months;

(4) Dates and descriptions of illnesses, accidents, significant changes of condition, treatments thereof, and immunizations for the previous 12 months;

(5) Summary of hospitalizations for the previous 12 months, to include recommendations for follow-up and treatment;

(6) Any other information relevant to the health of the resident; and

(7) Individual interests and preferences, including community activities.

11.3 Continuing Record Requirements

(A) Each facility shall maintain current and accurate program and medical records for individual residents that also contain:

(1) All information required by Part 11.1 of this chapter;

(2) A record of the use of the resident's funds including all debits, credits, and a description of purchases if supervised by the licensee;

(3) Current service plans, as appropriate, along with documentation of their implementation and progress toward meeting the goals;

(4) Documentation of resident interaction in the community, including activities offered and resident participation;

(5) Current photo of resident;

(6) General physical characteristics;

(7) General description of personality characteristics;

(8) Quarterly weight and annual height measurement;

(9) Records of interventions and treatments provided by practitioners, therapists, nurses, and other professional staff;

(10) Records of prescriptions ordered and medication administered in the previous 12 months;

(11) Date, time, and circumstances of resident's death, when applicable; and

(12) Documentation related to special diets, as required in Part 13.

(B) All entries in any resident record shall be dated and authenticated. Acceptable authentication shall be the staff's written signature, identifiable initials, computer key, or other appropriate technological means.

11.4 Medical Record Retention

(A) Medical records are those records pertaining to the health status and related medical services and treatments of the resident. Such records do not include documents involving services and programs.

(B) All medical records for adults (persons eighteen (18) years of age or older) shall be retained for no less than ten (10) years after the last date of service or discharge from the facility. All medical records for minors shall be retained after the last date of service or discharge from the facility for the period of minority plus ten (10) years.

Part 12 – Infectious Disease Prevention and Control

12.1 The administrator shall develop and implement an infectious disease control program with procedures that reflect the scope and complexity of the services provided in the facility. The program shall be based on nationally recognized standards for infection control and shall require the adequate investigation, control, and prevention of infections. Topics addressed shall include, but not be limited to:

(A) A requirement that at least one individual trained in infection control shall be employed by or available to the facility;

(B) Methods for identifying and tracking infection patterns and trends among employees, volunteers, or residents and initiating a response;

(C) Procedures for handling soiled linen and clothing, storing personal care items, and general cleaning which minimize the spread of pathogenic organisms;

(D) Maintenance of a sanitary environment;

(E) Mitigation of risks associated with infections and the prevention of the spread of communicable disease, including, but not limited to: hand hygiene, bloodborne and airborne pathogens, and respiratory hygiene and cough etiquette for residents and staff;

(F) Coordination with other federal, state, and local agencies including, but not limited to, a method to determine when to seek assistance from a medical professional and/or the local health department;

(G) The reporting of diseases as required by the Department's Rules and Regulations Pertaining to Epidemic and Communicable Disease Control, 6 CCR 1009-1; and

(H) The protective isolation of residents who have an infectious disease.

12.2 The facility shall provide initial and ongoing training for staff on the principles of infection prevention and control; universal precautions; management of blood, other body fluids, or potentially infectious waste; and cleaning and disinfection techniques.

Part 13 – Dietary Services

13.1 All food shall be procured, stored, and prepared safely.

13.2 At least a three-day supply of food and drinking water shall be available in the facility in case of emergency.

13.3 Staff handling, preparing, or serving food shall complete food safety training and maintain evidence of completion as part of the personnel file in accordance with Part 7.1(D). Food safety training shall be provided by recognized food safety experts or agencies, such as the Department's Division of Environmental Health and Sustainability, local public health agencies, or Colorado State University Extension Services. At a minimum, a certificate of completion of the available online modules is sufficient to comply with this part. The successful completion of other accredited food safety courses is also acceptable.

13.4 The facility shall ensure residents have the opportunity to be involved in planning meals and choosing available snacks.

13.5 Meals shall provide a nutritionally adequate diet for all residents consistent with generally recognized national or state dietary standards and/or guidelines.

13.6 The facility shall have a diet manual that provides guidance for the preparation of diet menus including special diets.

13.7 The facility shall have a registered dietician perform an initial review of all special diets to ensure they meet diet guidelines and ensure a review of all changes to the special diets of the residents. Such reviews shall be documented in the resident's record.

13.8 Records of meals prepared including available options and substitutions shall be kept by the facility staff and shall be available for review for a period of 30 days.

13.9 Meals shall vary daily and be appropriate for holidays and seasonal conditions.

13.10 Residents shall have access to the kitchen, food, and supplies at all times, unless a restriction is assessed to be appropriate and documented in the resident record.

13.11 Between-meal snacks of nourishing quality shall be available.

13.12 Residents shall be allowed to cook unless an assessment determines the resident is not capable of cooking in a safe manner and documentation of such assessment is part of the resident record.

13.13 Staff support shall be provided to all residents who need assistance during meals, as evidenced by an inability to self-feed within 15 minutes of food being presented.

13.14 Special Diets

(A) Known food allergies and prescribed special diets shall be documented and such information shall be made available to facility staff preparing meals.

(B) The administrator or their designee shall ensure that all staff, including volunteers and temporary staff, are aware of and provide food, supplies, and adaptive equipment in compliance with residents' food allergies and/or special diet requirements.

(C) The facility shall provide food that meets residents' special diet requirements.

(D) The facility shall document a resident's refusal to eat their special diet as part of the resident record.

Part 14 – Medications

14.1 On at least a quarterly basis, the facility shall ensure that medications and dosage taken by residents who are self-administering are reviewed by a licensed nurse or other licensed provider who is legally authorized to monitor medications within their own scope of practice.

14.2 Prescription medications shall be administered from containers or packages that are lawfully labeled.

14.3 The facility shall ensure that the primary care practitioner designated to coordinate a resident's care reviews each resident's medication on an annual basis for a stable regimen and whenever there is a new medication added or a change in the medication regimen.

14.4 At the time of discharge or transfer, medications administered by the facility shall be given to the resident's legal guardian, nurse, or qualified medication administration staff member at the new residence, and this shall be documented in the resident record.

14.5 The governing body shall establish and implement written policies and procedures that ensure the appropriate procurement, storage, administration, and disposal of all medications including, but not limited to:

(A) All medications, including, but not limited to, pro re nata (PRN) or "as needed" medications, shall be administered only by persons as authorized by law.

(B) Residents may self-administer medications unless they are determined to be incapable of safe self-administration by a licensed provider and such determination is documented and included in the resident record.

(1) The facility shall report non-compliance, misuse, or inappropriate use of known medications by a resident who is self-administering medications to the resident's primary care practitioner.

(2) The facility shall seek a review of the resident's determination related to self-administration, as follows, and retain updated documentation of the determination as appropriate:

(a) When non-compliance, misuse, or inappropriate use of known medications is reported to the resident's primary care practitioner.

(b) When there are changes in the resident's medications, routines, or circumstances that may impact their ability to self-administer medications.

(c) At least annually.

(3) All such reviews shall be documented in the resident's record.

(C) Facilities are allowed to use qualified medication administration persons (QMAPs) for medication administration, provided the following conditions are met:

(1) The facility fully complies with Sections 25-1.5-301 through 25-1.5-303, C.R.S., and 6 CCR 1011-1, Chapter 24 – Medication Administration Regulations;

(2) Group homes must meet the definition of facility at Section 25-1.5-301(2)(h), C.R.S.; and

(3) QMAPs shall not independently determine a resident's ability to self-administer medications.

(D) All medications shall be stored in locked containers according to the appropriate light and temperature conditions, and all controlled medications shall be double locked, except that residents capable of self-administering some or all of their medications shall be allowed to keep those medications in locked containers in their own rooms.

(E) There shall be documentation of medication administration to residents including time and dosage given, name of staff administering, and, if applicable, drug reaction or refusal by the resident.

(F) Staff shall report medication errors and refusals to the program director, consulting nurse, and primary care practitioner and shall ensure such errors and refusals are documented in the medication administration record.

(G) There shall be a policy and procedure for administration and transport of medications to facilitate community integrations and other activities such as day programs, vacations, and home visits.

14.6 The administrator shall ensure the implementation of and compliance with all policies and procedures related to controlled medication receipt, storage, administration, and disposal.

14.7 There shall be a designated medication preparation area separated from food that is equipped with: a suitable locking device to protect the medications stored therein; a refrigerator equipped with thermometer; counter work space; readily accessible contact information for the poison control center; and a sink for hand-washing or appropriate supplies for hand cleansing.

(A) Only medications, medical equipment, and supplies shall be stored in the designated preparation area.

(B) Test reagents, general disinfectants, cleaning agents, and other similar products shall not be stored in the medication area.

14.8 Non-prescription (over-the counter) medications administered to a resident shall meet the following conditions:

(A) The medication is maintained in the original container with the original label visible; and

(B) The medication is labeled with a single resident's full name.

14.9 Non-prescription drugs may be purchased by residents capable of self-administration.

Part 15 – Medical Services, Therapeutic Services, and Equipment, Supplies, and Assistive Technology

15.1 The governing body shall establish and the administrator shall implement written policies and procedures for medical services and therapeutic services based on documented applicable standards of practice.

15.2 Medical services, therapeutic services, diagnostic services, equipment, and assistive technology shall be provided in a timely manner as ordered by the authorized, licensed prescriber.

15.3 Each resident shall have a primary care practitioner designated to coordinate the resident's care.

15.4 A record of all prescribed medical services or therapeutic services shall be maintained as part of the resident record.

15.5 Changes in resident's physical condition shall be reported to the nurse. Following the nurse's assessment, the facility shall ensure the primary care practitioner is notified in a timely manner and others in accordance with facility policy.

15.6 The governing body shall develop and the administrator or designee shall implement a written policy for monitoring each resident's weight. The policy shall include:

(A) For the purposes of this rule, a significant weight change is a five percent (5%) change in one (1) month, seven and a half percent (7.5%) change in three (3) months, or ten percent (10%) change in six (6) months. A serious weight change is above those percentages in the same timeframes.

(B) Weight monitoring shall be documented and promptly assessed for significant/serious weight changes.

(C) The facility shall promptly notify the primary care or other appropriate practitioner when significant/serious weight changes occur and document this notification in the resident record.

15.7 Medical Services

(A) The facility shall arrange for a medical evaluation of each resident on an annual basis unless a greater or lesser frequency is specified by the primary care practitioner designated to coordinate resident's care. If it is determined an annual evaluation is not needed, a medical evaluation shall be conducted at least every two (2) years. The facility shall document the results of such evaluations and any required follow-up services.

(B) The facility shall assist each resident in obtaining an annual dental examination. If the dentist determines that an annual examination is unnecessary, a dental examination shall be conducted at least every two (2) years. The facility shall document the prescribed frequency, results of all dental examinations, and any required follow-up services. If the resident does not have teeth, an oral examination by a practitioner may be substituted for the dental examination and the frequency and documentation requirements in this rule shall apply to such oral examinations.

(C) Other medical and dental services and follow-up shall be obtained as ordered by the primary care or other practitioner and shall be documented in the resident record.

15.8 Therapeutic Services

(A) For the purpose of this Chapter 8, the term therapeutic services shall include, but not be limited to: physical therapy, occupational therapy, speech and Language therapy, and similar services.

(B) The facility shall ensure that all therapeutic services utilized by residents are provided by persons or facilities that are licensed, certified, or otherwise authorized by law to provide such therapies and meet the applicable standards of practice.

(1) Unlicensed staff may provide therapeutic services only if such staff has been trained by a person licensed, certified, or otherwise authorized by law to provide such therapies.

(a) The facility shall document the name and professional title of the person providing such training and the content of such training.

(b) The facility shall document the therapeutic service training received by unlicensed staff and have such documentation readily accessible.

(2) Unlicensed staff may provide therapeutic services only when a protocol with specific instructions for providing such therapies is documented.

(3) All therapeutic services provided by trained, unlicensed staff shall be supervised and monitored at least quarterly. Such supervision and monitoring shall be documented in the resident file and include:

(a) Reviewing to ensure services are being provided as prescribed; and

(b) Ensuring that the individual providing the service documented the service at the time the service was provided.

(4) All therapeutic services provided by trained, unlicensed staff shall be supervised and monitored annually by a person licensed, certified, or otherwise authorized by law to provide such services.

15.9 Equipment, Supplies, and Assistive Technology

(A) Residents who use wheelchairs, adaptive equipment, or other assistive technology services shall receive professional reviews at the prescribed or recommended frequency to ensure the continued applicability and fitness of such devices. Such reviews shall be documented in the resident record.

(B) Wheelchairs and other assistive technology devices shall be maintained according to the manufacturer's guidelines.

(C) The facility shall have portable emergency equipment as necessary to meet the specific needs of the residents. If such devices are present, the facility shall ensure that all personnel are trained in the proper use of such devices.

(D) Each resident shall have dentures, eyeglasses, hearing aids, and other aids as needed and prescribed by the appropriate professional. Resident refusal to use such aids shall be documented in the resident record.

(E) The facility shall have individual resident equipment and supplies necessary to meet each resident's continuing medical needs.

Part 16 – Nursing Services, Specialized Care, and Social Services

16.1 Nursing Services

(A) The facility shall develop and implement written nursing policies and procedures that address the nursing needs of the residents.

(B) The facility shall have sufficient licensed nursing staff available to respond to the needs of the residents.

16.2 Specialized Care: A facility providing specialized care must meet the following requirements:

(A) For the purpose of this Chapter 8, specialized care includes:

(1) Catheter care;

(2) Ostomy care;

(3) Tracheostomy care;

(4) Breathing treatments;

(5) Oxygen saturation monitoring;

(6) Blood pressure monitoring;

(7) Preventive skin care including appropriate pressure relieving/reducing devices.

(B) There shall be a record of any specialized care prescribed by a physician or other practitioner and/or delegated by a registered nurse or licensed practical nurse.

(C) The provision of specialized care shall be documented by the staff providing the service.

(D) Specialized care may be provided by unlicensed staff only if it is allowed by state law and such staff has been trained by a person licensed, certified, or legally authorized to provide such services, and the unlicensed staff has been deemed competent to provide such services through direct observation by the person providing the training.

(1) All specialized care provided by trained, unlicensed staff shall be monitored by a registered nurse or licensed practical nurse in accordance with their practice act, but no less than quarterly, and annually by a person licensed, certified, or legally authorized to provide such services. Such monitoring shall be documented in the resident file and include:

(a) Observing the unlicensed staff performing the specialized care to ensure ongoing competency to provide such service;

(b) Reviewing to ensure care is being provided as prescribed; and

(c) Ensuring appropriate documentation of care by the individual providing the service, at the time the service was provided.

16.3 Social Services. The facility shall provide appropriate social services and/or care coordination to residents and families, and consultation to the staff.

Part 17 – Gastrostomy Services

17.1 Gastrostomy services shall not be administered by an unlicensed individual unless that individual is trained and supervised by a licensed physician, nurse, or other practitioner.

17.2 The facility shall ensure that a physician, licensed nurse, or other practitioner has developed a written, individualized gastrostomy service protocol for each resident requiring such service, and that the protocol is updated each time the orders change for that resident's gastrostomy services. Each protocol shall include, but not be limited to:

(A) The proper procedures for preparing, storing, and administering nutritional supplements through a gastrostomy tube, including, but not limited to:

(1) The type of gastrostomy tube used by the resident;

(2) A list of all equipment and materials required for the procedure;

(3) The position of the resident during and after feeding;

(4) Procedures for cleaning the gastrostomy site and surrounding skin;

(5) Procedures for cleaning the gastrostomy equipment; and

(6) Instructions for documenting the procedure.

(B) The routine care and maintenance of the external gastrostomy site.

(C) The identification of possible problems associated with gastrostomy services and the extent to which an unlicensed individual may address the problem, including, but not limited to:

(1) Notification to licensed staff and/or providers regarding changes in the gastrostomy site;

(2) Signs of infection;

(3) Procedures to follow when the resident experiences coughing, nausea, or vomiting;

(4) Leakage around the stoma; and

(5) Procedures to follow when a gastrostomy tube has been dislodged or pulled out.

(a) Unlicensed individuals may not reinsert a gastrostomy tube, except that an unlicensed individual may take actions as directed/delegated by a licensed provider in an emergent situation if the resident is at risk of stoma site closure.

(D) The names and contact numbers of the resident's physician, licensed nurse, or other practitioner who is responsible for monitoring the unlicensed person(s) performing gastrostomy services and intervening, if problems are identified.

17.3 The facility shall ensure that a physician, licensed nurse, or other practitioner provides training to any unlicensed individual who may provide gastrostomy services. Documentation of the training shall be kept in the resident's record and shall include:

(A) The date or dates of when the training occurred;

(B) Indication that the unlicensed individual has reached proficiency which is defined as performing all aspects of the resident's protocol without error three (3) consecutive times; and

(C) The signature of the physician, licensed nurse, or other authorized, licensed practitioner that provided the training and observed the three (3) trials.

17.4 The facility shall ensure that a physician, licensed nurse, or other practitioner performs the gastrostomy services for each resident receiving gastrostomy services at least once prior to the unlicensed person providing the services.

17.5 For unlicensed persons performing gastrostomy services for several residents with similar protocols, the physician, licensed nurse, or other practitioner overseeing their training may document their proficiency with less than three (3) observations for each resident receiving services. The alternative method for establishing the proficiency of each staff member shall be documented.

17.6 The facility shall ensure that the physician, licensed nurse, or other practitioner observes and documents the unlicensed staff performing gastrostomy services for each resident at least quarterly for the first year and semi-annually thereafter, unless more frequent monitoring is appropriate. Such monitoring shall be documented in the record of the individual receiving gastrostomy services.

17.7 When changes are made to the written order for gastrostomy services and/or in the resident's protocol, the facility shall ensure that the physician, licensed nurse, or other practitioner that provides the training determines the extent of training that the unlicensed person will need to remain proficient in performing all aspects of the gastrostomy services. If changes in protocols occur, the facility shall document training and competency of unlicensed staff on the new protocol.

17.8 The facility shall ensure that the primary care practitioner or ordering physician annually reviews and approves the protocol for each resident receiving gastrostomy services.

17.9 For each resident, the facility shall ensure the following documentation for each gastrostomy service provided to the resident is included in the resident's record:

(A) A written record of each nutrient and fluid administered;

(B) The beginning and ending time of nutrient or fluid intake;

(C) The amount of nutrient or fluid intake;

(D) The condition of the skin surrounding the gastrostomy site;

(E) Any problem(s) encountered and action(s) taken; and

(F) The date and signature of the person performing the procedure.

Part 18 – Facility Reporting Requirements

18.1 Each facility shall comply with the occurrence reporting requirements set forth in 6 CCR 1011-1, Chapter 2, Part 4.2.

18.2 Each facility shall notify the Department within 48 hours of the relocation of one or more residents due to any portion of the facility becoming uninhabitable for any reason, including, but not limited to, fire or other disaster.

18.3 In the event of a voluntary closure of a facility, such facility shall notify the Department 30 days prior to closure and submit a plan for resident transfer at that time. The resident transfer plan shall include, at a minimum:

(A) Notice to the residents, families, and guardians;

(B) Schedule for the residents' moves;

(C) Staffing pattern during the 30 days prior to closure; and

(D) Provisions for ensuring the health and safety of residents during the closure.

Part 19 – Emergency Management Plan and Procedures

19.1 The governing body shall ensure that an evaluation of risks to the facility is completed using an all hazards approach. This evaluation must address natural and human-caused crises. Such an evaluation of risks shall be reviewed at least annually and updated as necessary, and shall include, but not be limited to:

(A) Fire;

(B) Severe weather, including but not limited to tornados, blizzards, and flooding;

(C) Security threats, including threatened or actual acts of violence;

(D) Gas leaks/explosions;

(E) Internal system failures, such as: electrical outages, internal structural collapse, or flooding; and

(F) Bioterror, pandemic, or disease outbreak events.

19.2 The administrator shall develop and implement a written emergency management plan addressing the hazards identified in Part 19.1, above, and including, at a minimum:

(A) Arrangements for alternative housing, transportation, and the provision of necessary medical care if a resident's primary care practitioner is not immediately available;

(B) Procedures that ensure notification of families or guardians in an emergency;

(C) Procedures for addressing interruptions in the normal supply of essentials, including, but not limited to: water, food, heat/air conditioning and ventilation, medications, and personal protective equipment (PPE). The plan shall ensure continuation of operations for at least 72 hours;

(D) Processes ensuring the protection and transfer of resident information, as needed; and

(E) Routine drills to ensure staff and resident familiarity with emergency procedures, as appropriate, including:

(1) Fire drills in accordance with state and local laws and regulations, but no less than quarterly; and

(2) An annual mock exercise that addresses all the items listed in Part 19.1.

19.3 The administrator shall ensure training in emergency procedures as follows:

(A) Each new staff member or volunteer shall be trained in emergency procedures prior to providing unsupervised resident care.

(B) Each resident capable of self-evacuation shall be trained in emergency procedures within seven (7) days of moving into the facility.

(C) Such training shall be documented in either the personnel file or resident record, as applicable.

19.4 The facility shall conduct and document a monthly review of its response to the items listed in Part 19.1 of this chapter including its policies and procedures and training of staff and residents.

Part 20 – Compliance with FGI Guidelines

Any construction or renovation of a facility for persons with intellectual and developmental disabilities shall conform to Part 3 of 6 CCR 1011-1, Chapter 2, unless otherwise specified in this current chapter.

Part 21 – Physical Environment

21.1 The facility shall maintain a home-like environment that is clean, sanitary, and free of hazards to health and safety.

21.2 All interior areas including basements and garages shall be safely maintained to protect against environmental hazards.

21.3 All exterior areas shall be safely maintained to protect against environmental hazards including, but not limited to:

(A) Exterior premises shall be kept free of high weeds and grass, garbage, and rubbish.

(B) Grounds shall be maintained to prevent hazardous slopes, holes, snow, ice, or other potential hazards.

(C) Staircases and porches shall be kept in good repair.

21.4 Compliance with State and Local Laws/Codes.

(A) Facilities shall be in compliance with all applicable zoning regulations of the municipality, city and county, or county where the home is situated. Failure to comply with applicable zoning regulations shall constitute grounds for the denial of a license to a home consistent with Section 25.5-10-215, C.R.S.

(B) Facilities shall be in compliance with all applicable state and local plumbing laws and regulations. Plumbing shall be maintained in good repair, free of the possibility of backflow and backsiphonage, through the use of vacuum breakers and fixed air gaps, in accordance with state and local codes.

(C) Facilities shall be in compliance with all applicable state and local sewage disposal requirements. Sewage shall be discharged into a public sewer system or disposed of in a manner approved by state and local health authorities in compliance with the Water Quality Control Division's Guidelines on Individual Sewage Disposal Systems, 5 CCR 1002-43.

21.5 Electric or space heaters shall not be permitted within resident bedrooms and may only be used in common areas of the facility if owned, provided, and maintained by the facility.

21.6 Waste Disposal/Combustibles

(A) All interior areas shall be free from accumulations of extraneous materials such as refuse, discarded furniture, and old newspapers.

(B) Combustibles, such as cleaning rags and compounds, shall be kept in closed metal containers.

(C) Kerosene heaters shall not be permitted within the facility.

(D) All garbage and rubbish not disposed of as sewage shall be collected in impervious containers in such manner that it is not a nuisance or health hazard and shall be removed to an approved storage area at least once a day. The refuse and garbage storage area shall be kept clean and free from nuisance. The facility shall have a sufficient number of impervious containers with tight fitting lids that shall be kept clean and in good repair.

(E) Carts used to transport refuse shall be enclosed, constructed of impervious materials, used solely for refuse, and maintained in a sanitary manner.

(F) Incinerators shall comply with state and local air pollution regulations and be constructed in a manner that prevents insect and rodent occupation.

(G) If private sewage disposal systems are used, system design plans and records of maintenance shall be kept on the premises and available for inspection.

(H) No exposed sewer line shall be located directly above working, storage, or eating surfaces in kitchens, dining rooms, pantries, or where medical supplies or drugs are prepared or stored.

21.7 Infestation and Hazardous Substances

(A) The facility shall be maintained free of infestation of insects and rodents, and all openings to the outside shall be screened.

(B) The facility shall have a pest control program as needed, provided by maintenance personnel or by contract with a pest control company, using the least toxic and least flammable effective pesticides.

(C) Solutions, cleaning compounds, pesticides, and other hazardous substances shall be labeled and stored in a safe manner.

21.8 Heating, Lighting, Ventilation

(A) Each room in the facility shall have heat, lighting, and ventilation sufficient to accommodate its use and the needs of the residents.

(B) All interior and exterior steps, interior hallways, and corridors shall be adequately illuminated.

(C) Intermediate Care Facilities for Persons with Developmental Disabilities submitting an initial license application after May 1, 2011, shall have nightlights that are controlled at the door of the bedroom.

21.9 Water

(A) There shall be an adequate supply of safe, potable water available for domestic purposes.

(B) Water temperatures shall be maintained at comfortable temperatures. Hot water shall not measure more than 110 degrees Fahrenheit at taps that are accessible by residents.

(C) There shall be a sufficient supply of hot water during peak usage demands.

21.10 Common Areas

(A) If the facility has one or more residents using a wheelchair, it shall provide a minimum of two entryways for wheelchair access and egress from the building.

(B) The facility shall provide common areas that are sufficient to reasonably accommodate all residents.

(C) The facility shall provide furnishings in all common areas that meet the needs of the residents and are in good repair.

(D) All common areas and dining areas shall be accessible to residents utilizing an auxiliary aid without requiring transfer from a wheelchair to walker or from a wheelchair to a regular chair for use in dining areas. All doors to those rooms requiring access shall be at least 32 inches wide.

(E) Residents shall be allowed free use of all common living areas with due regard for privacy, personal possessions, and safety of all residents.

(F) The facility shall have liquid soap and paper towels available in the common bathrooms of the facility.

21.11 Bedrooms

(A) The facility shall ensure that each resident resides in a regularly designated bedroom.

(B) All bedrooms shall meet the following square footage requirements:

(1) Single occupancy bedrooms shall have at least 100 square feet.

(2) Double occupancy bedrooms shall have at least 80 square feet per person.

(3) Bathroom areas and closets shall not be included in the determination of square footage.

(C) The facility shall provide each resident with a clean comfortable mattress, maintained in a sanitary condition.

(D) Resident bedrooms shall contain furnishings that meet the needs of the resident.

(E) Each bedroom shall have adequate storage space or closets for a resident's clothing and personal articles.

(F) Each bedroom shall have at least one window of eight (8) square feet, which shall have opening capability. All escape windows shall be maintained unobstructed on the interior and exterior of the facility.

(G) The ground level outside of any basement resident bedroom shall be maintained at or below the window sill for a distance of at least eight feet measured out from the window.

21.12 Bathrooms

(A) A full bathroom shall consist of at least the following fixtures: toilet, hand washing sink, toilet paper dispenser, mirror, tub or shower, and towel rack.

(B) The facility shall ensure compliance with the following criteria regarding the number of bathrooms per residents:

(1) The group home shall provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the residents,

(2) There shall be at least one full bathroom for every four (4) residents, and

(3) Group homes utilizing more than one level or floor for resident services and/or sleeping rooms shall have at least one full bathroom per floor.

(C) The facility shall ensure the following accessibility criteria:

(1) There shall be at least one bathroom adjacent to the common living space that is available for resident use.

(2) In any facility that is occupied by one or more residents utilizing an auxiliary aid, the facility shall provide at least one full bathroom as defined herein with fixtures positioned so as to be fully accessible to any resident utilizing an auxiliary aid.

(D) The facility shall ensure each bathroom has the following safety features:

(1) Non-skid surfaces on all bathtub and shower floors;

(2) Grab bars properly installed at each tub and shower, adjacent to each toilet, and as otherwise indicated by the needs of the resident population; and

(3) Toilet seats constructed of non-absorbent material and free of cracks.

(E) The facility shall ensure that each resident is furnished with personal hygiene and care items.

21.13 Housekeeping, Linen, and Laundry

(A) Each facility shall establish organized housekeeping services that are planned and performed to provide a pleasant, safe, and sanitary environment.

(B) The facility shall either contract with a commercial laundry or maintain its own laundry that meets the following criteria:

(1) All laundry equipment shall be designed and installed to comply with state and local laws and possess appropriate safety devices.

(2) Laundry operations shall be located in an area that is separated from resident care units.

(3) The laundry procedures shall be performed in such a way that soiled linen and resident clothing emerge clean and free of detergents according to manufacturer instructions.

(4) Soiled laundry shall be processed frequently enough to prevent unsanitary accumulations.

(5) The temperature of the water during the washing and rinsing process shall be based upon the recommendations of the laundry detergent and the items being laundered.

(C) There shall be a resident linen supply consisting of at least two complete changes times the number of resident beds. All linens shall be maintained in good repair.

(D) Bed linens shall be changed as often as necessary but in no case less than once a week.

(E) The facility shall have a secured maintenance area separated from living quarters with adequate floor storage area that is equipped with:

(1) Storage space for housekeeping equipment, supplies, and chemicals;

(2) An area for handling chemicals;

(3) Hand washing supplies;

(4) A waste receptacle with impervious liner; and

(5) For facilities with more than eight (8) beds, the secured maintenance area shall also contain a sink (preferably depressed or floor mounted) with mixing faucet.

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Tracking number: 2021-00593

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

State Board of Health

on 11/17/2021

6 CCR 1011-1 Chapter 08

CHAPTER 8 - FACILITIES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

The above-referenced rules were submitted to this office on 11/19/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 09:40:00

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor 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 1015-3

Rule title

6 CCR 1015-3 EMERGENCY MEDICAL SERVICES 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Health Facilities and Emergency Medical Services Division
EMERGENCY MEDICAL SERVICES
6 CCR 1015-3

****

CHAPTER TWO – RULES PERTAINING TO EMS PRACTICE AND MEDICAL DIRECTOR OVERSIGHT

Adopted by the Chief Medical Officer on October 29, 2021. Effective December 30, 2021.

Replace chapter 2, current Section 1, part 1.1 with revised text below

1.1 These rules define the authorized medical acts of Emergency Medical Service (EMS) providers in the settings in which they may practice: prehospital, as defined by Sections 25-3.5-206(5)(b) and 25-3.5-209, C.R.S. and these rules; out-of-hospital, as defined by 6 CCR 1011-3 and these rules; and clinical, as defined by Section 25-3.5-207(1)(a), C.R.S and these rules.

****

Replace current Chapter 2, Section 3, 3.2 and 3.2.1 with language below. Current subsections 3.2.2 and 3.2.3 remain unchanged.

3.2 The EMPAC shall consist of the following thirteen members:

3.2.1 Ten voting members appointed by the governor as follows:

A) Two physicians licensed in good standing in Colorado who are actively serving as EMS agency medical directors and are practicing in rural or frontier counties;

B) Two physicians licensed in good standing in Colorado who are actively serving as EMS agency medical directors and are practicing in urban counties;

C) One physician licensed in good standing in Colorado who is actively serving as an EMS agency medical director in any area of the state;

D) One EMS provider certified or licensed at an advanced life support level who is actively involved in the provision of emergency medical services;

E) One EMS provider certified or licensed at a basic life support level who is actively involved in the provision of emergency medical services; and

F) One EMS provider certified or licensed at any level who is actively involved in the provision of emergency medical services;

G) One clinical psychiatrist licensed in good standing in Colorado who is recommended by a statewide association of psychiatrists;

H) One anesthesiologist licensed in good standing in Colorado who is recommended by a statewide association of anesthesiologists;

****

Replace current Chapter 2, Appendix B, Table B.3 with the revised Table B.3 below

TABLE B.3 – BEHAVIORAL MANAGEMENT

Medications	EMT	EMT-IV	AEMT	EMT-I	P
Anti-Psychotic – Droperidol	N	N	N	VO	Y
Anti-Psychotic – Haloperidol	N	N	N	VO	Y
Anti-Psychotic – Olanzapine	N	N	N	VO	Y
Anti-Psychotic – Ziprasidone	N	N	N	VO	Y
Benzodiazepine – Diazepam	N	N	N	Y	Y
Benzodiazepine – Lorazepam	N	N	N	Y	Y
Benzodiazepine – Midazolam	N	N	N	Y	Y
Diphenhydramine	N	N	N	VO	Y
Ketamine (Ketalar)	N	N	N	N	N

****

Replace current Chapter 2, Appendix F, Table F.1 with the revised Table F.1 below

TABLE F.1 – CRITICAL CARE FORMULARY

Medications	P-CC
Acetylcysteine (Mucomyst)	Y
Antibiotics	Y
Bilvalirudin (Angiomax)	Y
Blood Products	Y
Dobutamine (Dobutamine)	Y
Esmolol (Brevibloc)	Y
Etomidate (Amidate)	Y
Fosphenytoin (Cerebyx)	Y
Ketamine (Ketalar)	Y (may only be used for analgesia, rapid sequence induction (RSI), and post-intubation management)
Labetalol (Normodyne)	Y
Levetiracetam (Keppra)	Y
Metoprolol (Lopressor)	Y
Phenytoin (Dilantin)	Y
Propofol (Diprivan)	Y
Rocuronium (Zemuron)	Y
Succinylcholine (Anectine)	Y
tPA infusion	Y
Tranexamic acid (TXA)	Y
Vecuronium (Norcuron)	Y

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Office of the Attorney General

Tracking number: 2021-00582

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

Chief Medical Officer - Dept. of Public Health & Environment

on 10/29/2021

6 CCR 1015-3

EMERGENCY MEDICAL SERVICES

The above-referenced rules were submitted to this office on 10/29/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 10:05:07

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

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

7 CCR 1101-3 WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation
7 CCR 1101-3
WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 5 Claims Adjusting Requirements

5-6 TIMELY PAYMENT OF COMPENSATION BENEFITS

(A) Benefits and penalties awarded by order are due three (3) business days after the order becomes final. Any ongoing benefits shall be paid consistent with statute and rule.

(B) Initial payment of temporary disability benefits awarded by admission shall be paid no later than the date the admission awarding benefits is filed and are considered due three (3) business days after the date of the admission. Temporary disability benefits are due at least once every two weeks thereafter from the date of the admission. Payment mailed via the United States Postal Service will be considered timely if postmarked at least three (3) business days prior to the due date and must include all benefits owed through the due date. In some instances, an employer's first report of injury and admission can be timely filed, but the first installment of compensation benefits will be paid more than 20 days after the insurer has notice or knowledge of the injury. Provided the filings are timely and that benefits are timely paid for the entire period owed as of the date of the admission, the insurer will be considered in compliance

(C) Permanent impairment benefits awarded by admission are retroactive to the date of maximum medical improvement and shall be paid so that the claimant receives the benefits not later than three (3) business days after the date of the admission. Subsequent permanent disability benefits are due at least once every two weeks from the date of the admission. When benefits are continuing, the payment shall include all benefits which are due. Payment mailed via the United States Postal Service will be considered timely if postmarked at least three (3) business days prior to the due date.

(D) An insurer shall receive credit against permanent disability benefits for any temporary disability benefits paid beyond the date of maximum medical improvement.

(E) Benefits shall be calculated based on a seven (7) day calendar week.

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

Division of Workers' Compensation

on 11/01/2021

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

The above-referenced rules were submitted to this office on 11/01/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 19, 2021 14:11:42

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

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

7 CCR 1101-3 WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES 1 - eff 01/01/2022

Effective date

01/01/2022

Rule 3 Insurance Coverage

3-1 REPORTING REQUIREMENTS FOR INSURANCE CARRIERS AND EMPLOYERS

(A) The Division designates the National Council on Compensation Insurance, Inc. (NCCI) as its agent to receive, process, and make available to the Division, all the required notices. Insurance carriers shall transmit this data and all other data elements in the electronic format as directed by the Division through NCCI.

(B) Every insurance carrier shall advise the Division, by filing with NCCI, notice of the issuance or renewal of insurance coverage within thirty (30) calendar days of the effective date of coverage. The insurance carrier shall ensure that every policy reported to NCCI includes the correct federal employer identification number ("FEIN") or other taxpayer identification number(s) for each covered employer, employer's business operation, client company, and/or employing entity.

(C) Every insurance carrier shall advise the Division, by filing with NCCI, final notice of the cancellation of insurance coverage no later than thirty (30) calendar days after coverage is actually canceled. This subsection does not pertain to the preliminary notice of cancellation referenced in §8-44-110~~, C.R.S~~.

(D) Every employer shall provide on request to its insurance carrier all FEINs or other taxpayer identification number(s) for all the employer's business operations, client companies, and/or any other similar employing entities, in Colorado to which the insurance applies. All changes in FEIN or other taxpayer identification numbers shall be reported immediately to the insurance carrier. The insurance carrier shall report all changes in FEINs and taxpayer identification numbers to NCCI within thirty (30) calendar days of receipt.

(E) Every insurance carrier shall provide to the division all certificates of insurance requested by the division, unless the insurer denies coverage for the requested employer, employer's business operation, client company, and/or employing entity. Certificates issued to the division shall contain, at a minimum, the employer's name, employer's address, employer's FEIN or other taxpayer identification number, insurer's name, insurer's address, policy number, and effective dates of the policy. The insurer shall provide such certificate(s) or notify the division of the denial of coverage within five (5) days of the request.

(F) For purposes of the performance of the Director's responsibilities under §8-43-409, the prehearing conference and any hearing that the Director may determine necessary may be conducted by any competent person appointed by the Director or by any other person designated by the Director.

3-2 CARRIER REPRESENTATIVE

Every insurance carrier shall notify the Division's designated agent of the name, address and telephone number of its representative responsible for reporting coverage information. This information shall be provided within thirty (30) days upon request of either the Division or its agent, or within thirty (30) days of a change in the information.

3-3 SELF-INSURED EMPLOYERS

(A) Any pool authorized to self-insure shall advise the Division in writing of the effective date of self-insurance, the name and address of the pool administrator and the federal employer identification number of each covered member. This information shall be provided within thirty (30) days upon request of either the Division or its agent, or within thirty (30) days of a change in the information.

(B) All individual self-insurance permit holders shall advise the Division in writing of the federal employer identification number of the permit holder as well as of all covered subsidiaries. This information shall be provided within thirty (30) days upon request of either the Division or its agent, or within thirty (30) days of a change in the information.

3.4 Unreported/erroneous policies - insurance carriers

(A) Every insurance carrier who fails to comply with the reporting requirements of paragraphs (a) through (e) of rule 3-1 shall be subject to penalties.

(B) For certificates of workers' compensation insurance or other documentation that has been received by the division indicating policies that have not been reported by the insurer to NCCI or policies that contain errors in an employer's identifying information, a list of such policies will be generated by the division and provided to each insurer containing all unreported or inaccurate policies. The insurer shall have fifteen (15) days from the date the list is issued to report/correct each listed policy to NCCI, or provide to the division a written explanation of why the policy cannot be reported/corrected to NCCI.

(C) If, within fifteen (15) days following the issuance of the division's list of unreported or erroneous policies, the insurer fails to either report a listed policy to NCCI or provide a written explanation to the division of why the policy cannot be corrected or reported to NCCI, a deficiency notice and order to comply may be issued to the insurer for all outstanding unreported or erroneous policies. The insurer shall then have twenty (20) days from the date of issuance of the deficiency notice and order to comply to perform one of the following actions:

(1) Report a previously unreported policy to NCCI.

(2) File a corrected endorsement with NCCI in the event the policy information previously submitted to NCCI is incorrect.

(3) Provide a written explanation to the division of why the policy cannot be reported to or corrected with NCCI.

3-5 ELECTION TO REJECT COVERAGE

(A) An officer of a corporation or a member of a Limited Liability Company ("LLC") who elects to reject workers' compensation coverage shall complete and submit the division prescribed rejection of coverage form to the division if all the company's corporate officers and LLC members choose to reject coverage and the corporation or LLC has no employees other than the corporate officers or LLC members. If the corporation or LLC has workers' compensation insurance, the corporate officer(s) or LLC member(s) shall submit the division prescribed form or the insurance carrier's substantially equivalent form to the workers' compensation insurance carrier.

(B) The owner(s) of a sole proprietorship or partnership performing construction work who elect(s) to reject workers' compensation coverage shall complete and submit the division prescribed rejection of coverage form to the division if the sole proprietorship or partnership has no employees other than the owner(s). If the sole proprietorship or partnership has workers' compensation insurance, such owner(s) shall submit the division prescribed form or the insurance carrier's substantially equivalent form to the workers' compensation insurance carrier.

(C) The Notice of Election to Reject Coverage shall become effective the next business day following receipt of the notice by the insurance carrier or, if none, by the Division.

3-6 NOTICES TO EMPLOYEES

(A) Every employer shall continuously post a notice to employees in one or more conspicuous places on the employer's work site advising employees that the employer is insured for workers' compensation as required by law, identifying the name of the employer's insurance carrier or stating that the employer is self-insured, and containing information about the Colorado workers' compensation system on a form prescribed or approved by the Division and furnished by the carrier or self-insured.

(B) Every employer also shall continuously post a notice to employees in one or more conspicuous places on the employer's work site advising employees that written notice must be given to an employer within 4 working days after an injury.

3-~~6~~**7** FINES FOR DEFAULTING EMPLOYER

(A) Following the Director's determination that an employer has failed to obtain the required insurance or has failed to keep such insurance in force or has allowed the insurance to lapse or has failed to renew such insurance, the Director will impose fines on the defaulting employer and/or will compel the employer to cease and desist its business operations.

(B) For any period beginning three years prior to the date the employer is sent a notice to show compliance and where such employer has not previously been sent a notice to show compliance, the director shall impose a fine of five dollars ($5.00) per day for each day of the employer's default until the date of issuance of the notice to show compliance. If the employer's default continues after the issuance of the notice to show compliance, fines shall be issued in accordance with the following schedule until the employer complies with the requirements of the workers' compensation act regarding insurance or until further order of the director:

1-10 DAYS	$10/DAY
11-20 DAYS	$30/DAY
21-30 DAYS	$50/DAY
31-40 DAYS	$100/DAY
41+ DAYS	$250/DAY

(C) Where an employer provides the director with information related to its ability to pay the fine, the director may, if appropriate, modify the fine structure in rule 3-6(b).

(D) For the Director's finding of an employer's second and all subsequent defaults in its insurance obligations, daily fines from $250/day up to $500/day for each day of default will be until the employer complies with the requirements of the Workers' Compensation Act regarding insurance or until further order of the Director.

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Office of the Attorney General

Tracking number: 2021-00608

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

Division of Workers' Compensation

on 11/01/2021

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

The above-referenced rules were submitted to this office on 11/01/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 19, 2021 16:49:36

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

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Labor Standards and Statistics (Includes 1103 Series)

CCR number

7 CCR 1103-1

Rule title

7 CCR 1103-1 COLORADO OVERTIME AND MINIMUM PAY STANDARDS ORDER (COMPS ORDER) #38 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

COLORADO OVERTIME AND MINIMUM PAY STANDARDS ORDER (COMPS ORDER) #38

7 CCR 1103-1

Adopted November 10, 2021, effective January 1, 2022.

Rule 1. Authority and Definitions.

1.1 Authority and relation to prior orders. Colorado Overtime and Minimum Pay Standards Order ("COMPS Order") #38 replaces COMPS Order #37 (2021) and prior orders, except that the provisions of prior orders still govern as to events occurring while they were in effect. The COMPS Order is issued under the authority of, and as enforcement of, Colorado Revised Statutes ("C.R.S.") Title 8, Articles 1, 4, 6, 12, 13.3, and 13.5 (2022), and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101, et seq. See Appendix A for citations. The effective date of COMPS Order # 38 is January 1, 2022.

1.2 Incorporation by reference. 29 C.F.R. Part 541 Subpart G; Colo. Const. art. XVIII, § 15 (2022); Title 8, Articles 1, 4, 6, and 13.3 of the Colorado Revised Statutes (2022); 7 CCR 1103-7 (2022); 7 CCR 1103-8 (2022); 7 CCR 1103-11 (2022); and 7 CCR 1103-14 (2022) are hereby incorporated by reference into this rule. Earlier versions of such laws and rules may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the constitution, statutes, and rules; all cited laws are incorporated in the forms that are in effect as of the effective date of this COMPS Order. 7 CCR 1103-14, the Publication And Yearly Calculation of Adjusted Labor Compensation Order ("PAY CALC Order"), states the periodically-adjusted dollar amounts of the minimum wages and minimum pay and income levels for exemptions required in the COMPS Order. All sources cited or incorporated by reference are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. They can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them 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 originally issuing them. All Division Rules are available to the public at www.coloradolaborlaw.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern, so long as they are consistent with Colorado statutory and constitutional provisions.

1.3 "Director" means the Director of the Division of Labor Standards and Statistics.

1.4 "Division" means the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.

1.5 "Employee," as used in the COMPS Order and the PAY CALC Order, has the following definitions.

(A) Under the Colorado Wage Act (CWA), as defined by C.R.S. § 8-4-101(5): "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer. For the purpose of the COMPS Order, relevant factors in determining whether a person is an employee include the degree of control the employer may or does exercise over the person and the degree to which the person performs work that is the primary work of the employer; except that an individual primarily free from

control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee."

(B) Under the Healthy Families and Workplaces Act (HFWA), as defined by C.R.S. § 8-13.3-402(4): "Employee" has the meaning set forth in section 8-4-101(5) but does not include an "employee" as defined in 45 U.S.C. sec 351(d) who is subject to the federal "Railroad Unemployment Insurance Act", 45 U.S.C. sec. 351 et seq.

(C) Under the Agricultural Labor Rights and Responsibilities Act, Colorado Senate Bill 21-87, as defined by C.R.S. § 8-6-101.5(3): "agricultural employee" or "agricultural worker" has the "same meaning as under C.R.S. § 8-13.5-201(3)" ("A worker engaged in any service or activity included in section 203(f) of the federal 'Fair Labor Standards Act of 1938',...as amended...or section 3121(g) of the federal 'Internal Revenue Code of 1986', as amended").

1.6 "Employer," as used in the COMPS Order and the PAY CALC Order, has the following definitions.

(A) Under CWA, as defined by C.R.S. § 8-4-101(6): "Employer" has the same meaning as set forth in the federal "Fair Labor Standards Act," 29 U.S.C. sec 203 (d), and includes a foreign labor contractor and a migratory field labor contractor or crew leader; except that the provisions of the COMPS Order do not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

(B) Under HFWA, as defined by C.R.S. § 8-13.3-402(5): "Employer" has the meaning set forth in section 8-4-101(6); except that the term includes the state and its agencies or entities, counties, cities and counties, municipalities, school districts, and any political subdivisions of the state but does not include the federal government.

(C) Under the Agricultural Labor Rights and Responsibilities Act, Colorado Senate Bill 21-87, as defined by C.R.S. § 8-2-206(1)(c): "agricultural employer" has the "same meaning provided in C.R.S. § 8-3-104(1)" ("a person that is engaged in any service or activity included in section 203(f) of the federal 'Fair Labor Standards Act of 1938', … as amended," or engaged in "agricultural labor, as defined in section 3121 of the federal 'Internal Revenue Code of 1986'," that either (1) contracts with any person who recruits, solicits, hires, employs, furnishes, or transports agricultural employees, or (2) regularly engages the services of one or more agricultural employees).

1.7 "Minor," for purposes of wage provisions specific to minors, means a person under 18 years of age, but not one who has received a high school diploma or a passing score on the general educational development examination. "Emancipated minor" means any individual less than eighteen years of age who meets the definition provided by C.R.S. § 8-6-108.5.

1.8 "Regular rate of pay" means the hourly rate actually paid to employees for a standard, non-overtime workweek. Employers need not pay employees on an hourly basis. If pay is on a piece-rate, salary, commission, or other non-hourly basis, any overtime compensation is based on an hourly regular rate calculated from the employee's pay.

1.8.1 Pay included in regular rate. The regular rate includes all compensation paid to an employee, including set hourly rates, shift differentials, minimum wage tip credits, non-discretionary bonuses, production bonuses, and commissions used for calculating hourly overtime rates for non-exempt employees. Business expenses, bona fide gifts,

discretionary bonuses, employer investment contributions, vacation pay, holiday pay, sick leave, jury duty, or other pay for non-work hours may be excluded from regular rates.

1.8.2 Regular rate for employees paid a weekly salary or other non-hourly basis.

(A) A weekly salary or other non-hourly pay may be paid as straight time pay for all work hours, and the regular rate each workweek will be the total paid divided by hours worked, if the parties have a clear mutual understanding that the salary is:

(1) compensation (apart from any overtime premium) for all hours each workweek;

(2) at least the applicable minimum wage for all hours in workweeks with the greatest hours;

(3) supplemented by extra pay for all overtime hours (in addition to the salary that covers the regular rate) of an extra ½ of the regular rate; and

(4) paid for whatever hours the employee works in a workweek.

(B) Where the requirements of (1)-(4) are not carried out, there is not the required "clear mutual understanding" that the non-hourly pay provides the regular rate for all hours with extra pay added for overtime hours. Absent such an understanding, the hourly regular rate is the applicable weekly pay divided by 40, the number of hours presumed to be in a workweek for an employee paid no overtime premium.

1.8.3 Regular rate for employees with multiple, hourly pay rates. The regular rate for an employee working two or more non-exempt jobs at different hourly pay rates for the same employer within a specific workweek shall be calculated as follows:

(A) Rate based on a weighted average: The employee's regular rate for the particular workweek is determined by adding together all the wages earned performing each job, then dividing that amount by the total number of hours worked in all jobs, consistent with the federal Fair Labor Standards Act (FLSA) and resulting in a weighted average rate of pay, or

(B) Rate based on the job actually performed during overtime hours: The employee's regular rate is the regular rate of hourly pay for the job being performed during the actual overtime hours.

If there is no written agreement between the employee and the employer as to the method of calculating the regular rate of pay in advance of performing the work, the employee's regular rate shall be calculated using the "weighted average" method described above in 1.8.3(A).

1.9 "Time worked" means time during which an employee is performing labor or services for the benefit of an employer, including all time s/he is suffered or permitted to work, whether or not required to do so.

1.9.1 Requiring or permitting employees to be on the employer's premises, on duty, or at a prescribed workplace (but not merely permitting an employee completely relieved from duty to arrive or remain on-premises) — including but not limited to, if such tasks take over one minute, putting on or removing required work clothes or gear (but not a uniform worn outside work as well), receiving or sharing work-related information, security or safety screening, remaining at the place of employment awaiting a decision on job assignment or when to begin work, performing clean-up or other duties "off the clock,"

clocking or checking in or out, or waiting for any of the preceding — shall be considered time worked that must be compensated.

1.9.2 "Travel time" means time spent on travel for the benefit of an employer, excluding normal home to work travel, and shall be considered time worked. At the start or end of the workday, travel to or from a work station, entirely within the employer's premises and/or with employer-provided transportation, shall not be considered time worked, except that such travel is compensable if it is:

(A) time worked under Rule 1.9 – 1.9.1;

(B) after compensable time starts or before compensable time ends under Rule 1.9 – 1.9.1; or

(C) travel in employer-mandated transportation (1) that materially prolongs commute time or (2) in which employees are subjected to heightened physical risk compared to an ordinary commute.

1.9.3 "Sleep time" means time an employee may sleep, which is compensable as follows. Where an employee's shift is 24 hours or longer, up to 8 hours of sleeping time may be excluded from overtime compensation, if:

(A) an express agreement excluding sleeping time exists;

(B) adequate sleeping facilities for an uninterrupted night's sleep are provided;

(C) at least 5 hours of sleep are possible during the scheduled sleep period; and

(D) interruptions to perform duties are considered time worked.

When an employee's shift is less than 24 hours, periods when s/he is permitted to sleep are compensable work time, as long as s/he is on duty and must work when required. Only actual sleep time may be excluded, up to a maximum of 8 hours per workday. When work-related interruptions prevent 5 hours of sleep, the employee shall be compensated for the entire workday.

1.10 "Tipped employee" means any employee engaged in an occupation in which s/he customarily and regularly receives more than $30 per month in tips. Tips include amounts designated as a tip by credit card customers on their charge slips. Nothing in this rule prevents an employer from requiring employees to share or allocate such tips or gratuities on a pre-established basis among other employees who customarily and regularly receive tips. Employer-required sharing of tips with employees who do not customarily and regularly receive tips, such as management or food preparers, or deduction of credit card processing fees from tipped employees, shall nullify allowable tip credits towards the minimum wage.

1.11 "'Wages' or 'compensation'" has the meaning provided by C.R.S. § 8-4-101(14) and includes paid sick leave under the Healthy Families and Workplaces Act, C.R.S. § 8-13.3-402(8)(b).

1.12 "Workday" means any consecutive 24-hour period starting with the same hour each day and the same hour as the beginning of the workweek. The workday is set by the employer and may accommodate flexible shift scheduling.

1.13 "Workweek" means any consecutive set period of 168 hours (7 days) starting with the same calendar day and hour each week.

Rule 2. Coverage and Exemptions.

2.1 Scope of coverage. The COMPS Order regulates wages, hours, working conditions, and procedures for all employers and employees for work performed within Colorado, with the exceptions and exemptions contained within Rule 2.

2.2 Exemption from all except Rules 1, 2, and 8. The following are exempt from the COMPS Order except Rules 1 (Authority and Definitions), 2 (Coverage and Exemptions), and 8 (Administration and Interpretation).

2.2.1 Administrative employees. This exemption covers a salaried employee, paid at least the applicable salary in Rule 2.5 as specified for the applicable year in the PAY CALC Order, who directly serves an executive, and regularly performs duties important to the decision-making process of that executive. The executive and employee must regularly exercise independent judgment and discretion in matters of significance, with a primary duty that is non-manual in nature and directly related to management policies or general business operations.

2.2.2 Executives or supervisors. This exemption covers a salaried employee, paid at least the applicable salary in Rule 2.5 as specified for the applicable year in the PAY CALC Order, who supervises the work of at least two full-time employees and has the authority to hire and fire, or to effectively recommend such action. The employee must spend a minimum of 50% of the workweek in duties directly related to supervision.

2.2.3 Professional employees. This exemption covers a salaried employee, paid at least the applicable salary in Rule 2.5 as specified for the applicable year in the PAY CALC Order, employed in a field of endeavor whose primary duty is work that requires (A) the consistent exercise of discretion and judgment, as distinguished from routine work that is mental, manual, mechanical or physical, and (B) either (1) knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, or (2) invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (as opposed to routine mental, manual, mechanical or physical work, or work that primarily depends on intelligence, diligence and accuracy). The professional employee must be employed in the field in which s/he was trained.

2.2.4 Outside salespersons. This exemption covers an employee working primarily away from the employer's place of business or enterprise for the purpose of making sales or obtaining orders or contracts for any commodities, articles, goods, real estate, wares, merchandise, or services. The employee must spend a minimum of 80% of the workweek in activities directly related to his or her own outside sales.

2.2.5 Owners or proprietors. This exemption covers a full-time employee actively engaged in management of the employer who either:

(A) owns at least a bona fide 20% equity interest in the employer; or

(B) for a non-profit employer, is the highest-ranked and highest-paid employee, and is paid at least the salary threshold in Rule 2.5 as specified for the applicable year in the PAY CALC Order.

2.2.6 Taxi cab drivers employed by a taxi service provider licensed by a state or local government.

2.2.7 In-residence workers. This exemption covers the below-listed in-residence employees.

(A) Casual babysitters employed in private residences directly by households, or directly by family members of the individual(s) receiving care from the babysitter.

(B) Property managers residing on-premises at the property they manage.

(C) Student residence workers working in premises where they reside for sororities, fraternities, college clubs, or dormitories.

(D) Laundry workers who (a) are inmates, patients, or residents of charitable institutions, and (b) perform laundry services, (c) in institutions where they reside.

(E) Field staff of seasonal camps or seasonal outdoor education programs who primarily provide supervision or education of minors, or education of adults; are required to reside on-premises or in the field; are provided adequate lodging and all meals free of charge and without deduction from wages; and as of January 1, 2021, are paid the amount required by subpart (1) below (with no minimum pay required before January 1, 2021).

(1) This exemption requires that field staff be paid either (a) the applicable Colorado minimum wage for all hours worked, or (b) a salary (i) equivalent to at least 42 hours per week at the Colorado minimum wage (with the 15% hourly wage reduction that Rule 3.3 permits for unemancipated minors), (ii) with hourly wage reduced one-sixth (⅙) for non-profit employers with annual total gross revenue of $25 million or less, and (iii) reduced $200 per week as a credit for facilities provided (lodging, meals, and other facilities), as specified for the applicable year in the PAY CALC Order.

(2) "Seasonal" in this Rule means a camp or program that either (a) does not operate for more than seven months in a year, or (b) during the preceding calendar year had average receipts for any six months of not more than one-third (⅓) of its average receipts for the other six months.

2.2.8 Bona fide volunteers and work-study students. This exemption covers those who need not be compensated under the federal Fair Labor Standards Act (29 U.S.C. §§ 201 et seq.) as either: (A) enrolled students receiving credit for an unpaid work-study program or internship; or (B) bona fide volunteers for non-profit organizations.

2.2.9 Elected officials and their staff. This exemption covers individuals elected to public office and members of their staff.

2.2.10 Employees in highly technical computer-related occupations. This exemption covers an employee paid a salary, or hourly compensation, in accord with Rule 2.5, and as specified for the applicable year in the PAY CALC Order, who:

(A) is a skilled worker employed as a computer systems analyst, computer programmer, software engineer, or other similarly highly technical computer employee;

(B) who has knowledge of an advanced type, customarily acquired by a prolonged course of specialized formal or informal study; and

(C) spends a minimum of 50% of the workweek in any combination of the following duties —

(1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications,

(2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications, or

(3) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems.

2.2.11 Highly compensated employees. This exemption covers an employee who:

(A) is paid annual wages of at least —

(1) weekly, the weekly salary for the executive, professional, or administrative exemption, as specified for the applicable year in the PAY CALC Order, and

(2) annually, two and one-quarter times the rounded annual salary for the executive, professional, or administrative exemption, as specified for the applicable year in the PAY CALC Order;

(B) customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee (as described in Rules 2.2.1-2.2.3); and

(C) whose primary duty is office or non-manual work — for example, non-management production-line workers and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers and other employees who perform work involving repetitive operations with their hands, physical skill and energy are not exempt under this section no matter how highly paid they might be.

2.2.12 National Western Stock Show. This exemption covers temporary employees employed directly by the Western Stock Show Association for the annual National Western Stock Show.

2.3 Agriculture.

2.3.1 Minimum Wages. All minimum wage laws and rules apply to all employees of all agricultural employers, except as otherwise provided for “range workers” in Rule 2.4.9.

2.3.2 Overtime and Maximum Hours Protections.

(A) Agricultural employees of agricultural employers are exempt from both the 40-hour weekly and the 12-hour daily overtime pay requirements in Rule 4.1.1, provided that such employees receive the following.

(1) Weekly overtime pay, at one and one-half times their regular rate of pay, after 60 hours worked per workweek from November 1, 2022, through December 31, 2023, and thereafter as follows, and as listed in the summary table below:

(a) at a highly seasonal agricultural employer (defined in Rule 2.3.2(C)), (i) after 56 hours worked per workweek during any up

to 22-workweek period, or any two or three periods of at least four workweeks each totaling up to 22 weeks, that the employer designates as its peak labor period(s), and (ii) otherwise after 48 hours worked per week; and

(b) at an agricultural employer that is not highly seasonal, (i) after 54 hours worked per workweek in 2024, and (ii) after 48 hours worked per workweek as of January 1, 2025; except

(c) at a small agricultural employer (defined in Rule 2.3.2(B) below), whether or not highly seasonal, after 56 hours worked per workweek in 2024, then whichever of (a) or (b) applies as of January 1, 2025.

<table>
<tr><th colspan="4">Summary Table: Weekly Overtime Requirements for Agricultural Employers</th></tr>
<tr><th>Time Period</th><th>(a) Highly Seasonal Employers</th><th>(b) Non-Highly Seasonal Employers</th><th>(c) Small Employers (seasonal or not)</th></tr>
<tr><td>Until 11/1/22</td><td colspan="3">[No requirements]</td></tr>
<tr><td>11/1/22-12/31/23</td><td colspan="3">60 hours</td></tr>
<tr><td>2024</td><td rowspan="2">56 hours for up to 22 peak weeks;
48 hours otherwise</td><td>54 hours</td><td>56 hours</td></tr>
<tr><td>2025 -</td><td>48 hours</td><td>[No separate rule for small employers; apply (a) or (b)]</td></tr>
</table>

(2) Beginning November 1, 2022:

(a) in lieu of 12-hour daily overtime pay under Rule 4.1.1, 30 minutes for the third Rule 5.2 paid rest period (rather than 10 minutes or any other duration under 30 minutes otherwise applicable to that rest period) — except that if the employer had no reason to believe an employee would exceed 12 hours until the twelfth hour worked, then the additional break time may be provided on the employee's next workday; and

(b) for a workday with more than 15 hours of work, or for more than 15 consecutive hours of work (as provided by Rule 4.1.5) without regard to the start and end time of the workday, an additional lump-sum payment equal to one hour of the Colorado minimum wage, as specified for the applicable year in the PAY CALC Order.

(B) "Small agricultural employer" means an agricultural employer that:

(1) employed fewer than four employees on average over the three prior calendar years (or as many complete prior calendar years as they have been in operation); and

(2) had average adjusted gross income, over the three prior complete taxable years preceding 2024 (the year that small agricultural employers have a different overtime standard), of no more than $1,000,000. Employers in operation fewer than three complete taxable years shall use as many complete taxable years as they have been in operation;

employers not yet in operation for any complete taxable years shall be considered below the threshold.

(C) "Highly seasonal agricultural employer" means an agricultural employer that, in any up to 22-workweek period (or any two or three periods , of at least four workweeks each, totaling up to 22 weeks) in the prior calendar year, had at least twice as many employees as the rest of the year, and provides the following to those it would pay weekly overtime after 56 rather than 48 hours in peak weeks.

(1) An initial disclosure, at least annually,

(a) that weekly overtime pay will be after 56 rather than 48 hours for up to 22 peak weeks,

(b) whether those peak weeks will be divided into one, two, or three periods (of four weeks or more), and

(c) a good-faith estimate of the months in which the peak weeks will occur.

The initial disclosure must be provided to employees at least 30 days in advance of the first expected peak week (or upon hiring for those start work fewer than 30 days in advance), except for those employed under, and in compliance with federal requirements for, temporary work visas, no later than the date of the worker's visa application, contemporaneous with required federal pre-employment written disclosures to visa workers ordinarily due by the date of the worker's visa application.

(2) Written notice, at least annually, of which weeks will be the peak weeks, no later than the seventh day before the first peak week (or upon hiring for those starting work after the seventh day). The employer may change which are the peak weeks after that notice if:

(a) it provides at least one week's written notice of any week being added or removed as a peak week;

(b) the initial disclosure was the employer's good-faith, reasonable expectation of which weeks would be the peak weeks; and

(c) the changes are based on circumstances not foreseeable at the time of the initial disclosure (for example, a late frost).

(3) All required notices and disclosures related to peak weeks in English and any language that is the first language spoken by at least five percent of the employer's workforce at any point during the year.

(D) An agricultural employee is exempt from all overtime pay requirements in the COMPS Order if (by blood, adoption, or marriage) they are the child, sibling, spouse, parent, aunt, uncle, nephew, niece, first cousin, grandchild, or grandparent of a family owner of an employer. For this exemption, a "family owner" is an individual with an ownership interest in an agricultural employer that is either (a) a majority interest or (b) an at least 10% interest that combines with those of other family members of that owner (of any type of relative listed in the prior sentence) to form a majority interest. If a family owner is also an "employee" of the agricultural employer, they also are exempt from all overtime pay requirements in the COMPS Order.

(E) How many employees an agricultural employer has, for purposes of the above definitions of "small agricultural employer" in (B), and "highly seasonal agricultural employer" in (C), shall be determined as follows.

(1) Employees shall be counted at the worksite for which the definition is being assessed, and shall count proportionally as follows, based on their average hours worked in all weeks in the preceding year with at least one hour worked:

(a) 35 hours per week or more, 1.0;

(b) between 15 and 35 hours per week, 0.5; and

(c) under 15 hours per week, 0.

(2) Employers need not rely on prior staffing levels to qualify for the "small agricultural" or "highly seasonal" employee thresholds if they (a) have been in operation for less than one calendar year, or (b) did not qualify based on their prior staffing levels, but have a good-faith, objectively reasonable belief that they will qualify for the present year. If their belief that they will qualify for the threshold proves incorrect, they must pay affected employees back pay for any additional overtime owed, plus 5%, by 30 days from the date the employer has notice that it will not qualify for the threshold for the year, or (if they lacked notice until the end of the year) by 30 days from the end of that calendar year.

(F) The Rule 2.3.2 exemption does not apply if an employer draws at least 50% of its annual dollar volume of business from sales to the consuming public (rather than for resale) of any services, commodities, articles, goods, wares, or merchandise; prior Orders for decades have covered any such employer, in any industry. E.g., Order #35, Rule 2(A) (covering any employer "that sells or offers for sale, any service, commodity, article, good, … wares, or merchandise to the consuming public" and draws "50% or more of its annual dollar volume … from such sales," rather than from sales to other businesses "for resale").

2.3.3 Meal and Rest Periods.

(A) In addition to the meal and rest periods required by Rule 5, an agricultural employer shall provide agricultural employees engaged in hand-weeding and hand-thinning an additional, five-minute rest period, which, insofar as is practicable, must be in the middle of each work period.

(B) The requirement of meal and rest periods in Rule 2.3.3 and Rule 5 does not apply to a truck driver whose sole and principal duty is to haul livestock or to a combine or harvester operator while harvesting.

2.4 Exemptions from Overtime Requirements of the COMPS Order. The following employees are exempt from Rule 4 (Overtime) unless otherwise specified.

2.4.1 Certain Salespersons and Mechanics. Salespersons, parts-persons, and mechanics employed by automobile, truck, or farm implement (retail) dealers; and salespersons employed by trailer, aircraft, and boat (retail) dealers are exempt from Rule 4 (Overtime).

2.4.2 Commission Sales. Sales employees of retail or service industries paid on a commission basis, provided that at least 50% of their total earnings in the pay period is derived from commission sales, and their regular rate of pay is at least one and one-half times the

minimum wage, are exempt from Rule 4 (Overtime). This exemption is applicable for only employees of retail or service employers who receive over 75% of their annual dollar volume from retail or service sales.

2.4.3 Ski Industry. Employees of the ski industry performing duties directly related to ski area operations for downhill skiing or snowboarding, and those employees engaged in providing food and beverage services at on-mountain locations, are exempt from (within Rule 4) the 40-hour overtime requirement but not the requirement of overtime pay for over 12 hours that are consecutive or are within a workday. This partial overtime exemption does not apply to ski area employees performing duties related to lodging.

2.4.4 Medical Transportation. Employees of the medical transportation industry who work 24-hour shifts are exempt from the Rule 4.1.1(B)-(C) daily (12-hour) overtime rules if they receive the required Rule 4.1.1(A) weekly (40-hour) overtime pay.

2.4.5 Eight and Eighty Rule. A hospital or nursing home may seek an agreement with individual employees to pay overtime pursuant to the provisions of the federal Fair Labor Standards Act "8 and 80 rule" whereby employees are paid time and one-half their regular rate of pay for any work performed in excess of 80 hours in a 14 consecutive day period and for any work in excess of 8 hours per day.

2.4.6 Drivers, and Driver's Helpers, Subject to the Federal Motor Carrier Act ("MCA"). Drivers and their driver's helpers are exempt from Rule 4 (overtime) and Rule 5 (rest and meal periods) while and to the extent that they are:

(A) subject to the federal MCA and exempt from overtime requirements of the FLSA pursuant to 29 U.S.C. § 213(b)(1) and regulations promulgated thereunder;

(B) working on MCA-covered non-passenger vehicles, or on MCA-covered passenger vehicles qualifying as commercial motor vehicles requiring a commercial driver's license ("CDL") -- but not on vehicles that transport workers to and from manual work jobs (*e.g.*, landscaping or lawn care, construction or roofing, cleaning or janitorial, or other manual labor) and do not require a CDL; and

(C) paid compensation equivalent to at least 50 hours at the Colorado minimum wage with overtime, as specified for the applicable year in the PAY CALC Order, regardless of whether the pay is hourly, salaried, piece rate, or on another basis.

2.4.7 Direct Support and Care. The Rule 4.1.1(B)-(C) daily (12-hour) overtime rule does not apply to companions designated as direct support professionals/direct care workers who are scheduled for, and work, shifts of at least 24 hours providing residential or respite services and who are employed by service providers and agencies that receive at least 75% of their total revenue from Medicaid or other governmental sources, and who provide services within Medicaid home- and community-based service waivers.

2.4.8 Decision-Making Managers at Livestock Employers. The Rule 2.3.2 and Rule 4 overtime rules do not apply to decision-making managers at livestock employers, defined as follows.

(A) A "decision-making manager" (for purposes of this exemption) is an employee primarily engaged in livestock work:

(1) who is paid at least the applicable salary in Rule 2.5, as specified for the applicable year in the PAY CALC Order;

(2) who is not employed in the position on a seasonal or temporary basis (i.e., not expected to remain in the position for less than 12 months); and

(3) whose primary duties require routine exercise of independent judgment and discretion in matters of significance, and who either

(a) supervises two or more full-time employees, or

(b) reports directly to an owner (majority or minority), or to an executive-level employee who reports directly to such an owner, who routinely exercises independent judgment and discretion in matters of significance, whether in manual or non-manual labor (e.g., the owner's second-in-command, or the head of the site where the exempt employee works).

(B) A "livestock employer" (for purposes of this exemption) is an agricultural employer with significant responsibilities for "livestock" (as defined under the FLSA) care and health — a dairy, cattle ranch, feedlot, or similar employer — that does not qualify as a "highly seasonal" employer under Rule 2.3.2.

2.4.9 Range workers. The Rule 2.3.2 and Rule 4 overtime rules do not apply to range workers who are paid at least the minimum range worker salary (as specified in the PAY CALC Order for the applicable year) during periods when they are "principally engaged in the range production of livestock … on the open range" (as defined by C.R.S. 8-6-101.5(b)), and are provided without cost or deduction any housing, food, transport, and equipment required for H-2A visa range workers by federal regulations.

2.5 Salary Thresholds for Certain Exemptions.

2.5.1 For COMPS exemptions requiring a salary, the "Salary Requirement" rules of the federal Fair Labor Standards Act in 29 C.F.R. Part 541 Subpart G, apply, except that under the COMPS Order, the salary must be at least the level specified for the applicable year in the PAY CALC Order and sufficient for the minimum wage for all hours in a workweek (with the exception of certain professionals listed in Rule 2.5.2). Except as provided in Rule 2.2.11, the weekly salary from July 1, 2020, through December 31, 2020, shall be $684 ($35,568 per year); $778.85 for 2021 ($40,500 per year); $865.38 for 2022 ($45,000 per year); $961.54 for 2023 ($50,000 per year); $1,057.69 for 2024 ($55,000 per year); and after 2024 shall be indexed every January 1 by the same Consumer Price Index ("CPI") as the Colorado minimum wage, as stated in the PAY CALC Order; except that the 2020 salary did not apply to the following two categories of employers, for whom the above salary schedule applied only as of January 1, 2021 — (A) non-profit employers with annual total gross revenue of under $50 million, and (B) for-profit employers with annual total gross revenue of under $1 million. Annual equivalents are based on 2080 hours over 52 weeks of 40 hours, as under the federal Fair Labor Standards Act, and are rounded to the nearest dollar.

For any employer that was not subject to the $684 per week salary under this Rule 2.5.1 for all or part of 2020, the required salary was the equivalent of the Colorado $12.00 minimum wage, less any applicable lawful credits, for all hours worked in a workweek; this salary requirement of minimum wage for all hours work applied under Minimum Wage Order #35 (2019) and prior Minimum Wage Orders.

2.5.2 Exemption for Certain Professionals Exempt from the Salary Requirement under Federal Wage Law. The Rule 2.5.1 salaries do not apply to the following professionals who are exempt from the requirement of a salary under federal wage law.

(A) Doctors, lawyers, and teachers who qualify as exempt Rule 2.2.3 professional employees need not receive any particular salary or hourly pay to be exempt.

(B) Employees in highly technical computer-related occupations, as defined by Rule 2.2.10, must receive at least the lesser of (1) the applicable salary in Rule 2.5.1, or (2) hourly pay that is at least $28.38 in 2021, adjusted annually by CPI thereafter, as specified for the applicable year in the PAY CALC Order.

Rule 3. Minimum Wages.

3.1 Statewide Minimum Wage. Under the minimum wage requirements of Article XVIII, Section 15, of the Colorado Constitution, all employees (with the exception detailed in Rule 3.3), whether employed on an hourly, piecework, commission, time, task, or other basis, shall be paid not less than the Colorado minimum wage, as specified for the applicable year in the PAY CALC Order, less any applicable lawful credits or exceptions noted, for all hours worked, if the employee is covered by *either*:

(A) Rule 2 (Coverage and Exemptions) of the COMPS Order; *or*

(B) the minimum wage provisions of the federal Fair Labor Standards Act (29 U.S.C. §§ 201 et seq.).

3.2 Minimum and Overtime Wage Requirements of Other Applicable Jurisdictions. In addition to state wage requirements, federal or local laws or regulations may apply minimum, overtime, or other wage requirements to some or all Colorado employers and employees. If an employee is covered by multiple minimum or overtime wage requirements, the requirement providing a higher wage, or otherwise setting a higher standard, shall apply. The Division accepts state law complaints by employees who claim entitlement to a state, federal, or local minimum or overtime wages under the C.R.S. § 8-4-101(14) definition that the "unpaid wages" recoverable in a state-law claim include "[a]ll amounts for labor or service performed by employees," as long as such amounts are "earned, vested, and determinable, at which time such amount shall be payable to the employee pursuant to this article."

3.3 Reduced Minimum for Minors. The minimum wage may be reduced by 15% for non-emancipated minors, as specified for the applicable year in the PAY CALC Order.

Rule 4. Overtime.

4.1 Overtime Wages.

4.1.1 Employees shall be paid time and one-half of the regular rate of pay for any work in excess of any of the following, except as provided in exemptions or variances in Rule 2:

(A) 40 hours per workweek;

(B) 12 hours per workday; or

(C) 12 consecutive hours without regard to the start and end time of the workday.

4.1.2 Whichever of the three calculations in Rule 4.1.1 results in the greater payment of wages shall apply in any particular situation.

4.1.3 Hours worked in two or more workweeks shall not be averaged for computing overtime.

4.1.4 Performance of work in two or more positions, at different pay rates, for the same employer, shall be computed at the overtime rate based on the regular rate of pay as described in Rule 1.8.3.

4.1.5 In calculating when 12 consecutive hours are worked for purposes of the Rule 4.1.1 requirement of overtime after 12 hours, meal periods may be subtracted, but only if the meal periods comply with the Rule 5.1 requirements for meal periods.

4.2 Effect of Daily Overtime on Workday and Workweek. The requirement to pay overtime for work in excess of 12 consecutive hours will not alter the employee's established workday or workweek, as previously defined.

4.3 Overtime for Minors. Nothing in Rule 4 modifies the provisions on work hours for minors contained in C.R.S. § 8-12-105.

Rule 5. Meal and Rest Periods.

5.1 Meal Periods. Employees shall be entitled to an uninterrupted and duty-free meal period of at least a 30-minute duration when the shift exceeds 5 consecutive hours. Such meal periods, to the extent practical, shall be at least one hour after the start, and one hour before the end of the shift. Employees must be completely relieved of all duties and permitted to pursue personal activities for a period to qualify as non-work, uncompensated time. When the nature of the business activity or other circumstances make an uninterrupted meal period impractical, the employee shall be permitted to consume an on-duty meal while performing duties. Employees shall be permitted to fully consume a meal of choice on the job and be fully compensated for the on-duty meal period without any loss of time or compensation.

5.2 Rest Periods. Every employer shall authorize and permit a compensated 10-minute rest period for each 4 hours of work, or major fractions thereof, for all employees, as follows, except as provided in exemptions or variances in Rule 2:

Work Hours	Rest Periods Required
2 or fewer	0
Over 2, and up to 6	1
Over 6, and up to 10	2
Over 10, and up to 14	3
Over 14, and up to 18	4
Over 18, and up to 22	5
Over 22	6

5.2.1 Rest periods shall be 10 minutes unless,

(A) on a given workday, or in a writing covering up to a one-year period that is signed by both parties, the employee and the employer agree, voluntarily and without coercion, to have two 5-minute breaks, as long as 5 minutes is sufficient, in the work setting, to allow the employee to go back and forth to a bathroom or other location where a bona fide break would be taken; or

(B) if the below conditions are met, rest periods need not be 10 minutes every 4 hours for any employees (i) governed by a collective bargaining agreement at any employer, or (ii) during time they are providing Medicaid-funded services for a service provider or agency receiving at least 75% of its annual total gross revenue from Medicaid or other governmental funds for providing such services within Medicaid home- and community-based services waivers, and the services provided require continuous supervision of the service recipient, or providing a rest period would interfere with ensuring the service recipient’s health, safety, and welfare. Employees in category (i) or (ii) must receive:

(1) rest periods that average, over the workday, at least 10 minutes per 4 hours worked; and

(2) at least 5 minutes of rest in every 4 hours worked.

Such an agreement does not change an employee's right to pay for rest periods under Rule 5.2.4. Additionally, when (B)(ii) above applies: When direct support professionals or direct care workers serving individuals with disabilities spend time in community outings with those individuals with disabilities – as part of day programs, supported living services, or one-to-one respite or personal care – time in such outings does not require rest breaks or pay for rest breaks.

5.2.2 Rest periods, to the extent practical, shall be in the middle of each 4-hour work period. It is not necessary that the employee leave the premises for a rest period.

5.2.3 Required rest periods are time worked for the purposes of calculating minimum wage and overtime obligations.

5.2.4 When an employee is not authorized and permitted a required 10-minute rest period, his or her shift is effectively extended by 10 minutes without compensation. Because a rest period requires 10 minutes of pay without work being performed, work during a rest period is additional work for which additional pay is not provided. Therefore, a failure by an employer to authorize and permit a 10-minute compensated rest period is a failure to pay 10 minutes of wages at the employee's agreed-upon or legally required (whichever is higher) rate of pay. This Rule 5.2.4 applies equally to any required rest period time not provided (e.g., rest periods that are incomplete, or for non-hourly-paid employees, or under any other rule or statute providing rest periods of different durations).

Rule 6. Deductions, Credits, and Charges.

6.1 Tips or Gratuities. It shall be unlawful for an employer to assert a claim to, right of ownership in, or control over tips or gratuities intended for employees in violation of the Colorado Wage Act, including C.R.S. § 8-4-103(6).

6.2 Credits Toward Minimum Wages. The only allowable credits an employer may take toward the minimum wage are those in Rules 6.2.1 - 6.2.3 below.

6.2.1 Lodging Credit. A lodging credit for housing furnished by the employer and used by the employee may be considered part of the minimum wage if it is:

(A) no greater than the smaller of (1) the reasonable and actual cost to the employer of providing the housing, (2) the fair market value of the housing, or (3) $25 per week for a room (in a shared residence, dormitory, or hotel) or $100 per week for a private residence (an apartment or a house);

(B) accepted voluntarily and without coercion, and primarily for the benefit or convenience of the employee, rather than of the employer; and

(C) recorded in a written agreement (electronic form is acceptable) that states the fact and amount of the credit (but need not be a lease).

6.2.2 Meal Credit. A meal credit, equal to the reasonable cost or fair market value of meals provided to the employee, may be used as part of the minimum hourly wage. No profits to the employer may be included in the reasonable cost or fair market value of such meals furnished. Employee acceptance of a meal must be voluntary and uncoerced.

6.2.3 Tip Credit. A tip credit no greater than $3.02 per hour may be used to offset cash wages for employers of tipped employees. An employer must pay a cash wage of at least the amount specified for the applicable year in the PAY CALC Order if it claims a tip credit

against its minimum hourly wage obligation; if an employee's tips combined with the cash wage of at least the amount specified for the applicable year in the PAY CALC Order do not equal the minimum hourly wage, the employer must make up the difference in cash wages.

6.3 Uniforms.

6.3.1 Where wearing a particular uniform or special apparel is a condition of employment, the employer shall pay the cost of purchases, maintenance, and cleaning of the uniforms or special apparel, with the following exceptions:

(A) if the uniform furnished by the employer is plain and washable, and does not need or require special care such as ironing, dry cleaning, pressing, etc., the employer need not maintain or pay for cleaning; and

(B) clothing that is ordinary, plain, and washable that is prescribed as a uniform need not be furnished by the employer unless a special color, make, pattern, logo, or material is required.

6.3.2 The cost of ordinary wear and tear of a uniform or special apparel shall not be deducted from an employee's wages.

Rule 7. Employer Record-Keeping and Posting Requirements.

7.1 Employee Records. Every employer shall keep at the place of employment, or at the employer's principal place of business in Colorado, a true and accurate record for each employee which contains the following information:

(A) name, address, occupation, and date of hire of the employee;

(B) date of birth, if the employee is under 18 years of age;

(C) daily record of all hours worked;

(D) record of credits claimed and of tips; and

(E) regular rates of pay, gross wages earned, withholdings made, and net amounts paid each pay period.

7.2 Issuance of Earnings Statement. An itemized earnings statement of the information in Rule 7.1(D)-(E) and the total hours worked in the pay period, with the employee’s and the employer’s names, shall be provided to each employee each pay period.

7.3 Maintenance of Earnings Statement Information. An employer shall retain records reflecting the information contained in an employee’s itemized earnings statement as described in this rule for at least 3 years after the wages or compensation were due, and for the duration of any pending wage claim pertaining to the employee. Each employer shall provide each employee access to the information in Rules 7.1(A) and (C) in any of the following forms it chooses:

(A) provide the information with the regular earnings statements;

(B) provide each employee with access to a functioning electronic portal that shows the information – but this method is permissible only if the employer knows an email address of the employee; or

(C) provide each employee the information for the entire calendar year by January 31st the following year and, in addition, provide the information to an employee upon a request that an employee may make once per year.

7.4 Posting and Distribution Requirements.

7.4.1 Posting. Every employer subject to the COMPS Order must display a COMPS Order poster for the current year, with applicable dollar figures as stated in the PAY CALC Order for that year, published by the Division in an area frequented by employees where it may be easily read during the workday. If the work site or other conditions make a physical posting impractical (including private residences employing only one worker, and certain entirely outdoor work sites lacking an indoor area), the employer shall provide a copy of the COMPS Order or poster to each employee within his or her first month of employment, and shall make it available to employees upon request. Employers shall be deemed noncompliant if they attempt to minimize the effect of posters or notices required by statute or these Rules, such as by communicating positions contrary to, or discouraging the exercise of rights covered in, the required poster or notice. An employer that does not comply with the above requirements of this paragraph shall be ineligible for any employee-specific credits, deductions, or exemptions in the COMPS Order, but shall remain eligible for employer- or industry-wide exemptions, such as exempting an entire employer or industry from any overtime or meal/rest period requirements in Rules 4-5.

7.4.2 Distribution. Every employer publishing or distributing to employees any handbook, manual, or written or posted policies shall include a copy of the COMPS Order, or a COMPS Order poster published by the Division, with any such handbook, manual, or policies. Every employer that requires employees to sign any handbook, manual, or policy shall, at the same time or promptly thereafter, include a copy of the COMPS Order, or a COMPS Order poster published by the Division, and have the employee sign an acknowledgement of being provided the COMPS Order or the COMPS Order poster.

7.4.3 Translation. Employers with any employees with limited English language ability shall:

(A) use a Spanish-language version of the COMPS Order and poster published by the Division, if the employee(s) in question speak Spanish; or

(B) contact the Division to request that the Division, if possible, provide a version of the COMPS Order and poster in another language that any employee(s) need.

Rule 8. Administration and Interpretation.

8.1 Recovery of Wages.

(A) Availability of court action or Division administrative complaint. An employee receiving less than the full wages or other compensation owed is entitled to recover in a civil action the unpaid balance of the full amount owed, together with reasonable attorney fees and court costs, notwithstanding any agreement to work for a lesser wage, pursuant to C.R.S. §§ 8-4-121, 8-6-118. Alternatively, an employee may elect to pursue a complaint through the Division's administrative procedure as described in the Colorado Wage Act, C.R.S. § 8-4-101, et seq.

(B) No minimum claim size. There is no minimum size of a wage claim, and thus no claim too minimal ("*de minimis*") for recovery, because Article 4 requires paying "[a]ll wages or compensation" (C.R.S. § 8-4-103(1)(a)), and authorizes civil actions "to recover any amount of wages or compensation" (C.R.S. § 8-4-110(1)) and Division complaints "for any violation" (C.R.S. § 8-4-111(1)(a)).

8.2 Complaints. Any person may register with the Division a written complaint that alleges a violation of the COMPS Order within 2 years of the alleged violation(s), except that actions brought for a willful violation shall be commenced within 3 years.

8.3 Investigations. The Director or a designated agent shall investigate and take all proceedings necessary to enforce the payment of the minimum wage and other provisions of the COMPS Order, pursuant to these rules and C.R.S. Title 8, Articles 1, 4, 6, and 13.3. Violations may be subject to the administrative procedure as described in the Colorado Wage Act, C.R.S. § 8-4-101, et seq.

8.4 Violations. It is theft under the Criminal Code (C.R.S. § 18-4-401) if an employer or agent:

(A) willfully refuses to pay wages or compensation, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, coerce, delay, or defraud the person to whom such indebtedness is due (C.R.S. § 8-4-114); or

(B) intentionally pays or causes to be paid to any such employee a wage less than the minimum (C.R.S. § 8-6-116).

8.5 Reprisals. Employers shall not threaten, coerce, or discriminate against any person for the purpose of reprisal, interference, or obstruction as to any actual or anticipated investigation, hearing, complaint, or other process or proceeding relating to a wage claim, right, or rule. Violators may be subject to penalties under C.R.S. §§ 8-1-116, 8-1-140, 8-4-120, and/or 8-6-115.

8.6 Division and Dual Jurisdiction. The Division shall have jurisdiction over all questions arising with respect to the administration and interpretation of the COMPS Order. Whenever employers are subjected to Colorado law as well as federal and/or local law, the law providing greater protection or setting the higher standard shall apply. For information on federal law, contact the U.S. Department of Labor, Wage and Hour Division.

8.7 Construction.

(A) Liberal construction of COMPS, narrow construction of exceptions/ exemptions. Under the C.R.S. § 8-6-102 “Construction” provision (“Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed by such court”), applicable to rules on “wages which are inadequate to supply the necessary cost of living” (§ 8-6-104), on “conditions of labor detrimental to [worker] health or morals” (§ 8-6-104), on “conditions of labor and hours of employment not detrimental to health or morals for workers” (§ 8-6-106), on “what are unreasonably long hours” (§ 8-6-106), on what requirements are “necessary to carry out the provisions of this article” (§ 8-6-108.5), on minimum and overtime wages (§§ 8-6-109, -111, -116, -117), and on who qualifies as an “agricultural employer” (§ 8-6-120 (incorporating §§ 8-13.5-201(1); 8-3-104(1)(b))): The provisions of the COMPS Order shall be liberally construed, with exceptions and exemptions accordingly narrowly construed.

(B) Subpart included in cross-references. Where any Division rule references another rule, the reference shall be deemed to include all subparts of the referenced rule.

(C) Minimum Wage Order references. References to the Colorado "Minimum Wage Order" shall be deemed to reference the COMPS Order, as the successor to the Colorado Minimum Wage Order.

8.8 Separability. The COMPS Order is intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the

remainder of the COMPS Order remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

8.9 Basis for Calculation. Calculations in the PAY CALC and COMPS Orders are based on Section 15 of Article XVIII of the Colorado Constitution ("Section 15") ("Colorado's minimum wage is … adjusted annually for cost of living increases, as measured by the … Consumer Price Index used for Colorado"); C.R.S. Article 8, Title 6; and the COMPS Order. All inflation-adjusted values applicable to the COMPS and PAY CALC Orders are based on the CPI used for Colorado, the Denver-Aurora-Lakewood CPI published by the federal Bureau of Labor Statistics. To effectuate the above provisions that employees must be paid not less than the prior year's minimum wage adjusted for inflation, Division rules and practice must round up, to the nearest cent, any fractional cents yielded by the inflation adjustment. Other than in the annual minimum wage calculation, Division rules and practice round fractional cents of at least 0.5 up, and of under 0.5 down.

Appendix A. Statutory Authority.

- C.R.S. §§ 8-1-101 ("'General order' means an order of the director applying generally throughout the state to all persons, employments, or places of employment under the jurisdiction of the division");

- 8-1-103 ("[P]owers, duties, and functions of the director … , includ[e] … promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications");

- 8-1-107 ("[T]he director has the duty and the power to … [a]dopt reasonable and proper rules and regulations relative to the exercise of his powers and proper rules and regulations to govern the proceedings of the division and to regulate the manner of investigations and hearings.")

- 8-1-108 ("[G]eneral orders shall be effective … after they are adopted by the director and posted"; "All orders of the division shall be … in force and prima facie reasonable and lawful until … found otherwise.");

- 8-1-111 ("The director is vested with the power and jurisdiction to have such supervision of every employment and place of employment … [to] determine the conditions under which the employees labor … , to enforce all provisions of law relating thereto … to administer all provisions of this article with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this article.");

- 8-1-130 ("The director has full power to hear and determine all questions within his jurisdiction, and his findings, award, and order issued thereon shall be final agency action.");

- 8-4-111 ("It is the duty of the director … to enforce generally the provisions of this article.");

- 8-6-101.5 ("[T]he minimum wage requirements of section 15 of article xviii of the state constitution, and any minimum wage laws enacted pursuant to this article 6, apply to agricultural employers employing agricultural workers. ...The Colorado minimum wage that an agricultural employer must pay to an agricultural worker who is principally engaged in the range production of livestock … on the open range is: (i) beginning January 1, 2022, ... five hundred fifteen dollars per week; and (ii) beginning January 1, 2023, the minimum wage required in the prior calendar year adjusted annually .... . The director may set a higher minimum wage than is required … consistent with the director's authority and duties[.]");

- 8-6-101.5 ("An agricultural worker is entitled to an uninterrupted and duty-free meal period of at least a thirty-minute duration when the agricultural worker's shift exceeds five consecutive hours. ...An agricultural worker is entitled to an uninterrupted and duty-free rest period of at least ten minutes within each four hours of work."); 8-13.5-203(3) ("An agricultural employer shall provide agricultural workers engaged in hand weeding and hand thinning an additional five

minute rest period, which, insofar as is practicable, must be in the middle of each work period. The authorized rest period must be based on the total hours worked daily at the rate of fifteen minutes net rest time per four hours worked, or a major fraction thereof. The agricultural employer shall count the authorized rest period as hours worked and not deduct the rest period from the agricultural worker's wages.");

- 8-6-102 ("Whenever this article or any part thereof is interpreted by any court, it shall be liberally construed.");

- 8-6-104 ("It is unlawful to employ workers in any occupation … for wages which are inadequate to supply the necessary cost of living and to maintain the health of the workers .... It is unlawful to employ workers in any occupation … under conditions of labor detrimental to their health or morals.");

- 8-6-105 ("It is the duty of the director to inquire into the wages paid to employees and into the conditions of labor … in any occupation … if the director has reason to believe … conditions of labor are detrimental to the health or morals of said employees or that the wages paid to a substantial number of employees are inadequate to supply the necessary cost of living and to maintain such employees in health.");

- 8-6-106 ("The director shall determine the minimum wages sufficient for living wages … ; standards of conditions of labor and hours ... not detrimental to health or morals for workers; and what are unreasonably long hours.");

- 8-6-108 ("[F]or the purpose of investigating any of the matters [s/]he is authorized to investigate by this article … [t]he director has power to make reasonable and proper rules and procedure and to enforce said rules and procedure.""");

- 8-6-109 ("If after investigation the director is of the opinion that the conditions of employment surrounding said employees are detrimental to the health or morals or that a substantial number of workers in any occupation are receiving wages … inadequate to supply the necessary costs of living and to maintain the workers in health, the director shall proceed to establish minimum wage rates.");

- 8-6-111 ("Overtime, at a rate of one and one-half times the regular rate of pay, may be permitted by the director under conditions and rules and for increased minimum wages which the director, after investigation, determines and prescribes by order and which shall apply equally to all employers in such industry or occupation.");

- 8-6-116 ("The minimum wages fixed by the director, as provided in this article, shall be the minimum wages paid to the employees, and the payment … of a wage less than the minimum … is unlawful");

- 8-6-117 ("In every prosecution … of this article, the minimum wage established by the director shall be prima facie presumed to be reasonable and lawful and the wage required to be paid. The findings of fact made by the director acting within prescribed powers, in the absence of fraud, shall be conclusive.");

- 8-6-120 ("The director shall promulgate rules providing meaningful overtime and maximum hours protections to agricultural employees. … In promulgating such rules, the director shall consider the inequity and racist origins of the exclusion of agricultural employees from overtime and maximum hours protections available to other employees, the fundamental right of all employees to overtime and maximum hours standards that protect the health and welfare of employees, and the unique difficulties agricultural employees have obtaining workplace conditions equal to those provided to other employees.");

- 8-12-115 (“The director shall enforce … this article” and “shall promulgate rules and regulations more specifically defining the occupations and types of equipment permitted or prohibited by this article.”);

- 8-13.3-403 (“The division shall promulgate rules regarding compensation and accrual of paid sick leave for employees employed and compensated on a fee-for-service basis.”);

- 8-13.3-407 (“Determinations made by the division under this section [as to paid sick leave] are appealable pursuant to section 8-4-111.5 and rules promulgated by the department regarding appeals and strategic enforcement.”);

- 8-13.3-408 (“Each employer shall notify its employees that they are entitled to paid sick leave, pursuant to rules promulgated by the division.”);

- 8.13.3-410 (“The director may coordinate implementation and enforcement of this part and adopt rules as necessary for such purposes.”);

- 8.13.35-202 (c) (“To ensure that agricultural workers have meaningful access to services, the director of the division shall promulgate rules regarding additional times during which an employer may not interfere with an agricultural worker’s reasonable access to key service providers, including periods during which the agricultural worker is performing compensable work, especially during periods when the agricultural worker is required to work in excess of forty hours per week and may have difficulty accessing such services outside of work hours.”);

- 8.13.5-203 (“The director of the division shall promulgate rules that require agricultural employers to protect agricultural workers from heat-related stress illnesses and injuries when the outside temperatures reach eighty degrees or higher, with discretion to adjust requirements based on environmental factors, exposure time, acclimatization, and metabolic demands of the job as set forth in the federal Department of Health and Human Services Centers for Disease Control and Prevention National Institute for Occupational Safety and Health 2016 Revised Publication: Criteria for a Recommended Standard, Occupational Exposure to Heat and Hot Environments.”); and

- the Administrative Procedure Act, C.R.S. § 24-4-103.

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

Division of Labor Standards and Statistics (Includes 1103 Series)

on 11/10/2021

7 CCR 1103-1

COLORADO OVERTIME AND MINIMUM PAY STANDARDS ORDER (COMPS ORDER) #38

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:46:20

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

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Labor Standards and Statistics (Includes 1103 Series)

CCR number

7 CCR 1103-7

Rule title

7 CCR 1103-7 WAGE PROTECTION RULES 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

WAGE PROTECTION RULES

7 CCR 1103-7

Adopted November 10, 2021, effective January 1, 2022.

Rule 1. Statement of Purpose and Authority

1.1 The general purpose of these Wage Protection Rules (Rules) is to implement labor laws within the jurisdiction of the Division, including but not limited to the Colorado Wage Act (CWA) as amended by the Wage Protection Act (WPA) of 2014, C.R.S. § 8-4-101 et seq., the Healthy Families and Workplaces Act (HFWA) of 2020, C.R.S. § 8-13.3-401 et seq., and the Agricultural Labor Rights and Responsibilities Act, as codified in relevant part at C.R.S. §§ 8-6-101.5, 8-6-120, and 8-13.5-201 et seq. These rules are adopted pursuant to the Division's authority to adopt and amend rules and regulations to enforce, execute, apply, and interpret Articles 1, 2, 4, 6, and 13.3, and 13.5 of Title 8, C.R.S. (2022), and all rules, regulations, investigations, and other proceedings of any kind thereunder, by the Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of Articles 1, 2, 4, 6, 13.3, and 13.5, including but not limited to §§ 8-1-101, 103, 107, 108, 111, 130; § 8-4-111; §§ 8-6-102, 104, 105, 106, 108, 109, 111, 116, 117, 120; § 8-12-115; §§ 8-13.3-401, 403-405, 407-411, 416; and §§ 8-13.5-202, 203, 204.

1.2 Incorporation by Reference. Title 8, Articles 1, 2, 4, 6, 12, 13.3, and 13.5 of the Colorado Revised Statutes (2022) are hereby incorporated by reference, except that earlier versions of such laws and rules may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from the Division of Labor Standards & Statistics at a reasonable charge. These statutes can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes 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 originally issuing the statutes. All Division Rules are available to the public at www.coloradolaborlaw.gov. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as they are consistent with Colorado statutory and constitutional provisions.

1.3 Separability. These Rules are intended to remain in effect to the maximum extent possible. If any part of a rule (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the rule remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

1.4 The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment (Director) has the authority to enforce the statutes cited in Rule 1.1 above and these Rules.

Rule 2. Definitions and Clarifications

2.1 "Administrative procedure" means the process used by the Division to investigate wage complaints in accordance with C.R.S. § 8-4-111 and C.R.S. §§ 8-13.3-407(4), -410, and -411.

2.2 "Authorized representative" means a person designated by a party to a wage complaint to represent the party during the Division's administrative procedure. To designate an authorized representative, the party must comply with the requirements of Rule 4.3.

2.3 "Average daily earnings," as used in C.R.S. § 8-4-109(3)(b), will be calculated as follows, unless the Division identifies a legitimate reason to use a different method of calculation:

2.3.1 The most recent typical workweek or pay period will generally be used to calculate the average daily earnings. The total gross amount of wages and compensation will be divided by the number of days worked.

2.3.2 If an employee is entitled to and has been paid less than the Colorado minimum wage, and has not earned more than the Colorado minimum wage, then the Colorado minimum wage will be used to calculate average daily earnings.

2.3.3 All compensation paid to employees, including the hourly rate, shift differential, minimum wage tip credit, regularly occurring non-discretionary bonuses, commissions, and overtime may be included in the average daily earnings calculation.

2.4 "Certified copy," as used in C.R.S. § 8-4-113, means a copy of a final Division decision (issued by a compliance investigator or hearing officer) signed by the Director of the Division, or his or her designee, certifying that the document is a true and accurate copy of the final decision. A certified copy must be requested in writing. A Division decision (issued by a compliance investigator or hearing officer) will not be certified unless: either (1) all appeal deadlines have passed and no appeal has been filed or (2) if an appeal was timely filed, the decision was not superseded on appeal. A certified copy will not be issued in the event of termination pursuant to C.R.S. § 8-4-111(3).

2.5 "Determination" means a decision issued by a compliance investigator upon the conclusion of a wage complaint investigation. "Determination" includes: Citation and Notice of Assessment, Determination of Compliance, and Notice of Dismissal, if that Notice of Dismissal is issued after the Division initiated the administrative procedure as described in Rule 4.4.

2.6 "Employee" has the following definitions:

2.6.1 Under the CWA, C.R.S. § 8-4-101(5), an "employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer. For the purpose of these Rules, relevant factors in determining whether a person is an employee include the degree of control the employer may or does exercise over the person and the degree to which the person performs work that is the primary work of the employer; except that an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee."

2.6.2 Under the HFWA, C.R.S. § 8-13.3-402(4), "employee" has the same meaning as in C.R.S. § 8-4-101(5), but does not include an "employee" as defined in 45 U.S.C. § 351(d), who is subject to the federal "Railroad Unemployment Insurance Act," 45 U.S.C. § 351 et seq. An employee's "family member" means (1) an employee's immediate family member, as defined in C.R.S. § 2-4-401(3.7); (2) a child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor; or (3) a person for whom the employee is responsible for providing or arranging health- or safety-related care. C.R.S. § 8-13.3-402(6).

2.7 "Employer" has the following definitions:

2.7.1 Under C.R.S. § 8-4-101(6), "employer" has the same meaning as in the federal Fair Labor Standards Act at 29 U.S.C. § 203(d), and includes a foreign labor contractor and a migratory field labor contractor or crew leader; except that the provisions of the COMPS Order do not apply to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation,

reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado. "Foreign labor contractor" and "field labor contractor" have the definitions in C.R.S. §§ 8-4-101(7), (8.5).

2.7.2 Under the HFWA, C.R.S. § 8-13.3-402(5), "employer" has the same meaning as in C.R.S. § 8-4-101(6), except that an "employer" also includes the state and its agencies or entities, counties, cities and counties, municipalities, school districts, and any political subdivisions of the state, but does not include the federal government.

2.7.3 A "successor employer" is responsible for an acquired employer's HFWA obligations**,** including but not limited to accrued, requested, or in-progress leave, and "means an employing unit, whether or not an employing unit at the time of acquisition, that … acquires all of an organization, a trade, or a business[,] or substantially all of the assets[,] of one or more employers subject to" HFWA. C.R.S. § 8-13.3-402(12). Acquiring "substantially all of the assets" of an employer is defined as in 26 U.S.C. § 368(a)(1)(C) and Rev. Proc. 77-37, § 3.01; acquiring "a trade or a business" is defined as in C.R.S. § 8-76-104(11)(c).

2.7.4 To determine whether an employer meets the 16-employee threshold for HFWA coverage in 2021 pursuant to C.R.S. § 8-13.3-403(1)(b), the rules for counting employees to determine whether an employer is covered under the federal Family and Medical Leave Act apply: the employer must employ the requisite number of employees "for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year"; "[a]ny employee whose name appears on the employer's payroll will be considered employed each working day of the calendar week, and must be counted whether or not any compensation is received for the week"; "[e]mployees on paid or unpaid leave, including [sick or medical] leave, leaves of absence, disciplinary suspension, etc., are counted as long as the employer has a reasonable expectation that the employee will later return to active employment"'; "a corporation is a single employer rather than its separate establishments or divisions"; and employees are counted only if "within … the United States," including any state, the District of Columbia, or any territory or possession of the United States. 29 CFR §§ 825.104-105.

2.8 The "employer's correct address," including as used in C.R.S. § 8-4-101(15), can include, but is not limited to, the employer's email address, the employer's address on file with the Colorado Secretary of State, and the address of the employer's registered agent on file with the Colorado Secretary of State.

2.9 When considering whether there is "good cause" for an extension of time, including as used in C.R.S. § 8-4-113(1)(b), the Division will determine whether the reason is substantial and reasonable and must take into account all available information and circumstances pertaining to the specific complaint.

2.10 "Post," including as used in C.R.S. § 8-4-107, may include electronic posting in a place readily accessible to all employees.

2.11 "Public health emergency" is defined as in C.R.S. § 8-13.3-402(9):

(A) An act of bioterrorism, a pandemic influenza, or an epidemic caused by a novel and highly infectious agent, for which (1) an emergency is declared by a federal, state, or local public health agency, or (2) a disaster emergency is declared by the Governor; or

(B) A highly infectious illness or agent with epidemic or pandemic potential for which a disaster emergency is declared by the Governor.

A public health emergency is "declared" by any initial, amended, extended, restated, or prolonged declaration of an emergency that meets the above definition. Employees have up to 80 hours of

supplemental paid sick leave usable as of January 1, 2021, because a public health emergency declared after the HFWA effective date remains in effect long enough to trigger paid leave in 2021 (under HFWA § 405 and Rule 3.5.1(C), distinct from the up to 80 hours of leave provided for 2020 by HFWA § 406 to conform to the federal paid leave law that expires on December 31, 2020). Employees receive their supplement of up to 80 hours of leave usable as of January 1, 2021, under HFWA § 405 only once during the entirety of a public health emergency even if such public health emergency is amended, extended, restated, or prolonged.

2.12 "Records reflecting the information contained in an employee's itemized pay statement," as used in C.R.S. § 8-4-103(4.5), may be kept electronically. The records are not required to be copies of the pay statements but must reflect all information contained in the pay statements.

2.13 "Terminated employee," as used in C.R.S. § 8-4-105(1)(e), includes any employee separated from employment, whether the separation occurs by volition of the employer or the employee.

2.14 The Division may enforce the gratuity provisions described in C.R.S. § 8-4-103(6) through the administrative procedure described in C.R.S. § 8-4-111. The legal treatment of "tips," "gratuities," or other monies paid on a similar basis, in any source of law, is identical regardless of the terminology used.

2.15 "'Wages' or 'compensation'" has the same meaning as in C.R.S. § 8-4-101(14). "Paid sick leave" required by HFWA constitutes "wages" under C.R.S. § 8-4-101(14); is covered by the provisions of C.R.S. Title 8, Article 4, and these Rules; is defined as paid time off from work that is provided by an employer for one of the qualifying reasons described in C.R.S. §§ 8-13.3-404 to -406. C.R.S. § 8-13.3-402(8)(a),(b).

2.16 A "written demand," including as used in C.R.S. § 8-4-101(15), can be sent to the employer by electronic means, including but not limited to email and text message. Wages must be owed at the time of sending for the written demand to be considered valid.

2.17 Vacation Pay.

2.17.1 C.R.S. § 8-4-101(14)(a)(III), includes in the definition of "'[w]ages' or compensation'": "Vacation pay earned in accordance with the terms of any agreement. If an employer provides paid vacation for an employee, the employer shall pay upon separation from employment all vacation pay earned and determinable in accordance with the terms of any agreement between the employer and the employee." "Vacation pay" is pay for leave, regardless of its label, that is usable at the employee's discretion (other than procedural requirements such as notice and approval of particular dates), rather than leave usable only upon occurrence of a qualifying event (for example, a medical need, caretaking requirement, bereavement, or holiday).

2.17.2 The "earned and determinable in accordance with the terms" provision does not allow a forfeiture of any earned (accrued) vacation pay, but does allow agreements on matters such as: (1) whether there is any vacation pay at all; (2) the amount of vacation pay per year or other period; (3) whether vacation pay accrues all at once, proportionally each week, month, or other period; and (4) whether there is a cap of one year's worth (or more) of vacation pay. Thus, employers may have policies that cap employees at a year's worth of vacation pay, but that do not forfeit any of that year's worth.

For example, an agreement for ten paid vacation days per year:

(a) *may* provide that employees can accrue more than ten days, by allowing carryover of vacation from year to year;

(b) *may* cap employees at ten days; but

(c) may not diminish an employee's number of days (other than due to use by the employee).

2.18 "Willful," in Articles within C.R.S., Title 8, that this Division enforces or administers, has the same meaning as under 29 U.S.C § 255(a) and 29 C.F.R. § 578.3(c).

2.19 C.R.S. § 8-4-103(1)(b) describes circumstances under which employers are "subject to the penalties specified in section 8-4-113(1)." Despite use of the word "penalty" in this section, this language does refer to the fine described in C.R.S. § 8-4-113(1) and is payable to the Division.

2.20 A complaint, appeal, or other submission to the Division is considered "filed" with the Division when it is received by the Division via mail, fax, email, online submission, or personal delivery. Any complaint, appeal, or other submission to the Division received after 11:59pm Mountain Time is considered filed the next business day. Any such submission is considered "signed," or to have a "signature," if has either an ink signature, a scanned signature, an electronically drawn or generated signature, or a typed name entered by the party or their authorized representative in the signature area; by signing in any such fashion, the individual is deemed to have agreed and assented that the document is signed by them.

2.21 These Rules are to be read in conjunction with other rules promulgated and enforced by the Division with additional requirements, including but not limited to the Colorado Overtime and Minimum Pay Standards Order ("COMPS Order"), 7 CCR 1103-1, and the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("Colorado WARNING Rules"), 7 CCR 1103-11.

Rule 3. Filing a Wage Complaint

3.1 An employee who wishes to file a wage complaint with the Division shall use the Division-approved form(s).

3.1.1 A wage complaint may only be filed by the employee who did not receive his or her wages or compensation.

3.1.2 A wage complaint shall include the employee's signature, employee's contact information, employer's contact information, and basis for the wage complaint. Failure to include this information on the wage complaint form may result in dismissal of the wage complaint.

3.1.3 The failure of an employee to respond in a timely manner to informational or investigatory requests by the Division may result in dismissal of the wage complaint.

3.1.4 If a wage complaint is dismissed before a Notice of Complaint is sent to the employer because the employee failed to respond to a Division request for information, the complaint may be reopened if the employee provides the requested information or documentation to the Division within 35 days of the Division's request for information. Employees may be required to file a new complaint if the employee's response is received more than 35 days after the Division's request for information.

3.1.5 The Division shall not accept wage complaints for amounts exceeding $7,500.

3.1.6 An anonymous complaint is not a "wage complaint" within the meaning of C.R.S. § 8-4-111 and C.R.S. §§ 8-13.3-402(8)(a)(I)-(II), - 407, -410, -411 and will not be investigated using the Division's administrative procedure. The Division may choose to address an anonymous complaint outside of the administrative procedure.

3.2 An employee may pursue a wage complaint through either the court system or the Division's administrative procedure.

3.2.1 Employees are not required to use the Division's administrative procedure in order to

pursue a wage complaint in court.

3.2.2 The Division does not have jurisdiction over any wage complaint that has been adjudicated or is currently being adjudicated by a court of competent jurisdiction.

3.2.3 As provided by C.R.S. § 8-4-113(2), a certified copy of any citation, notice of assessment, or order imposing wages due, fines, or penalties pursuant to this article may be filed with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. Such a filing can be in a county or district court, and will thereby have the effect of a judgment from which execution may issue.

3.3 The employee may withdraw the wage complaint at any time prior to issuance of a determination by notifying the Division in writing.

3.4 The Division may exercise its discretion to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.

3.5 Accrual, use, and other matters relating to paid leave under HFWA.

3.5.1 Accrual of HFWA leave. Paid leave begins to accrue at the commencement of employment or on January 1, 2021, whichever is later.

(A) For the minimum HFWA accrual rate of one hour of leave for every 30 hours worked, up to cap of 48 hours per benefits year (C.R.S. § 8-13.3-403(2)(a)), accrual is based on all "time worked" under Rule 1.9 of the COMPS Order, 7 CCR 1103-1, with regular and overtime hours counting equally; except under C.R.S. § 8-13.3-403(2)(c), an overtime-exempt employee accrues paid leave based on their normal hours worked up to a maximum of forty per week. Once employees have accrued 48 hours of paid leave during the benefit year, they do not accrue more, except if an employer chooses to provide paid leave in a greater amount. C.R.S. §§ 8-13.3-403(2)(a), -413.

(B) For hours accrual for purposes of C.R.S. § 8-13.3-403(2)(a), the best available, reasonable estimate shall be used for employees paid on a fee-for-service basis for which hours are not ordinarily tracked and cannot feasibly be tracked, except that higher education adjunct faculty paid on a per-credit or per-course basis shall be deemed to work three hours total for each in-class hour.

(C) On the day a public health emergency is declared within the definition of Rule 2.11, employers are required to immediately provide each employee with additional hours of paid leave, usable as of the date of the declaration, January 1, 2021, or the employee's first date of employment, whichever is later -- whatever the employee has accrued prior to the declaration of the public health emergency at the regular HFWA rate (*i.e.*, one hour per 30 worked, up to a maximum of 48 per benefit year), and a one-time supplement with the number of hours needed for:

(1) employees who normally work forty or more hours in a week to have access to 80 hours of total paid leave; and

(2) employees who normally work under forty hours in a week to have access to paid leave hours that are at least the greater of the number of hours the employee (a) is scheduled for work or paid leave in the fourteen-day period after the leave request, or (b) actually worked in the fourteen-day period prior to the declaration of the public health emergency or the leave request, whichever is later.

(D) During the entire duration of a public health emergency (*i.e.*, during the time between the date on which the emergency is declared and four weeks after the date of the official termination or suspension of the emergency declaration), employers:

(1) are required to permit employees to take both (a) the paid leave they have accrued prior to the declaration date of the public health emergency pursuant to C.R.S. § 8-13.3-403(2)(a), for any of the qualifying reasons provided in C.R.S. § 8-13.3-404(1), and (b) the amount of supplemental paid leave that was provided to the employee on the date of the declaration of a public health emergency, for any of the qualifying reasons provided in C.R.S. § 8-13.3-405(3);

(2) remain subject to the minimum accrual requirements of C.R.S. § 8-13.3-403(2)(a), and employees continue to accrue paid leave (up to 48 hours per benefit year); and

(3) must permit an employee to use the full amount of supplementary leave provided under C.R.S. § 8-13.3-405(1) and this rule, prior to using any of the employee's previously-accrued leave under C.R.S. § 8-13.3-403(2)(a), if an employee required leave in circumstances that qualify under both C.R.S. § 8-13.3-404(1) and C.R.S. § 8-13.3-405(3) (*e.g.*, an employee is experiencing symptoms of a communicable illness that was the subject of the declaration of a public health emergency and needs to obtain testing and treatment).

(E) Yearly Basis for HFWA leave.

(1) Carryover. Pursuant to C.R.S. § 8-13.3-403(3)(b), "up to forty-eight hours of paid sick leave that an employee accrues in a year but does not use carries forward to, and may be used in, a subsequent year." For purposes of C.R.S. § 8-13.3-403(3)(b), "year" means "a regular and consecutive twelve-month period as determined by an employer." C.R.S. § 8-13.3-402(13). The employer shall not be required to, but may, permit an employee to carry forward more than forty-eight (48) hours of unused paid leave from one benefit year to the next. C.R.S. §§ 8-13.3-403(3)(b), -413.

(2) "Benefit year" definition. The applicable "benefit year" is the period of 12 consecutive months established by an employer in which an employee shall accrue and use earned sick leave. Unless otherwise established by an employer in a written policy, a "benefit year" is the calendar year. If an employer transitions from one type of year to another, the employer must ensure that the transition process maintains all HFWA rights, and must notify employees in writing of any such changes.

3.5.2 Pay rate and amount of HFWA leave. Under C.R.S. § 8-13.3-402(8), leave must be paid at the same rate and with the same benefits, including health benefits, as the employee normally earns during hours worked, not including overtime, bonuses, or holiday pay. Leave must be paid on the same schedule as regular wages.

(A) The pay rate for leave must be at least the applicable minimum wage. The HFWA pay rate shall be calculated using the same rules applicable to calculating an employee's "regular rate" under Rule 1.8 of the COMPS Order, 7 CCR 1103-1, except that: (1) bonuses included in the regular rate calculation are excluded from the HFWA pay rate calculation; (2) only the method in COMPS Rule 1.8.3(A) may be used for employees with variable hourly rates, except that the

rate is measured over 30 days pursuant to the following subsection (3); and (3) the HFWA regular rate shall be determined based upon the employee's pay over the 30 calendar days prior to taking leave, unless the employee has not yet worked 30 calendar days in which case the longest available period shall be used. The HFWA pay rate for employees covered by Rule 3.5.1(B) shall be calculated in accordance with that Rule.

(B) The number of hours of paid HFWA leave an employee can take is the number of hours the employer reasonably anticipated they would have worked during the period of the leave, based on: (1) their regular schedule of hours actually worked; (2) or, if leave is during a period the employee was anticipated to depart from a regular schedule, then hours anticipated for that period; (3) or, if the number of hours the employee would have worked during the period cannot be reasonably anticipated, then their average hours worked during their most recent 30 calendar days of work. If an employee has not yet been employed for 30 calendar days, their entitlement must be determined under 3.5.2(B)(1) or (2).

(C) Indeterminate shifts. If an employee uses paid leave for a shift of indeterminate length (for example, a shift that is defined by business needs rather than a previously specified number of hours), an employer may determine the number of paid leave hours used by the employee based on the number of hours actually worked by a replacement employee in the same shift. If there is no replacement employee for the indeterminate shift, an employer may determine the number of paid leave hours used by the employee based on the number of hours actually worked by the employee for their most similar shift in the past.

(D) On-call employees are entitled to use paid leave during any hours they have been scheduled to work, including hours among the employee's on-call time that the employer actually requests the employee to work, or any other hours that would qualify as "time worked" as defined by Rule 1.9 of the COMPS Order, 7 CCR 1103-1. Otherwise, being "scheduled to work" does not include shifts for which an employee has been asked to be available or on-call. However, if an on-call employee has an agreement with an employer to be paid for a scheduled shift regardless of whether the employee actually works the shift, the employer must provide paid leave to a qualifying employee for that shift.

3.5.3 Use of HFWA leave.

(A) Because an employee "may use accrued paid sick leave as it is accrued," C.R.S. § 8-13.3-403(3)(a), HFWA leave may be used immediately upon accrual, but an employer may, in the ordinary course of business and in good faith, verify employee hours within a month after work is performed and adjust accrued leave to correct any inaccuracy, provided that the employee is so notified in writing.

(B) An employer may require use of HFWA leave in hourly increments, or may require or allow smaller minimum increments; if an employer does not specify the minimum increment in writing, employees nevertheless may not use increments smaller than a tenth of an hour (*i.e.*, six-minute increments).

(C) An employer cannot apply an absence or attendance policy to an employee's HFWA-qualifying leave use if it could result in adverse action against the employee, including discipline, as defined in C.R.S. § 8-13.3-407(2)(b). However, after an employee has exhausted all leave required by HFWA, an employer can apply an absence or attendance policy to any absences taken by the employee.

3.5.4 Applicability of a general paid time off ("PTO") policy to HFWA leave. HFWA does not require additional leave if an employer policy provides fully paid leave for both HFWA and

non-HFWA purposes (*e.g.*, sick time and vacation) and makes clear to employees, in a writing distributed in advance of an actual or anticipated leave request, that:

(A) its leave policy provides PTO --

(1) in at least an amount of hours and with pay sufficient to satisfy HFWA and applicable rules (including, if a public health emergency is declared, a supplemental amount of leave required to satisfy C.R.S. § 8-13.3-405(1) and Rule 3.5.1(C),

(2) for all the same purposes covered by HFWA and applicable rules, not a narrower set of purposes, and

(3) under all the same conditions as under HFWA and applicable rules, not stricter or more onerous conditions (including but not limited to matters such as accrual, use, payment, annual carryover of unused accrued leave, notice and documentation requirements, and anti-retaliation and anti-interference rights); and

(B) additional HFWA leave need not be provided when employees use all of their available PTO for non-HFWA-qualifying reasons (*e.g.*, vacation). C.R.S. § 8-13.3-403(4), except if a public health emergency is declared after an employee uses some or all available PTO for the applicable benefit year, the employer must supplement the employee's current total of accrued, unused leave pursuant to Rule 3.5.1(C).

3.5.5 Notice by employees of HFWA-qualifying leave.

(A) An employee may request leave orally or in writing, including electronically (for example, by email or text message). An employer may choose additional methods of receiving requests or notifications that it deems acceptable, but shall not restrict employees from using any method that notifies the employer effectively. C.R.S. § 8-13.3-404(2).

(B) For HFWA leave for any health-related or safety-related reason within C.R.S. § 8-13.3-404, if the employee's need for leave is "foreseeable," (1) an employee shall make a good-faith effort to provide advance notice and a reasonable effort to schedule the leave in a manner that does not unduly disrupt employer operations, and (2) an employer may by written policy require reasonable procedures to provide notice of foreseeable leave, but shall not deny paid sick leave based on noncompliance with such a policy. C.R.S. § 8-13.3-404(2),(5).

(C) For HFWA leave that is "related to public health emergency" under C.R.S. § 8-13.3-405(3): An employee shall notify their employer of their need for leave as soon as practicable if (1) the need for leave is foreseeable and (2) the employer's place of business is not closed. C.R.S. § 8-13.3-405(4).

3.5.6 An employer may require "reasonable documentation" that leave is for a HFWA-qualifying purpose only if the leave requested or taken is for "four or more consecutive work days," C.R.S. § 8-13.3-404(6), defined as four consecutive days on which the employee would have ordinarily worked absent the leave-qualifying condition, not four consecutive calendar days. An employer may not require an employee to provide documentation that leave is for a qualifying reason "related to [a] public health emergency" under C.R.S. § 8-13.3-405(3),(4).

(A) When documentation is required, an employer may request only "reasonable" documentation, which is defined as not more documentation than needed to

show a HFWA-qualifying reason for leave, as described in subparts (B), (C), and (D) below, and an employer shall not require disclosure of "details" regarding the employee's or family member's "health information" or the "domestic violence, sexual assault, or stalking" that is the basis for HFWA leave (C.R.S. § 8-13.3-412(1)).

(B) To document leave for a health-related need under C.R.S. § 8-13.3-404(1)(a), (b):

(1) If the employee received any services (including remote services) from a health or social services provider for the HFWA-qualifying condition or need, a document from that provider, indicating a HFWA-qualifying purpose for the leave, will suffice.

(2) An employee who did not receive services from a provider for the HFWA-qualifying leave, or who cannot obtain a document from their provider in reasonable time or without added expense, can provide their own writing indicating that they took leave for a HFWA-qualifying purpose.

(C) To document leave for a safety-related need covered by C.R.S. § 8-13.3-404(1)(c) (*i.e.*, domestic abuse, sexual assault, or criminal harassment): A document under subpart (B)(1) (from a health provider or a non-health provider of legal services, shelter services, social work, or other similar services) or an employee writing under (B)(2) will suffice, as will a legal document indicating a safety need that was the reason for the leave (*e.g.*, a restraining order, other court order, or police report).

(D) Submission of documentation to an employer may be provided (1) by any reasonable method, including but not limited to electronic transmission, (2) at any time until whichever is sooner of an employee's return from leave (or termination of employment, if the employee does not return), (3) without a requirement of the employee's signature, notarization, or any other particular document format.

(E) Confidentiality of leave-related information and documentation. Any information an employer possesses regarding the health of an employee or the employee's family member, or regarding domestic abuse, sexual assault, or criminal harassment affecting an employee or employee's family member, shall be treated as confidential and may not be disclosed to any other individual except the affected employee, unless the affected employee provides written permission prior to such disclosure. C.R.S. § 8-13.3-412(2)(c). If the information is in writing, it shall be maintained on a separate form and in a separate file from other personnel information, and shall be treated as a confidential medical record by the employer. C.R.S. § 8-13.3-412(2)(a)-(b).

(F) If an employer reasonably deems an employee's documentation deficient, without imposing a requirement of providing more documentation than HFWA or applicable rules permit, prior to denying leave, the employer must: (1) notify the employee within seven days of either receiving the documentation or the employee's return to work (or termination of employment, if the employee does not return), and (2) provide the employee the minimum of seven days to cure the deficiency after the employee is notified that the employer deems the existing documentation inadequate.

3.5.7 Employer records of accrued and used paid leave hours. An employer "shall retain records for each employee for a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used" (C.R.S. § 8-13.3-409(1)), except that two-year limit does not diminish the obligation to retain pay statement records for three years (C.R.S. § 8-4-103(4.5)). Upon an employee's request, an employer must provide, in

writing or electronically, documents sufficient to show, or a dated statement containing, the then-current amount of paid leave the employee has (1) available for use, and (2) already used during the current benefit year, including information as to any accrued leave provided and used subject to C.R.S. § 8-13.3-403 and any supplemental public health emergency-related leave provided and used subject to C.R.S. § 8-13.3-405(3). Employees may make such requests no more than once per month, except they may make an additional request when any need for HFWA leave arises. Employers may choose a reasonable system for fulfilling such requests, including but not limited to listing such information on each pay stub, using an electronic system where employees can access their own information, or providing the necessary information in a letter or electronic communication.

3.5.8 Collective bargaining agreements that provide for equivalent or more generous paid sick leave.

(A) If a bona fide collective bargaining agreement ("CBA") "provides for equivalent or more generous paid sick leave for the employees covered" (C.R.S. § 8-13.3-415(2),(3)), then:

(1) HFWA does not apply additional requirements (*e.g.* it does not require an additional 48 hours of leave when a CBA provides the same amount of leave); and

(2) HFWA does not invalidate the CBA or require its re-opening.

(B) A CBA "provides for equivalent or more generous paid sick leave" (C.R.S. §§ 8-13.3-415(2),(3)) if the CBA does not diminish any employee protections under HFWA and rules promulgated thereunder, including but not limited to the requirements in Rule 3.5.4(A) and:

(1) accrual and carryover;

(2) use and its conditions (*e.g.*, documentation and notice to employers); and

(3) protection and effectuation of paid sick leave rights through notice to employees and prohibitions against retaliation based on, or interference with, protected activity.

(C) This Rule applies to a CBA that is either:

(1) "in effect on the effective date" of HFWA, July 14, 2020; or

(2) "initially negotiated or negotiated for the next collective bargaining agreement after th[at] effective date . . . if the requirements of this Part 4 are expressly waived in the [CBA]." (C.R.S. §§ 8-13.3-415(2),(3).)

Rule 4. Investigation

4.1 Wage complaints shall be assigned to Division compliance investigators. Investigatory methods used by the Division may include:

(A) Interviews of the employer, employee, and other parties;

(B) Information gathering, fact-finding, and reviews of written submissions; and

(C) Any other lawful techniques that enable the Division to assess the employer's compliance.

4.2 The Division will evaluate wage complaints under the following burden of proof structure:

4.2.1 To initiate a wage complaint, an employee must provide an explanation of the basis for the complaint that is clear, specific, and shows the employee is entitled to relief. The employee must provide sufficient evidence from which both a violation of Colorado wage and hour laws and an estimate of wages due may be reasonably inferred.

4.2.2 The burden then shifts to the employer to prove, by a preponderance of the evidence, that the employee is not entitled to the claimed relief. If the employer fails to meet its burden, the Division may award wages and/or penalties to the employee based on the employee's evidence.

4.2.3 If the Division concludes that wages are owed to the employee, but cannot calculate the precise amount of wages due, then the Division may award a reasonable estimate of wages due.

4.3 Any party to a wage complaint may designate an authorized representative to represent the party during the Division's administrative procedure.

4.3.1 The party may designate an authorized representative by filing the Division-approved form with the Division.

4.3.2 If not using the Division-approved form, and the authorized representative is a licensed attorney or accountant, the party or the authorized representative must provide written notice to the Division that the authorized representative will represent the party during the Division's administrative procedure.

4.3.3 If not using the Division-approved form, and the authorized representative is not a licensed attorney or accountant, the party must provide a signed written notice to the Division that the authorized representative will represent the party during the Division's administrative procedure.

4.3.4 The party may revoke the authorized representative's authority by contacting the Division in writing.

4.4 After receipt of a wage complaint that states a claim for relief, the Division will initiate the administrative procedure by sending a Notice of Complaint to the employer, along with any relevant supporting documentation submitted by the employee, via U.S. postal mail, electronic means, or personal delivery.

4.4.1 If the Notice of Complaint cannot be delivered, the administrative procedure has not been initiated. If a proper address is located or provided, the Division will resend the Notice of Complaint, and the employer's deadline to respond will be calculated from the date of the subsequent notice.

4.4.2 If the Division cannot determine the employer's correct address, it may contact the employee to request the employer's address. The Division may dismiss the wage complaint if neither the employee nor the Division can determine the employer's correct address.

4.4.3 The employer's response to the Notice of Complaint must include the completed Division Employer Response Form, as well as any additional information or documentation requested by the Division. An insufficient response from the employer may be considered a failure to respond under C.R.S. § 8-4-113(1)(b).

4.4.4 If an employer obtains a good cause extension to respond under C.R.S. § 8-4-113(1)(b), the extension does not waive or reduce penalties owed to the employee pursuant to C.R.S. § 8-4-109(3)(b) if the employer fails to pay the employee's wages within fourteen

days after the Notice of Complaint is sent.

4.4.5 Where a claim, complaint, or investigation for violation of these Rules or the statutes they enforce has been filed or commenced, the employer shall preserve all relevant documents until final disposition and until the expiration of the statutory period within which a person aggrieved may bring a civil action.

4.5 After receipt and review of the employer's response, the Division may contact the employee for additional documentation or information. If the employer denies, in whole or in part, the allegations in the Notice of Complaint, and the Division determines further investigation would be beneficial, the Division shall send to the employee any relevant supporting documentation submitted by the employer. If the employee does not respond to the request for additional documentation or information by the deadline given, the Division will make a determination based on the information in the record.

4.6 All parties to a wage complaint are responsible for ensuring the Division has current contact information.

4.6.1 All parties must promptly notify the Division of any change in contact information, including mailing address, email address, and phone number.

4.6.2 Parties should not rely on the U.S. Postal Service to forward mail. Failure to respond to a notice because mail was not forwarded to a new address will not be excused.

4.7 In any Division investigation, proceeding, or other action, if information is provided to the Division by a source requesting confidentiality, and that information is used only as a basis for procuring other evidence, not offered as evidence itself, then the source shall remain confidential. Any such confidential source is unlawful to disclose (unless the source consents) in any administrative or judicial proceeding, in response to any records or information request, or in any other manner, in order to effectuate statutory requirements including but not limited to the following:

(A) If information is properly treated as confidential, the Division "shall provide a physical environment and establish policies and procedures to ensure confidentiality for all information regarding any employer, employee, or person pertaining to any action pursuant to articles 1 to 13" (C.R.S. § 8-1-115);

(B) "No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted or caused to be instituted any proceeding under this article or related law or who has testified or may testify in any proceeding on behalf of himself, herself, or another regarding afforded protections under this article (C.R.S. § 8-4-120);

(C) It is unlawful to "discharge[] or threaten[] to discharge, or in any other way discriminate[] against an employee" because s/he "may testify in any investigation or proceeding relative to enforcement of this article" (C.R.S. § 8-6-115); and

(D) It is unlawful to take adverse action based on "participat[in]g in an investigation, hearing, or proceeding or cooperat[ing] with or assist[ing] the Division in its investigations of alleged violations" of HFWA (C.R.S. §§ 8-13.3-402(10), -407).

4.8 Immigration status is irrelevant to wage rights and responsibilities, including the right to access paid leave without retaliation or interference under HFWA, and the Division shall assure that wage rights and responsibilities apply regardless of immigration status, including but not limited to as follows.

4.8.1 The Division will not voluntarily provide any person or entity information concerning the immigration status of (a) a party to a wage claim, (b) a person offering information

concerning a wage claim, or (c) a person with a relationship with anyone in categories (a) or (b).

4.8.2 Any effort to use a person's immigration status to negatively impact the wage and hour law rights, responsibilities, or proceedings of any person or entity is an unlawful act of obstruction, retaliation, and/or extortion, based on statutory provisions including but not limited to the following that make it unlawful:

(A) For "any person" to "hinder[] or obstruct[] the director or any such person authorized by the director in the exercise of any power conferred by this article," including but not limited to wage investigations, rulemakings, or adjudicative or judicial proceedings (C.R.S. § 8-1-116(2));

(B) For an employer to "intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted or caused to be instituted any proceeding under this article or related law or who has testified or may testify in any proceeding on behalf of himself, herself, or another regarding afforded protections under this article" (C.R.S. § 8-4-120);

(C) For any person to "threaten[] to report to law enforcement officials the immigration status of the threatened person or another person" to "induce another person" to give up money "or another item of value" (C.R.S. § 18-3-207(1.5)), including inducing the surrender of any "tangible and intangible personal property, contract rights, choses in action, [or] services … , and any rights of use or enjoyment connected therewith" (C.R.S. § 18-1-901); and

(D) For an employer to deny "any right guaranteed under" HFWA, or to take "any adverse action against an employee for exercising any right guaranteed" by HFWA (C.R.S. §§ 8-13.3-402(10), -407).

Rule 5. Determination

5.1 Upon conclusion of the investigation of a wage complaint, the Division will issue a determination.

5.1.1 The Division shall send the determination to all parties via U.S. postal mail, electronic means, or personal delivery on the date the determination is issued by the Division's compliance investigator. The Division shall notify the parties of their termination and any appeal rights pursuant to C.R.S. § 8-4-111(3) and C.R.S. § 8-4-111.5(1).

5.1.2 The date of "issuance" of the Division's determination, as used in C.R.S. § 8-4-111(3), is the date the Division's determination is "sent," as used in C.R.S. § 8-4-111.5(1). Both the termination and appeal deadlines are calculated from the date the Division's determination is originally issued and sent to the parties.

5.1.3 If any copies of the decision are sent to the parties after the date the Division's determination is originally issued and sent to the parties, those copies are provided only as a courtesy and do not change the thirty-five day appeal and termination deadlines.

5.1.4 Determinations by the Division may include the following remedies, depending on which, if any, the Division's findings support:

(A) monetary or other relief authorized by the statute(s) under which the wage complaint was filed, including but not limited to, where applicable --

(1) any unpaid wages, penalties, and/or fines under C.R.S. Title 8, Articles 1, 4, 6, and 13.3;

(2) if a claim under C.R.S. Title 8, Article 13.3 (HFWA) cost the employee a job or pay, back pay plus either reinstatement or (if reinstatement is infeasible) front pay for a reasonable period; and/or

(3) other fines or penalties authorized by statutes applicable to the complaint;

(B) fines or penalties authorized by the statutes on Division investigative and enforcement authority in C.R.S. Title 8, Articles 1, 4, 6, and 13.3; and/or

(C) order(s) to cease non-compliance and/or effectuate compliance, as authorized by the statute(s) under which the complaint was filed and statutes on Division investigative and enforcement authority in C.R.S. Title 8, Article 1, 4, 6, and 13.3.

Rule 6. Appeal

6.1 Any party to the claim may appeal the Division's determination.

6.1.1 Parties are encouraged, though not required, to use the Division's appeal form. A valid appeal is a written statement that is timely filed with the Division, explains the clear error in the determination that is the basis for the appeal, and has been signed by the party or the party's authorized representative.

6.1.2 No appeal will be heard and no hearing will be held unless the appeal is received by the Division within thirty-five calendar days of the date the determination is sent. It is the responsibility of the party filing the appeal to ensure the appeal is received by the Division within the thirty-five day filing deadline.

6.1.3 Upon receipt of the appeal, the Division will notify the parties of the date of the hearing and any interim deadlines via U.S. postal mail, electronic means, or personal delivery.

6.1.4 Upon receipt of the appeal, the Division will send a copy of the appeal and a copy of the record of its investigation to the parties via U.S. postal mail, electronic means, or personal delivery. All evidence submitted to the Division as part of the investigation is part of the record on appeal and need not be resubmitted.

6.2 Parties who timely file a valid appeal of the Division's determination will be afforded an administrative appeal hearing before a Division hearing officer. Parties may appear by telephone.

6.3 The parties may submit new testimonial evidence to the hearing officer in accordance with deadlines imposed by the Division. The parties may submit new documentary or other non-testimonial evidence in accordance with deadlines imposed by the Division and upon showing "good cause," which may be assessed based on any relevant factors, including but not limited to:

6.3.1 That the new evidence was previously not known or obtainable, despite diligent evidence-gathering efforts by the party offering the new evidence;

6.3.2 That the party failed to receive fair notice of the investigation or of a key filing by another party or by the Division to which the new evidence is responsive;

6.3.3 That factors outside the control of the party prevented a timely action or interfered with the opportunity to act, except that the acts and omissions of a party's authorized representative are considered the acts and omissions of the party and are not considered to be a factor outside the party's control as intended by this rule;

6.3.4 That a determination raised a new issue or argument that cannot be responded to adequately without the new evidence;

6.3.5 That, at the investigation stage, the party offering new evidence requested more time to submit evidence, yet was denied, and in the hearing officer's judgment (a) the need for more time was legitimate and did not reflect neglect by the party, (b) the denial of the request for more time was unwarranted, and (c) exclusion of the evidence would cause substantial injustice to the party; and/or

6.3.6 That failure to admit the evidence otherwise would cause substantial injustice and did not arise from neglect by the party.

6.4 New evidence must be sent to all other parties to the appeal. Failure to send all new evidence to all other parties to the appeal may result in the evidence being excluded from the record.

6.5 If the party who filed the appeal does not participate in the hearing, the appeal may be dismissed.

6.6 All testimony at a hearing must be recorded by the Division but need not be transcribed unless the hearing officer's decision is appealed.

6.7 The hearing officer may, upon the application of any party or on his or her own motion, convene a prehearing conference to discuss the issues on appeal, the evidence to be presented, and any other relevant matters that may simplify further proceedings.

6.8 The hearing officer will decide whether the Division's determination is based on a clear error of fact or law.

6.9 The hearing officer shall not engage in ex parte communication with any party to an appeal.

6.10 An appeal may, in the discretion of the hearing officer, be sequenced and/or divided into two or more stages on discrete questions of liability and/or relief (*e.g.*, bifurcation), yielding two or more decisions and/or phases of the appeal.

6.11 The hearing officer's decision constitutes a final agency action pursuant to C.R.S. § 24-4-106. The Division shall promptly provide all parties with a copy of the hearing officer's decision via U.S. postal mail, electronic means, or personal delivery. The Division shall notify the parties of their appeal rights pursuant to C.R.S. § 8-4-111.5(5).

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Tracking number: 2021-00614

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

Division of Labor Standards and Statistics (Includes 1103 Series)

on 11/10/2021

7 CCR 1103-7

WAGE PROTECTION RULES

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:50:20

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

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Labor Standards and Statistics (Includes 1103 Series)

CCR number

7 CCR 1103-14

Rule title

7 CCR 1103-14 2022 Publication And Yearly Calculation of Adjusted Labor Compensation (2022 PAY CALC) Order 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

2022 Publication And Yearly Calculation of Adjusted Labor Compensation (2022 PAY CALC) Order

7 CCR 1103-14

Adopted November 10, 2021, effective January 1, 2022.

Rule 1. Statement of Purpose, Requirements, and Calculations.

1.1 This Publication And Yearly Calculation of Adjusted Labor Compensation Order ("PAY CALC Order"), 7 CCR 1103-14, publishes values that adjust periodically under the Colorado Overtime and Minimum Pay Standards Order ("COMPS Order"), 7 CCR 1103-1, or other laws.

1.2 Coverage and Application. Following are the 2022 minimum pay and income levels and future adjustments in each cited COMPS Order rule, and/or mandated by constitutional, statutory, or rule provisions the COMPS Order implements, or from which it derives.

Minimum Pay Level in COMPS Order Rule		2022 Level (Yearly Calculation)	Future Annual Adjustments
(A)	Full Colorado minimum wage (R. 3.1)	**$12.56** per hour	Last year's minimum adjusted by CPI (Consumer Price Index) for Colorado
(B)	Amount of minimum wage that employers must pay to tipped employees (R. 1.10, 6.2.3)	**$9.54** per hour to the extent that adding tips raises total pay to full minimum wage	**$3.02** per hour below full minimum wage to the extent that adding tips raises total pay to full minimum wage
(C)	Minimum wage for non-emancipated minors (R. 3.3)	**$10.68** per hour	15% below full minimum wage
(D)	Minimum pay for agricultural range workers (R. 2.2.7(E))	**$515.00** per week	Prior year's level adjusted by inflation
(E)	Executive/supervisor, administrative, or professional employees ("EAP") (R. 2.5.1); certain owners or proprietors of non-profit employers (R. 2.2.5); decision-making managers at livestock employers (R. 2.4.8)	**$865.38** per week ($45,000 rounded annual equivalent); and sufficient for the minimum wage for all hours worked in a workweek	Per week, **$961.54** in 2023 ($50,000 rounded annually), **$1,057.69** in 2024 ($55,000 rounded annually), and the prior year's level adjusted by CPI each year as of 2025
(F)	Highly technical computer employees (R. 2.5.2, 2.2.10)	**$28.92** per hour or the EAP salary above (Item E)	Prior year's hourly wage adjusted by inflation, or the EAP salary above
(G)	Highly compensated employees (R. 2.2.11)	**$101,250** annually, *and* the EAP salary (row E) weekly	The annual EAP salary (row E) multiplied by 2.25
(H)	Certain drivers and driver's helpers (R. 2.4.6)	**$690.80** per week	Based on Colorado minimum wage each year
(I)	Certain seasonal camp or outdoor education field staff (R. 2.2.7(F))	Full minimum wage or, per week: **$327.52** (adults) or **$248.39** (minors); except at non-profits with up to $25 million in revenue, **$239.60** (adults) or **$160.47** (minors)	Based on Colorado minimum wage each year

1.3 Additional Requirements. Many of the referenced COMPS Order rules have other requirements aside from a minimum pay level, including but not limited to: an employee having duties that

qualify for exemption; an employee receiving sufficient tips to allow for a tip credit to be taken; and an employer paying any higher applicable federal, local, or minimum wage.

Rule 2. Authority, Construction, and Definitions.

2.1 Authority and Incorporation by reference. This PAY CALC Order is issued under the authority and as enforcement of Section 15 of Article XVIII of the Colorado Constitution and Articles 1, 4, 6, and 12 of C.R.S. Title 8 (2022), and is intended to be consistent with the State Administrative Procedures Act, C.R.S. § 24-4-101, et seq. Hereby incorporated by reference into this rule are 29 C.F.R. Part 541 Subpart G; Colo. Const. art. XVIII, § 15 (2022); Title 8, Articles 1, 4, 6, 12, and 13.3 of the Colorado Revised Statutes (2022); the COMPS Order, 7 CCR 1103-1 (2022); the Wage Protection Rules, 7 CCR 1103-7 (2022); and the Direct Investigation Rules, 7 CCR 1103-8 (2022). Earlier versions of such laws and rules may apply to events that occurred in prior years. Incorporation excludes later amendments to or editions of the constitution, statutes, and rules; all cited laws are incorporated in the forms that are in effect as of the effective date of this PAY CALC Order. Where these Rules reference another rule, the reference shall be deemed to include all subparts of the referenced rule. Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern, so long as they are consistent with Colorado statutory and constitutional provisions. All sources cited or incorporated by reference are available for public inspection at the Colorado Department of Labor and Employment, Division of Labor Standards & Statistics, 633 17th Street, Denver CO 80202. Copies may be obtained from the Division at a reasonable charge or can be accessed from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them at cost upon request or provide the requestor information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing them. All Division rules are publicly available at www.coloradolaborlaw.gov.

2.2 Administration and Dual Jurisdiction. The Division shall have jurisdiction over all questions arising with respect to the administration and interpretation of this PAY CALC Order. Whenever employers are subjected to Colorado law as well as federal and/or local law, the law providing greater protection or setting the higher standard shall apply. For information on federal law, contact the U.S. Department of Labor, Wage and Hour Division.

2.3 Separability. These Rules are intended to remain in effect to the maximum extent possible. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the Rules remain valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

2.4 “Division” means the Division of Labor Standards and Statistics in the Colorado Department of Labor and Employment.

PHILIP J. WEISER
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NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
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on 11/10/2021

7 CCR 1103-14

2022 Publication And Yearly Calculation of Adjusted Labor Compensation (2022 PAY CALC) Order

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:36:31

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

Permanent Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Family and Medical Leave Insurance

CCR number

7 CCR 1107-1

Rule title

7 CCR 1107-1 Regulations Concerning Paid Family Medical Leave Program 1 - eff 01/01/2022

Effective date

01/01/2022

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of FAMLI

REGULATIONS CONCERNING PAID FAMILY MEDICAL LEAVE PROGRAM

7 CCR 1107-1

1.1 Authority

This regulation is adopted pursuant to the authority in section 8-13.3-501 C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S. and the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 through 524 (the "Act"), C.R.S.

1.2 Scope and Purpose

A.Regulations 1.5 and 1.6 implement the procedural and substantive provisions for the Family and Medical Leave Insurance program pursuant to C.R.S. 8-13.3-507, concerning the establishment, collection, and administration of premium collections.

B.This regulation does not apply to any other premiums, fees, taxes, or collections outlined in unemployment insurance, worker compensation, private temporary disability insurance or private family leave insurance programs or other programs not administered by the Division.

1.3 Applicability

The provision of this Section will apply to employers as defined in 8-13.3-503 (8) C.R.S. who are operating within the State of Colorado, no matter what State, county, or territory the employer is physically located in or claims as a base of operations, unless otherwise specified by exemptions in 8.13.3-503 C.R.S (8) or federal law.

The provisions of this Section will be applicable to self-employed persons who elect coverage under 8-13.3-514 C.R.S. and employees of any local government who elect coverage under 8-13.3-514 C.R.S.

If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

1.4 Definitions

"Calendar Quarter" has the same definition as 8-70-103 (6) C.R.S.

"Division" has the same definition as 8-13.3-503 (5) C.R.S.

"Employee" has the same definition as 8-13.3-503 (7) C.R.S.

“Employee share” is defined as 50 percent of the premium required for an employee by section 8-13.3-507 (3) C.R.S.

“Employer” has the same definition as 8-13.3-503 (8) C.R.S.

“Employer share” is defined as 50 percent of the premium required for an employee by section 8-13.3-507 (3) C.R.S.

“FAMLI” is defined as the Paid Family and Medical Leave Insurance Act, sections 8-13.3-501 through 524 (the “Act”), C.R.S.

“Net earnings from self employment” has the same meanings as in the Internal Revenue Code at 26 U.S.C. § 1402 (a), in effect for the taxable year, and the implementing regulations at 246 CFR § 1.1402 (a).

Gross income has the same meaning as in the Internal Revenue Code at 26 CFR § 1.61-2.

“Premium” is defined as the money payments required pursuant to 8-13.3-507 C.R.S. to finance the payment of family and medical leave insurance benefits and administer the family and medical leave insurance program.

“Self-Employed Person” is defined to include: an individual worker who is primarily free from external control and direction in the performance of their duties, labor or services, both under the individual’s contract for the performance of the labor or services, and those who are customarily engaged in an independent trade, occupation, profession, or business related to the labor or service performed; is a sole proprietor, a joint venturer or a member of a partnership; a member of a limited liability company,or a person who is otherwise in business for themselves.

1.5 Assessing and Collecting Premiums

1.5.1 Election, Withdrawal, and Cancellation of Coverage for Self-Employed Persons Regarding Premium Assessment

A. Self-employed persons may elect coverage under 8-13.3-514 C.R.S.

1. Notice of election of coverage must be submitted to the Division online or in another format approved by the Division.
2. Elective coverage begins on the first day of the calendar quarter immediately following the notice of the election.
3. A period of coverage is defined as:

    (a) Three years following the first day of elective coverage or any gap in coverage; and

    (b) Each subsequent year.

4. Any self-employed person may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.
5. A notice of withdrawal from coverage must be submitted to the Division online or in another format approved by the Division.

6. Any levy resulting from the Division's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

1.5.2 Determining Wages Earned for Self-Employed Persons Regarding Premium Assessment

A. A self-employed person will update information with the Division not less than quarterly within the period of coverage to ensure timely and accurate benefit coverage amounts.

B. Pursuant to 8-13.3-507 (4)(a) C.R.S., a self-employed person is required to submit only 50 percent of the premium required for an employee by section 8-13.3-507 (3) C.R.S. on that individual's income from self employment.

C. Not less than each quarter, a self- employed person who has elected coverage under 8-13.3-514 C.R.S. will report to the Division net earnings from self employment once they have elected to use net earnings as the basis of both premium collection and benefit payments for the three year opt-in period.

D. Not less than each quarter, a self-employed person who has elected coverage under 8-13.3-514 C.R.S, will report to the Division gross earnings from self employment once they have elected to use gross earnings as the basis for both premium collection and benefit payments for the three year opt-in period. Gross wages from self employment will be reported as gross wages for a specific quarterly pay period and not gross wages for the year to date.

E. If a self-employed individual elects to change their premium and benefit calculation between gross and net, they may do so one time within the three year opt-in period.

F. The Division may require copies of tax returns, bank records, self- attestations, or any other documents deemed necessary by the Division to verify or determine a self-employed person's wages.

G. If a self-employed individual has elected coverage under 8-13.3-514 C.R.S., and is also employed by another or multiple employers, the self-employed person's FAMLI benefit payment will be based on the combined wages pursuant to this rule and Rule 1.5.3.

1.5.3 Determining Wages for All Employees Regarding Premium Assessment

A. Wages reportable to the Division for premium assessment purposes include:

1. Salary or hourly wages, including "wages" as defined by 8-70-141 C.R.S; and other compensation, including board, lodging, payments in kind, and/or other benefits provided as compensation for services performed by employees, including but not limited to domestic and agricultural employees.

2. The Division may, after investigation, determine in individual cases the amounts to be included as reasonable value of remuneration payable in any medium other than cash for the purpose of computing premiums due under the act, but where the cash value of such benefits is agreed upon in a written contract, the amounts agreed upon will presumptively be the reasonable value of such benefits; and
3. Commissions, payments on a piecework basis, or bonuses earned for labor or services performed in accordance with the terms of any agreement between an employer and employee.

B. Tips/gratuities and service charges will be considered to be wages for the purposes of the act when the employer exercises significant control over the amount and distribution of money received by an employee as a tip/gratuity or service charge.

C. An employer is considered to have significant control over tips/gratuities or service charges when they are collected by the employer and then redistributed to employees.

D. Notwithstanding any other provision of this section, any tips/gratuities and service charges when used by the employer in order to conform to the minimum-wage requirements of federal or state law will be deemed to be wages for the purposes of the act, to the extent of such use.

1. For the purposes of this section, the inclusion, for the convenience of the customer, of a tip/gratuity in an amount charged by a customer through the use of a credit card will not, by itself, be deemed to constitute significant control.
2. For the purposes of this section, a requirement by an employer that an employee report or account for tips/gratuities will not, by itself, be deemed to constitute significant control.

E. In addition to the foregoing provisions of this section, wages will also include tips that are received while performing services that constitute employment and that are made known to the employer through a written statement furnished by the employee.

F. In circumstances where the employer's records regarding wages or other compensation pursuant to this section are inaccurate or incomplete, the Division may consider any evidence, written or otherwise, to determine the amount of wages as a matter of just and reasonable inference, absent any specific evidence provided by the employer suggesting that such inference is unreasonable.

1.5.4 Exempted From Wages

A. The Division will not consider the following as wages.

1. Per-diem or mileage reimbursements;

2. Amounts of payments made by the employer on behalf of the employee into other insurance or annuity accounts that are not associated with FAMLI including but not limited to:

(a) Short term or long term disability

(b) Medical or hospitalization expenses in connection with sickness or accident disability

(c) Death

(d) Earnings from investment-interest payments, dividend payments, or rent receipts from rental property, except if the income is earned through a business owned or operated by the claimant.

(e) Severance pay with the exception of payments pursuant to 8-73-110 C.R.S.

1.5.5 Premiums Remitted by an Employer

A. Premiums must be paid not less than quarterly in the form and manner determined by the Division. Quarterly payments will include all premiums with respect to wages paid for employment in all payroll periods that end within the calendar quarter.

1. Due Date of Premiums. Premiums will become due and be paid no later than the last day of the month immediately following the end of the calendar quarter for which the premiums have accrued.

(a) Payment will be considered timely if postmarked or received in person or electronically on or before the due date. If the due date of premiums falls on a Saturday, Sunday, or legal holiday, payment will be considered timely if postmarked or received in person or electronically on the next business day that is not a Saturday, Sunday, or legal holiday.

(b) Quarterly payment will not be required when the total amount of any premiums due, including any penalties and interest accrued for an untimely or incorrect report, is less than five dollars.

2. Erroneous Rate Notice. If, as a result of an incorrect notification or computation of rate by the Division, an employer is required to make an additional payment of premiums, such additional payment will not accrue interest until thirty days after notification by the Division that such additional payments are due.

3. First payment of a new employer, unless stated otherwise by exemption.

(a) The first premium payment of any employing unit that becomes an employer subject to 8.13.3-501 C.R.S. et seq., at any time during a calendar year will become due and be paid on or before the last day of the month immediately following the calendar quarter in which such an employing unit becomes an employer.

(b) Said payment will include the FAMLI premiums with respect to wages paid for employment occurring on and from the first day of the calendar year through all payroll periods that end within the calendar quarter in which the employing unit becomes an employer.

B. Employers ability to deduct premiums from employees

1. An employer required to remit premiums pursuant to 8-13.3-507 C.R.S. may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.

   (a) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under 8-13.3 -507 C.R.S., and the employer cannot deduct this amount from a future paycheck of the employee for a different pay period.

   (b) An employer will not deduct the employee share of the premium for a pay period where there is a lack of sufficient employee wages to cover the premium for that pay period.

   (c) In the payment of any premiums, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

2. Employers not required to pay the Employer share of the FAMLI premium due to employer size of business pursuant to 8-13.3-507 (5) C.R.S. must remit the employees' share of the premium in the manner outlined by the Division. Such employers may deduct up to 50 percent of the premium required for an employee by section 8-13.3-507 (3) C.R.S., from the employee's wages and will remit 50 percent of the premium required by section 8-13.3-507 (3) C.R.S., to the Division.

3. An employer who is not required to pay the employer share of the premium pursuant to 8.13.3-507 (4)(c), may elect to remit the employee share of the premium for employees who elect coverage under 8-13.3-514 C.R.S.

C. Application of payments made to premiums

1. A payment received by the Division as a premium payment will be applied to the quarter for which the premium assessment applies.

(a) A payment exceeding the legal fees,fines,penalties, interest and premiums due for that quarter will be applied to any other debt owed to the Division in accordance with subsection 2 (c) in part C. of these rules.

(b) If no debt exists, premium overpayments of less than fifty dollars will be credited to future payments due.

(c) If no debt exists, premium overpayments of fifty dollars or more may be refunded to the employer at the employer's request. Otherwise, such overpayments will be credited to future payments due.

2. Payments received will be applied in the following order of priority:

(a) Current quarter balance;

(b) Any previous quarter premium balance due starting with the oldest quarter;

(c) Then beginning with the oldest quarter in which a balance is owed:

(1) Penalties;

(2) Fines;

(3) Fees; and

(4) Interest charges.

D. Pursuant to § 8-13.3-507 (6), C.R.S., premiums will not be required for employees' wages above the contribution and benefit base limit established annually for the federal social security administration for purposes of the federal old-age survivors, and disability insurance program limits pursuant to 42 U.S.C. § 430.

1.5.6 Calculating Employer Size Related To Premium Exemptions

A. For determining premium exemptions based on employer size as outlined in § 8-13.3-507(5), C.R.S., the rules for counting employees to determine whether an employer is covered under the federal Family and Medical Leave Act apply; the employer must employ the requisite number of employees "for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year'; "a[ny] employee whose name appears on the employer's payroll will be considered employed each working day of the calendar week, and must be counted whether or not any compensation is received for the week"; "Employees on paid or unpaid leave, including [sick or medical leave], leaves of absence, disciplinary suspension, etc. are counted as long as the employer has a reasonable expectation

the employee will later return to active employment"; and "a corporation is a single employer rather than its separate establishments or divisions."

1. If the Division determines the employer's status has changed as it relates to premium liability, the Division will notify the employer as to their premium liability.

2. An employer's size for purposes of this regulation 1.5.6 will be calculated annually by counting the number of employees pursuant to regulation 1.5.4 (A) during the preceding calendar year. A new premium discount pursuant to § 8-13.3-507(5) will not take effect until the Division has completed such calculation.

3.If an employer has not been in business in Colorado long enough to report employer's size pursuant to regulation 1.5.6 (A), the employer's size will be calculated after the second quarter of reporting is due by averaging the number of employees reported over the quarters for which reporting exists. Premium calculations based on this determination will begin on this reporting date. This size determination remains in effect through the following calendar year.

B. Determination of employer size for premium collection beginning January 1, 2023.

1. For purposes of premium calculations for calendar year 2023, the Division will determine the size of all employers by reviewing the number of employees reported pursuant to 8-70-113 C.R.S, for the first calendar quarter. Employers that report ten or more employees will be required to pay the employer share of the premium for all calendar quarters in calendar year 2023.

C. Determining in-state status of employees

1. An employee's wages will be subject to premiums for all services performed within Colorado and for all services performed both within and outside of Colorado where:

(a) The employee's entire service is performed within Colorado;

(b) The employee's service is performed both within and outside of Colorado, but the service performed outside the state is incidental to the employee's work within Colorado or, for example is, temporary or transitory in nature and consists of isolated transactions; or

(c) Services are not localized in any state, but some of the services are performed in Colorado, and

(1) The base of operations is in Colorado, or if there is no base of operations, then the place from which such services ~~is~~ are directed or controlled is in Colorado as established in 8-70-117 C.R.S., or

(2) The base of operations or place from which some part of the service is directed or controlled is not in any state in which part of the service is performed, but the employee's residence is in Colorado.

2. Payment to Another Jurisdiction. An employer who has erroneously paid to another jurisdiction an amount as premiums properly payable to Colorado will not be delinquent if premiums properly payable to Colorado are paid within thirty days of the date on which the Division determines that such premiums are payable to Colorado.

1.5.7 Assessments and Recomputations of FAMLI Premiums

A. If, in the judgment of the Division or upon its information and knowledge, the report of wages included in an employer's FAMLI premium report is incomplete or in error, the Division may require, and the employer shall respond within the time allotted, a further report, examine the employer's relevant books and records, or use other reasonable measures to the extent necessary to obtain an accurate report.

B. If a contributing employer is either delinquent in filing a premium report within the time prescribed by the Division or whose records are needed to make a proper determination of an amount of indebtedness or other matter declines to make its records available, the Division may, in its discretion:

1. Use the information and knowledge available to the Division to estimate the amount of chargeable wages paid by a contributing employer during the premium period or periods. The amount of chargeable wages so determined will be deemed to have been paid by the employer and will be used to determine the annual payroll;

2. Assess the employer for FAMLI premiums calculated on the basis of the estimated wages; and

3. Issue a subpoena duces tecum to compel an employer to release books and records to the Division for use in obtaining the required information.

C. A contributing employer who is delinquent in filing reports or paying FAMLI premiums will be promptly notified of the assessment by the communication method the employer elected during FAMLI registration. Premiums will not be considered delinquent if paid within thirty days after the date on which the Division notifies the employer of the delinquent payment.

D. The Division may correct errors of computation whenever such erroneous computations are found or brought to the Division's attention.

1.6 Notification of FAMLI Premium Liability

A. The Division will notify employers and individual persons who have elected coverage of their expected premium on the first business day of the calendar month the premium is due to be paid.

1. Notification may be either electronic or sent by postal mail to the address provided to the Colorado Department of Labor and Employment.

(a) Employers, including self-employed persons may choose a business representative such as a payroll service provider, attorney, or accountant to receive notification on their behalf.

(b) Self-employed persons and local government employees who elect coverage pursuant to § 8-13.3-514, C.R.S., may elect to be notified electronically or by postal mail.

(c) Local governments that have declined participation in the FAMLI program pursuant to 8-13.3-522 C.R.S., but which have agreed to withhold and remit the employee share of premiums for employees who elect coverage under 8-13.3-514, C.R.S., will be provided a quarterly list of employees who have elected coverage pursuant to 8-13.3-514 C.R.S. Local governments which have declined participation in the FAMLI program pursuant to section 8-13.3-522, C.R.S., and have declined to withhold and remit the employee share of premiums for employees who elect coverage under 8-13.3-514 C.R.S., will not receive information from the Division regarding any such employees who have voluntarily elected coverage.

2. A schedule of due dates as well as guidance as to how to remit premiums will be posted by the Division on the FAMLI website and will remain publicly available.

B. Employers not subject to a premium liability due to coverage through a pre-approved substitute private plan under 8-13.3-521, C.R.S., will not receive quarterly notifications of premium liability from the Division.

1. In the event of a loss of coverage or significant change in status, the employer is required to notify the Division within 30 days, and a premium liability will begin to accrue from the first day of the previous calendar quarter.

2. Premium liability will then continue to follow the regular calendar quarter payment schedule, until such time as a new and separate waiver has been approved by the Division.

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Office of the Attorney General

Tracking number: 2021-00605

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

Division of Family and Medical Leave Insurance

on 11/10/2021

7 CCR 1107-1

REGULATIONS CONCERNING PAID FAMILY MEDICAL LEAVE PROGRAM

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:43:33

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

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Inspection and Consumer Services Division

CCR number

8 CCR 1202-11

Rule title

8 CCR 1202-11 ADMINISTRATION AND ENFORCEMENT OF THE COMMODITY HANDLER AND FARM PRODUCTS ACT, SECTIONS 35-36-101 THROUGH 314, C.R.S. 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

ADMINISTRATION AND ENFORCEMENT OF THE COMMODITY HANDLER AND FARM PRODUCTS ACT, SECTIONS 35-36-101 THROUGH 314, C.R.S.

8 CCR 1202-11

Part 2 Definitions and Terms

2.1. “The Act” means the Commodity Handler and Farm Products Act; Title 35, Article 36 of the Colorado Revised Statutes.

2.2. “Cash buyer” means a dealer who signs an affidavit stating that the dealer will make payment for each transaction in cash or with a bank-certified check, a bank cashier's check, an irrevocable electronic funds transfer, or a money order at the time the dealer obtains possession or control of the farm products from the owner.

2.3. “Commissioner” means the Commissioner of the Colorado Department of Agriculture

2.4. “Condition” means the process of increasing the storage life of a commodity and minimizing spoilage and quality loss.

2.5. “Department” means the Colorado Department of Agriculture

2.6. “Commodity Handler” means a person: (I) engaged in buying any commodities from the owner for processing or resale; (II) engaged in receiving and taking possession of any commodities from the owner for storage or safekeeping; (III) engaged in soliciting or negotiating sales of commodities between the vendor and purchaser respectively; (IV) who receives on consignment or solicits from the owner of a commodity any kind of commodity for sale on commission on behalf of the owner, who accepts any commodity in trust from the owner of the commodity for the purpose of resale, or who sells or offers for sale on commission any commodity or in any way handles any commodity for the account of the owner of the commodity; or (V) is engaged in buying any commodity from the owner of the commodity for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock. Unless otherwise specified, a commodity handler means a public warehouse and public warehouse operator. "Commodity handler" does not include: (I) A bona fide retail grocery merchant or restaurateur having a fixed or established place of business in Colorado if the use of commodities by the person is directly related to the operation of the person's retail grocery or restaurant; or(II) A producer as defined in the "Colorado Cottage Foods Act", section 25-4-1614 (9)(c), who earns net revenues of ten thousand dollars or less per calendar year from the sale of each eligible food product.

2.7. “Dealer” means a person: (I) engaged in buying any farm products from the owner for processing or resale; (II) engaged in receiving and taking possession of any farm products from the owner for storage or safekeeping; (III) engaged in soliciting or negotiating sales of farm products between the vendor and purchaser respectively; (IV) who receives on consignment or solicits from the owner of a farm product any kind of farm product for sale on commission on behalf of the owner, who accepts any farm product in trust from the owner of the farm product for the purpose of resale, or who sells or offers for sale on commission any farm product or in any way handles any farm product for the account of, or as an agent of, the owner of the farm product; or (V) is engaged in buying any farm products or commodities from the owner of the farm products or commodities for the commercial feeding of livestock that are owned wholly or in part by another,

at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock. "Dealer" does not include:(I) A bona fide retail grocery merchant or restaurateur having a fixed or established place of business in Colorado if the use of farm products by the person is directly related to the operation of the person's retail grocery or restaurant; or (II) A producer as defined in the "Colorado Cottage Foods Act", section 25-4-1614 (9)(c), who earns net revenues of ten thousand dollars or less per calendar year from the sale of each eligible food product.

2.8. “Financial statement” means a statement prepared according to generally accepted accounting principles (GAAP) that accurately presents the financial condition of the applicant or licensee and that includes, at a minimum, a balance sheet and statement of income.

2.9. “Financial assurance” means the mechanisms used by a licensee to demonstrate that the funds necessary to meet the cost of closure, post closure maintenance and monitoring, and corrective action will be available whenever they are needed.

2.10. “Licensee” unless specifically clarified with the rule, means a commodity handler or farm products dealer, including public warehouse operator, small-volume dealer, or cash buyer that must be licensed.

2.11. “Public warehouse” - means an elevator, mill, warehouse, or other structure in which commodities are received from one or more members of the public for storage.

2.12. “Small-volume commodity handler” means a person who has a fixed or established place of business in Colorado; engages in commodities handling; buys less than $250,000 worth of commodities and farm products per year from owners for processing or resale and does not purchase commodities for commercial feeding of livestock.

2.13. “Small-volume dealer” means a person who does not qualify as a "dealer" under section 35-36-102, (12)(a)(II) to 12(a)(V), C.R.S.; has a fixed or established place of business in Colorado; buys less than twenty thousand dollars worth of farm products or commodities, in aggregate, per year from the owners for processing or resale; and does not purchase farm products for commercial feeding of livestock.

2.14. “Spoilage” means grain with quality deterioration due to moisture migrations, mold, insect damage, heat damage, or other factors.

2.15. “Quality and quantity” means the legal, operational, managerial, and financial liability of the warehouse operator for any grain obligation(s), including company-owned grain, handled or stored by the warehouse operator.

Part 13 Statements of Basis, Specific Statutory Authority and Purpose

E. Adopted November 10, 2021 – Effective December 30, 2021

STATUTORY AUTHORITY

The Commissioner’s statutory authority for the adoption of this permanent rule amendment is set forth in section 35-36-103(1), C.R.S.

PURPOSE

The purpose of this rule making is to clarify the definitions of the terms Commodity Handler and Dealer to properly align with 35-36-102, C.R.S.

FACTUAL AND POLICY BASIS

This rulemaking clarifies the definitions of the terms Commodity Handler and Dealer so they are the same as the definitions in section 35-36-102(8) and (12), C.R.S. respectively. The updated definition section provides clarity and uniformity throughout statute and rule.

PHILIP J. WEISER
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Opinion of the Attorney General rendered in connection with the rules adopted by the

Commissioner of Agriculture

on 11/10/2021

8 CCR 1202-11

ADMINISTRATION AND ENFORCEMENT OF THE COMMODITY HANDLER AND FARM PRODUCTS ACT, SECTIONS 35-36-101 THROUGH 314, C.R.S.

The above-referenced rules were submitted to this office on 11/12/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 11:03:06

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

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Plant Industry Division

CCR number

8 CCR 1203-23

Rule title

8 CCR 1203-23 RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE INDUSTRIAL HEMP REGULATORY PROGRAM ACT 1 - eff 12/31/2021

Effective date

12/31/2021

DEPARTMENT OF AGRICULTURE

Plant Industry Division

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE INDUSTRIAL HEMP REGULATORY PROGRAM ACT

8 CCR 1203-23

Pursuant to the provisions and requirements of the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S., the following Rules are hereby promulgated to regulate the cultivation of Hemp:

Part 1 DEFINITIONS

1.1 "Act" means the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S.

1.2 Approved Laboratories" means a laboratory certified by the Colorado Department of Public Health and Environment (CDPHE) that meets all standards of performance, personnel qualifications, operating procedures, analytical processes, proficiency testing, quality assurance, ISO accreditation and any other standard required by the Commissioner to meet State and Federal requirements for testing hemp.

1.3 "Biomass" means the material created once all flowers, buds, trichomes, leaves, stalks, seed, and plant parts from a lot are chopped or shredded in such a way as to create a homogenous, uniform blend of the lot from which the material originated.

1.4 "Certified Clones" are asexually propagated progeny identical to the stock plant and certified by the Association of Official Seed Certifying Agencies (AOSCA).

1.5 "Commercial" means the growth of Hemp, for any purpose including engaging in commerce, market development and market research, by any person or legal entity other than an institution of higher education under the pilot program administered by the Department for purposes of agricultural or academic research in the development of growing Hemp.

1.6 "Commissioner" means the Commissioner of Agriculture.

1.7 "Corrective Action Plan" means a plan proposed by a licensed hemp producer and approved by the Department to correct a negligent violation.

1.8 "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

1.9 "Department" means the Colorado Department of Agriculture.

1.10 "Harvest" means the termination of the cultivation process, the movement of Hemp from a Registered Land Area to another location, or the movement of Hemp within a Registered Land Area between indoor and outdoor planting areas. Harvest does not include removal of plants as a result of poor plant health, pests, disease, or weather events, nor does it include removal of male or hermaphrodite plants as part of a cross-pollination prevention plan.

1.11 "Hemp" means a plant of the genus Cannabis Sativa L. and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, containing a total delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent on a dry-weight basis.

1.12 “Hemp Greens” are the hemp leaves from immature plants that have been germinated from seed with the plants being no more than ten (10) inches tall, and not flowering at the time of removal of the leaves from the plant.

1.13 “Hemp Microgreens” means immature hemp seedlings for human consumption that are cut-off above the soil or substrate line, harvested prior to flowering and harvested not more than 14 days after germination. Hemp microgreens are typically between two (2) and three (3) inches in height, but not taller than five (5) inches.

1.14 “Hemp Mother Plants” are immature hemp plants with a THC concentration of 0.3% or less that are used for cloning purposes.

1.15 “Hemp Transplants” are hemp seedlings, rooted cuttings, immature plants produced from tissue culture, or other means of reproduction, that are harvested but transplanted into a larger container or field to mature for harvest.

1.16 “Immature Plant” means a hemp plant that is not flowering.

1.17 “Industrial use” means non-consumable use of hemp.

1.18 “Law Enforcement” means the activities of the federal, state and local law enforcement agencies responsible for maintaining public order and enforcing the law.

1.19 “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

1.20 “Negligence” means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth in the Industrial Hemp Regulatory Program Act, section 35-61-101, et seq., or the rules adopted pursuant thereto.

1.21 “Non-compliant hemp” means hemp that test results of which return with a Total THC level above the acceptable Total THC level.

1.22 “Performance-based sampling” means an alternative method and frequency of testing that will ensure, at a confidence level of 95 percent that the hemp plants tested with the alternative method will not test above the acceptable Hemp THC level.

1.23 “Planting” means the starting of the cultivation process including by planting seed, sticking cuttings, tissue culture, the transfer of plants moved into a Registered Land Area except for replanting into a larger container within the same Registered Land Area, and the emergence of volunteer plants that the Registrant intends to cultivate and not destroy.

1.24 “Registrant” means any individual or legal entity who holds a valid Registration to cultivate Hemp under these Rules and the Industrial Hemp Regulatory Program Act.

1.25 “Registration” means authorization by the Commissioner for any individual or legal entity to grow Hemp on a Registered Land Area.

1.26 “Registered Land Area” means a contiguous land area registered with the Department on which a Registrant plans to cultivate Hemp. A Registered Land Area may include land and buildings that are not used for cultivation.

1.27 “Remediation” means the process of rendering non-compliant hemp compliant. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a biomass-like material.

1.28 “Research and Development (‘R&D’)” means cultivation of Hemp by an institution of higher education or other entity approved by the Department for purposes of agricultural or academic research in the development of growing Hemp.

1.29 “Variety” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

1.30 “Volunteer plant” means a hemp plant that grows without any intentional cultivation or planting of hemp on the land where the volunteer plant emerges.

Part 2 REGISTRATION

2.1 Each applicant for a Commercial Hemp Registration must submit a signed, complete, accurate and legible application form provided by the Commissioner and receive, notification of registration from the Department prior to planting, which application will include, in part, the following information:

2.1.1 The name and address of the applicant and a list of all key participants, including the full name, title, and email addresses for each key participant.

2.1.2 Type of entity, such as corporation, LLC, partnership, or sole proprietor including the entity’s employee identification number, the principal business location address, telephone number, and e-mail address (if available).

2.1.3 The Secretary of State ID Number under which a corporate entity is doing business.

2.1.4 The legal description (Section, Township, Range) in which the growing area is located.

2.1.5 The global positioning system location coordinates taken at the approximate center of the Registered Land Area.

2.1.6 A map of the land area on which the applicant plans to cultivate Hemp, showing the boundaries and dimensions of the land area(s) whether in acres or square feet or both as appropriate.

2.1.7 Statement of any known intended use and varieties.

2.1.8 By submitting an application the Registrant acknowledges and agrees to the following terms and conditions:

2.1.8.1 The Registrant shall allow and fully cooperate with any inspection and sampling conducted by the Department.

2.1.8.2 The Registrant shall pay for any inspection and laboratory analysis costs that the Department deems necessary within 30 days of the date of the invoice.

2.1.8.3 The Registrant shall submit all required reports when due.

2.1.9 A Registrant must have the legal right to cultivate Hemp on the Registered Land Area and the legal authority to grant the Department and any authorized sampler access for inspection and sampling.

2.2 Each applicant for an R&D Hemp Registration shall submit a signed, complete, accurate and legible application form provided by the Commissioner prior to planting which includes the following information:

2.2.1 The name and address of the applicant.

2.2.2 Type of organization.

2.2.3 Organization name(s) if different from (2.2.1) above.

2.2.4 The legal description (Section, Township, Range) in which the growing area is located.

2.2.5 The global positioning system location coordinates taken at the approximate center of the Registered Land Area.

2.2.6 A map of the land area on which the applicant plans to cultivate Industrial Hemp, showing the boundaries and dimensions of the land area whether in acres or square feet or both as appropriate.

2.2.7 The Registrant's URL to the website where it will share with the public or publish its research.

2.2.8 The scope and standard operating procedures for production of hemp in the research project, including a narrative of the planned research project.

2.2.9 The disposal plan for all hemp produced.

2.2.10 By submitting an application the Registrant acknowledges and agrees to the following terms and conditions:

2.2.10.1 The Registrant shall allow and fully cooperate with any inspection and sampling conducted by the Department.

2.2.10.2 The Registrant shall pay for any inspection and laboratory analysis costs conducted by the Department within 30 days of the date of the invoice including any costs assessed by any authorized sampler and the costs assessed by any laboratory for sampling the THC content of any sample taken.

2.2.10.3 The Registrant shall submit all required reports when due.

2.3 No person may cultivate any hemp in a proposed registered land area until the Commissioner has approved and issued a registration.

2.4 Registrations are non-transferable.

2.5 No Hemp plant may be included in more than one Registration simultaneously.

2.6 Except for R&D registrations, no Registered Land Area may contain non-compliant hemp plants or parts thereof that the Registrant knows or has reason to know are of a variety that will produce a plant that when tested will produce more than 0.3% total THC concentration on a dry weight basis. No Registrant may use any such variety for any purpose associated with the cultivation of Hemp.

2.7 Each noncontiguous land area on which Hemp is grown must have a unique Registration. Any addition to a Registered Land Area must also have a separate Registration.

2.8 In addition to the application form, each applicant for a Registration must submit the Registration fee set by the Commissioner. If the Registration fee does not accompany the application, the application for Registration will be deemed incomplete.

2.9 The annual Registration fee for Commercial production of Hemp is $500 plus $5.00/acre outdoors or $3.00/1000 sq. ft. indoors.

2.10 The annual Registration fee for R&D production of Hemp is $500 plus $5.00/acre outdoors or $3.00/1000 sq. ft. indoors. Application fees for R&D registrations may be waived for institutions of higher education.

2.11 All Registrations shall be valid for one year from date of issuance.

2.12 All Hemp plant material must be planted, grown and harvested under a valid Registration. Any plant material that is not harvested in the Registration period in which it was planted and any volunteer plants that are not destroyed must be declared for inclusion in a subsequent Registration.

2.13 Any Registrant that wishes to alter the growing area(s) on which the Registrant will conduct Hemp cultivation for either Commercial or R&D purposes shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations. Amendments to an existing Registration are limited to changes within the original land area registered, including variety changes, location(s) of varieties, and actual acreage or square feet of each variety planted.

2.14 Incomplete applications will not be processed, and application fees will not be refunded if a Registration is not granted.

2.15 Any changes to contact information must be provided within 10 days of the change.

2.16 No Land area may be included in more than one Registration at the same time.

2.17 Plants grown for R&D cannot be moved into another registration.

Part 3 REPORTS AND RECORDS REQUIREMENTS

3.1 Within 10 days after planting any hemp and within 10 days after emergence of any volunteer hemp plants in a Registered Land Area that the Registrant chooses to cultivate and not destroy, each Commercial Registrant shall submit, on a form provided by the Commissioner, a Planting Report that includes:

3.1.1 A list or description of all varieties and intended use of hemp planted, or of volunteer hemp plants that have emerged and are not destroyed.

3.1.2 The global positioning system coordinates and a map showing the location and actual acreage or square feet of each variety of hemp planted, or of volunteer hemp plants that have emerged and are not destroyed.

3.1.3 A Planting Report must be submitted any time hemp is planted in, or moved into a Registered Land Area, except that replanting into a larger container within the same Registered Land Area does not necessitate a planting report.

3.2 At least 30 days prior to harvest, each Commercial Hemp Registrant shall submit a Harvest Report, on a form provided by the Commissioner that includes:

3.2.1 The harvest date(s) and location of each variety of Hemp cultivated within a Registered Land Area.

3.2.2 A Registrant must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of 5 days by submitting an Amended Harvest Report to the Department. If any such changes are made the Commissioner may require additional testing prior to harvest.

3.2.3 A Registrant who disposes of plants as a result of poor plant health, pests, disease, or weather events, along with removal of male or hermaphrodite plants as part of a cross-pollination prevention plan is not required to document the removal of those hemp plants on a Harvest Report prior to such removal.

3.3 Within 10 days after planting any hemp, and within 10 days after emergence of any volunteer hemp plants in a Registered Land Area that the Registrant chooses to cultivate and not destroy, each R&D Registrant shall submit, on a form provided by the Commissioner, a Planting Report that includes:

3.3.1 A list or description of all varieties of hemp planted, or of volunteer hemp plants that have emerged and are not destroyed within a Registered Land Area.

3.3.2 The global positioning system coordinates and a map showing the location and actual acreage or square feet of each variety of any hemp planted, or of volunteer hemp plants that have emerged and are not destroyed, within a Registered Land Area.

3.3.3 A Planting Report must be submitted any time hemp is planted in, moved into or moved within a Registered Land Area, except for replanting into a container of the same size within the same indoor location.

3.4 At least 30 days prior to harvest, each R&D Hemp Registrant shall submit a Harvest Report, on a form provided by the Commissioner that includes:

3.4.1 The harvest date(s) and location of each variety cultivated within a Registered Land Area.

3.4.2 A Registrant must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of 5 days by submitting an Amended Harvest Report to the Commissioner. If any such changes are made the Commissioner may require additional testing prior to harvest.

3.4.3. A Registrant who disposes of plants as a result of poor health, pests, disease, or weather events, along with removal of make or hermaphrodite plants as part of a cross-pollination prevention plan is not required to document the removal of those hemp plants on a Harvest Report prior to such removal.

3.5 Each Commercial and R&D Registrant shall report to the Commissioner any changes to information provided in the Registration or any previously submitted reports, including any changes to the intended disposition, within 10 days of such change.

3.6 Registrants shall maintain records of all hemp plants acquired, grown, produced, handled or disposed of, including THC test results, of all hemp lots grown within all Registered Land Area(s).

3.7 All Registrants shall report hemp crop acreage to the Farm Services Agency of the United States Department of Agriculture (“FSA”) as set forth at USDA Crop Acreage Reporting (incorporated by reference herein, effective July 1, 2019). Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference are available for public inspection during regular business hours and may be obtained at a reasonable charge or examined by contacting the Plants Division, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material

may be examined at no cost on the Internet at: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/crop-acreage-reporting-19.pdf.

3.7.1 If the Registrant wishes to alter the land area on which the Registrant will conduct hemp cultivation or R&D growth operations, before altering the area, the Registrant shall submit the Department and the FSA an updated legal description, global positioning system location, and map specifying the proposed alterations.

3.8 Registrants shall retain such records and reports for three (3) years.

3.9 All records pertaining to Part 3.6 shall be made available for inspection by the Department and USDA inspectors, auditors, or their representative during reasonable business hours.

Part 4 INSPECTION AND SAMPLING PROGRAM

4.1 All Registrations are subject to routine inspection and sampling to verify that the total THC concentration of the hemp planted within a Registered Land Area does not exceed the acceptable Hemp THC level.

4.2 Except as set forth below in regard to performance-based sampling, all lots grown on a Registered Land Area must be sampled by the Department or an Authorized Sampler. Prior to the anticipated harvest, a Registrant must coordinate sampling of its hemp lots by contacting either an Authorized Sampler or the Department.

4.3 Samples from hemp plants must be collected within thirty (30) days prior to the anticipated harvest.

4.4 The Commissioner shall also conduct additional inspections and sampling to verify compliance with the reporting requirements of these Rules. A subset of Registrants will be randomly selected each year for records audit, inspection of premises, and sampling to ensure compliance of these rules.

4.5 A Registered Land Area may be subject to inspection and sampling prior to voluntary termination of the Registration or before its expiration date.

4.6 During any inspection or sampling, the Registrant or authorized representative shall be present at the growing operation, if possible. The Registrant or authorized representative shall provide the Department's Inspector with complete and unrestricted access to all hemp plants, parts and seeds within a Registered Land Area whether growing or harvested, and all land, buildings and other structures used for the cultivation and storage of Hemp.

4.7 All hemp lots within a Registered Land Area must be sampled to ensure compliance with the Hemp Program.

4.7.1 Individual samples of each variety or lot of hemp must be sampled from the Registered Land Area.

4.7.2 The sampled material will be prepared for testing using protocols approved by the CDPHE Hemp Testing Laboratory Certification 5 CCR 1005-5 (incorporated by reference herein, effective April 14, 2021). Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference are available for public inspection during regular business hours and may be obtained at a reasonable charge or examined by contacting the Plants Division, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at:

https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=9408&fileName=5%20CCR%201005-5

4.7.3 Quantitative laboratory determination of the total THC concentration on a dry weight basis will be performed according to CDPHE's standard operating procedures as set forth at 5 CCR 1005-5 (incorporated by reference herein, effective April 14, 2021). Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference are available for public inspection during regular business hours and may be obtained at a reasonable charge or examined by contacting the Plants Division, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at: https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=9408&fileName=5%20CCR%201005-5..

4.7.4 A sample test result of a representative sample with a total THC concentration on a dry weight basis greater than the acceptable Hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this Rule. At least one non-compliant hemp plant or part of a plant in the Registered Land Area contains a total THC concentration on a dry weight basis of more than 0.3% and that the Registrant of that Registered Land Area is therefore not in compliance with the Act.

4.7.5 Upon receipt of such a test result, the Commissioner may, among other disciplinary options, summarily suspend or revoke the Registration of a Hemp Registrant in accordance with the Act, these Rules, and section 24-4-104, C.R.S.

4.7.6 A Registrant shall not harvest the hemp prior to sample collection.

4.7.7 Harvested plant material may not leave the Registered Land Area prior to receiving sample results except when plant material is moved to storage outside of the Registered Land Area to prevent crop loss under the following conditions:

4.7.7.1 A registrant must maintain control and ownership of hemp stored outside of the Registered Land Area until receiving sample results.

4.7.7.2 A registrant must report to the Department the location of hemp stored outside of the Registered Land Area.

4.7.8 Individual samples of Hemp lots shall not be commingled with other lots during sampling or laboratory analysis.

4.7.9 Plants grown only for R&D cannot be moved to a commercial registration or enter into the stream of commerce.

4.7.10 Any Registrant with a lot that tests above the acceptable hemp THC level, but below 1.0 percent THC on a dry weight basis may choose to dispose of or remediate each such lot. If a Registrant chooses to remediate, the Registrant may do so in one of the two following ways:

4.7.10.1 Separating and destroying flowers of plants found in non-complying lots within the RLA, while retaining stalks, leaves, and seeds; or

4.7.10.2 Blending the entire hemp lot to create a biomass.

4.7.11 If a Registrant elects to remediate any lot that is tested above the acceptable Hemp THC level, the Registrant must first request permission from the Department by submitting a Remediation and Disposal form to the Department to notify the Department of the Registrant's chosen method of remediation, including the date by which the remediation will be complete. Upon approval from the Department, the Registrant may so remediate.

4.7.12 Any such request must be made within 10 days of the Registrant's receiving the Remediation and Disposal form from the Department.

4.7.13 The Department will conduct remediation sampling or verification of any separation and destruction within 10 days of the remediation date reported to the Department pursuant to rule 4.7.9.

4.7.13.1 Non-compliant hemp lots may be remediated by separating and destroying the flowers from the plants in the non-compliant lots, while retaining stalks, leaves, and seeds or by shredding the entire hemp plant to create a biomass.

4.7.13.2 Registrants must return a completed Remediation and Disposal form to the Department within ten (10) days of receiving the Remediation and Disposal form indicating the date of disposal or remediation.

4.7.14 No person may remediate any lot sample results that indicate a total THC content of 1.0 percent or greater.

4.7.15 Any lot that is tested with a total THC content of 1.0 percent of greater must be disposed of as follows:

4.7.15.1 By using DEA registered reverse distributor or law enforcement; or

4.7.15.2 On site at the farm or hemp production facility.

4.7.15.3 Disposal on site at the farm must occur as set forth by the Agriculture Marketing Services of USDA Hemp Remediation and Disposal Guidelines (incorporated by reference herein, effective January 15, 2021). Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference are available for public inspection during regular business hours and may be obtained at a reasonable charge or examined by contacting the Plants Division, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at: https://www.ams.usda.gov/sites/default/files/media/HempRemediationandDisposalGuidelines.pdf.

4.8 A Registrant who produces Certified Seed or Certified Clones, is registered with an R&D registration, has produced hemp at or below the acceptable hemp THC level for the previous three years, who produces hemp microgreens, hemp greens, hemp transplants, and immature plants, or who produces hemp for grain or other industrial purposes may petition the Department for inclusion in the Department's performance-based sampling program on a form provided by the Department, including as follows:

4.8.1 Certified Seed or Certified Clones:

4.8.1.1 Provide the Department with evidence of AOSCA certified seed or plant material label(s) in the form of the certified seed tag, including the total area (square feet or acres) planted.

4.8.1.2 Provide the Department with evidence of having planted AOSCA Certified Seed or AOSCA Certified Clones that have tested at or below the acceptable Hemp THC level for the previous three (3) years, including evidence that the Registrant will continue to use the same variety.

4.8.1.3 Registrants producing Certified Seed or Certified Clones are subject to random sampling.

4.8.2 Research and Development Registrants:

4.8.2.1 When hemp does not enter the stream of commerce, a Registrant may self-report all total THC concentration test results so long as the Registrant permits the Department to inspect or audit the above documentation set forth in Parts 2.2.7 through 2.2.9.

4.8.2.2 Research institutions are exempt from pre-harvest sampling of hemp crops when they comply with 4.8.2.1 listed above.

4.8.3 A Registrant who has produced indoor or outdoor hemp to maturity from the same variety or strain for the previous three, consecutive years that, when tested by the Department or an authorized sampling agent, with results at or below the acceptable hemp THC level.

4.8.4 A Registrant who is producing hemp microgreens, hemp greens, hemp transplants, and immature plants is exempt by placing an averment on the application that:

4.8.4.1 Hemp transplants will be transferred only to the location at which these plants will grow to maturity and from which these plants will be harvested; and

4.8.4.2 Mother plants may be exempt from sampling after testing within the allowable hemp THC level. Otherwise, different strains of mother plants that are harvested or leave the Registered Land Area must be sampled.

4.8.5 Production for grain or other industrial uses may be exempt from testing of each lot but will be randomly sampled.

4.9 Fees and Costs

4.9.1 For all sampling conducted by the Department pursuant to these Rules, the Department will charge the Registrant $125 per inspection plus all laboratory costs associated with the inspection.

4.9.2 Registrants selected for inspection and sampling shall reimburse the Department for both the fees and costs incurred by the Department within 30 days of the date of invoice.

4.9.3 Registrant is responsible for paying all fees to approved samplers and third party labs.

4.9.4 The Registrant shall pay for any inspection and laboratory analysis costs, including the costs associated by any authorized sampler and the costs assessed by any laboratory for sampling the THC content of any sample taken.

4.10 Authorized Samplers

4.10.1 Any individual acting as an authorized sampler must possess a valid sampler registration and certification issued by the Commissioner.

4.10.1.1 Each authorized sampler shall complete and file with the Commissioner an application on a form furnished by the Commissioner which contains at a minimum the following: name, address, telephone number and any other information required on the form.

4.10.1.2 Each applicant for an authorized sampler certification shall take a yearly Department-approved sampler training course and pass an examination administered by the Department.

4.10.1.3 The Commissioner, or Commissioner's designee shall administer a general training class on the authorized sampling and handling techniques according to protocols approved by the Commissioner.

4.10.2 The Commissioner may cancel an authorized sampler's registration and certification or refuse to register or certify any person who has engaged in any of the following activities:

4.10.2.1 Consistent disregard for established and approved methods of sampling determined by the Department.

4.10.2.2 Failing or refusing to disclose a conflict of interest.

4.10.2.3 Tampering with samples to influence test results.

4.10.2.4 Purposeful commingling of sampled lots.

Part 5 VIOLATIONS/DISCIPLINARY SANCTIONS/CIVIL PENALTIES

5.1 In addition to any other violations of Title 35, Article 61, C.R.S., or these Rules, the following acts and omissions by any applicant or Registrant or authorized representative thereof shall constitute violations for which civil penalties up to $2,500 per violation and disciplinary sanctions, including denial of an application or summary suspension or revocation of a Registration, may be imposed by the Commissioner in accordance with §§ 35-61-107 and 24-4-104, C.R.S.:

5.1.1 Refusal or failure by an applicant, Registrant or authorized representative to fully cooperate and assist the Department with all aspects of the administration and enforcement of the Act and these Rules, including the application, registration, reporting, inspection and sampling processes.

5.1.2 Failure to provide any information required or requested by the Commissioner for purposes of the Act or these Rules.

5.1.3 Providing false, misleading, or incorrect information pertaining to the Registrant's cultivation of Hemp to the Commissioner by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of the Act or these Rules.

5.1.4 Failure to submit any required report in accordance with Part 3.

5.1.5 Growing hemp that when tested is shown to have a total THC concentration greater than 0.3 percent on a dry weight basis.

5.1.6 Failure to pay fees assessed by the Commissioner for inspection or laboratory analysis costs.

5.1.7 Negligent violations include, but are not limited to:

5.1.7.1 Failure to provide a legal description of the land on which the producer produces Hemp.

5.1.7.2 Failure to obtain a Registration or other required authorization from the Commissioner.

5.1.7.3 Production of hemp with a total THC concentration exceeding the allowable limit, except that a producer who has made reasonable efforts to grow Hemp and whose non-compliant hemp does not have a total THC of more than 1.0 percent on a dry weight basis will not have committed a negligent violation.

5.1.8 Corrective actions for negligent violations include but are not limited to:

5.1.8.1 A date, set by the Commissioner, by which the producer shall correct the negligent violation.

5.1.8.2 Periodic reporting to the Commissioner, on a form provided by the Commissioner, on the Registrant's compliance with the Act and Rules for a period not less than two years from the date of the negligent violation.

5.1.8.3 The Commissioner will conduct inspections to determine whether the Registrant has implemented the corrective action plan as submitted.

5.1.9 A producer that negligently violates the provision of these rules three times in a five-year period shall be ineligible to produce hemp for five years beginning on the date of the third violation.

5.1.10 Culpable Violations

5.1.10.1 Any person that materially falsifies any information contained in an application to cultivate hemp in Colorado shall be ineligible to receive a registration to cultivate hemp in Colorado.

5.1.10.2 If the Department determines that the producer has violated the plan with a culpable mental state greater than negligence, the Department will report the producer to the U.S and Colorado Attorneys General.

5.2 Felony Convictions

5.2.1 A person with state or federal felony conviction relating to a controlled substance is not eligible to receive a registration to cultivate hemp, and my not produce hemp, in Colorado for a period of ten (10) years from the date of the conviction.

5.2.2 A person who was lawfully growing hemp pursuant to a registration issued by the Department prior to December 20, 2018, and whose conviction for a state or federal felony relating to a controlled substance also occurred before that date shall not be denied a registration to cultivate hemp as set forth in Rule 5.2.1.

5.2.3 The Department's determination regarding any such denial shall be based upon the results of the criminal background check of key participants as set forth in section 35-61-104(1)(c), C.R.S.

Part 7 RESERVED

Part 8 APPROVED LABORATORIES

8.1 The Department will maintain a list of approved Hemp testing laboratories that are certified by the Colorado Department of Public Health and Environment.

8.2 Authorized samplers must submit Hemp samples for official analysis only to those approved Hemp testing laboratories identified by the Department, as set forth in Rule 8.1.

Part 9 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

9.1 Adopted November 12, 2013 – Effective December 30, 2013

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), §§ 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:

1. Adopt a Part 1 setting forth definitions of specific terms used in these Rules.

2. Adopt Rules in Part 2 establishing a process for registering growers of industrial hemp and setting forth the information and fees required.

3. Adopt Rules in Part 3 establishing the information reporting requirements with which registrants must comply.

4. Adopt Rules in Part 4 establishing an inspection program to ensure compliance with the provisions of the Act and these Rules.

5. Adopt Rules in Part 5 creating conditional penalty waiver provisions for registrants whose industrial hemp crop THC content tests between 0.3% and 1.0% by dry weight.

6. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 13-241 authorized the creation of a program within the Department of Agriculture to regulate industrial hemp cultivation.

2. The bill created a nine-member advisory committee to work with the Department to develop rules establishing an Industrial Hemp Regulatory Program. This committee was appointed by Senator Gail Schwartz and Representative Randy Fischer.

3. The committee held three public meetings to determine what rules were necessary to implement this program and draft the appropriate language. The committee will continue to work with the Department to refine and update these Rules over the coming years, as well as review the testing protocols that Department staff is currently developing.

9.2 Adopted June 11, 2014 – Effective June 11, 2014

Statutory Authority

These emergency rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.

2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 -4 weeks to plan sampling.

9.3 Adopted August 5, 2014 – Effective September 30, 2014

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to make permanent emergency rules effective June 11, 2014. Specifically, these amendments:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.

2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 -4 weeks to plan sampling.

9.4 Adopted February 11, 2015 – Effective March 30, 2015

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed Rules are to:

1. Amend the definition of “Commercial” in Rule 1.2. to establish clear separation between the activities permitted under a Commercial registration and a Research and Development registration.

2. Amend the definition of “Law Enforcement” in Rule 1.7.

3. Adopt a new Rule 1.8 to define “Registrant.”

4. Adopt a new Rule 1.9 to define “Registration.”

5. Adopt a new Rule 1.10 to define “Registered Land Area” and delete the definition of “Growing Area.”

6. Amend the definition of “Research and Development” in Rule 1.11 to follow the 2014 Farm Bill language.

7. Adopt a new Rule 1.12 to define “Variety.”

8. Amend language referencing site and growing area(s) used throughout the Rules to reflect the above definition changes.

9. Amend language referencing sampling and analysis costs and add terms of payment used in Rules 2.1.7.3 and 2.2.7.3.

10. Separate language from Rule 2.2.5 and create Rule 2.2.6 for Rule language consistency between Commercial and Research & Development Rules format.

11. Create a new Rule 2.3 barring the transfer of ownership of a registration.

12. Create a new Rule 2.4 language barring registration of one plant under two registrations.

13. Create a new Rule 2.5 barring any cannabis plants other than Industrial Hemp on a registered land area.

14. Create a new Rule 2.6 to define what can be included in a single registration.

15. Amend registration fees in Rules 2.8 and 2.9 to cover the cost of administering the program.

16. Adopt a new Rule 2.11 to require harvest of all plants within a registration period. Allow for material that is planted under one registration to be included in subsequent registrations through declaration during registration.

17. Adopt a new Rule 2.13 limiting amendments to a registration.

18. Adopt a new Rule 2.13 regarding processing of applications.

19. Adopt a new Rule 2.14 requiring registrants to maintain current contact information with the Department.

20. Amend Rules 3.1.2 and 3.4.1 to require reporting of all plant material used in an Industrial Hemp registered land area.

21. Adopt new Rules 3.1.3 and 3.4.2 requiring registrants to report the intended use of all parts of the Industrial Hemp crop included in a registered land area.

22. Adopt new Rules 3.2 and 3.5 requiring reporting of the varieties and location of all Industrial Hemp planted in a registered land area.

23. Adopt a new Rule 3.5.3 requiring research and development registrants to verify that all the Industrial Hemp to be cultivated is reasonably believed to produce a crop with a THC of 0.3% or less on a dry weight basis.

24. Amend Rules 3.3.2 and 3.6.2 to require reporting of specific crop location information at least 30 days prior to harvest.

25. Adopt a new Rule 3.7 to require reporting of any changes in information previously submitted to the Department within 10 days.

26. Amend Rule 4.1 to allow sampling of all cannabis plants on a registered Industrial Hemp land area, allow sampling of up to 100% of the registrants, allow the Department to notify the registrant of inspection by methods other than certified mail, require registrants to contact the Department within 10 days of inspection notification and explain the consequence for failing to do so.

27. Amend Rule 4.2 to allow access to all cannabis material associated with a registration.

28. Amend Rules 4.3 and 4.3.1 to allow individual or composite sampling of all cannabis plants on a registered Industrial Hemp land area.

29. Amend Rule 4.3.2 to allow more valid scientific testing protocols.

30. Amend Rule 4.3.4 to include the updated language from existing Rule 4.3.4.1 and remove the term commercial so any registration found not in compliance could be suspended or revoked in accordance with C.R.S. 24-4-104.

31. Amend Rule 4.4.2 to set terms of payment to 30 days of invoice.

32. Amend Rule 5.1 to include the same 1.0% THC limit for a waiver from penalty as applied to commercial registrations.

33. Amend Rule 6.1 to clarify scope and add summary suspension language for clarity purposes.

34. Amend Rule 6.1.5 to include proper terminology for cannabis exceeding 0.3% THC.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. The revised definitions for "Commercial" and "Research and Development" in Rules 1.2 and 1.11 are intended to establish a clear separation between the activities allowed under a Commercial registration and a Research and Development registration. All Industrial Hemp production activities not authorized by the 2014 Farm Bill Research and Development language, including all privately-conducted research and development, are covered by a commercial registration. In addition to private scientific research, this change in definitional language will allow research for competitive advantage or product development without limiting the sale or distribution of plant material used and produced under a commercial registration, similar to what commercial enterprises in other industries do for product development in a research division of a company. This Rule change meets the needs of registrants who have requested sale of material from their research and development registrations by aligning their research to be conducted under commercial registration without structurally changing their research practices.

2. Rule 1.7 is intended to clarify the broad scope of governmental agencies involved in law enforcement and eliminate unnecessary language about their activities.

3. Rules 1.8 and 1.9 are intended to define the difference between a person or entity who has been granted approval from and the authorization to grow Industrial Hemp on a specific site.

4. Rule 1.10 creates a definition for an area registered to grow Industrial Hemp that includes property the registrant may want to include that is not a growing area.

5. Rule 1.12 creates a definition for plants used in the Rules that clarifies registration, planting and harvest requirements. The definition is also necessary for delineation purposes during sampling.

6. The changes in Rules 2.1, 2.2, 3.1, and 3.4 are needed to make the language in those Rules consistent with other language in the Rules.

7. Amending the language in 2.1.7.3 and 2.2.7.3 is intended to standardize the terminology with that used in Part 4, clarify the costs for which a registrant is responsible, and set the terms of payment which are not currently specified . This clarification is necessary because some registrants have delayed payment of fees until another registration is granted or until they have negotiated individual payment terms, creating administrative confusion and increasing program costs.

8. Separating the requirements in Rule 2.2.6 and 2.2.5 improves consistency with 2.1.6 and 2.1.5 for ease of Rule readability.

9. The prohibition in Rule 2.3 on the transfer of registration is necessary to facilitate inspection and sampling and to prevent the transfer of registrations to persons or entities who would not otherwise qualify for a registration due to previous sanctions and penalties. This also closes a potential loophole through which a legally acquired Industrial Hemp registration could be transferred to another individual for purposes of evasion in growing or transporting of Marijuana.

10. Rule 2.4 is necessary to avoid confusion when a registrant holds multiple registrations. This Rule will enable the Department to accurately identify, inspect and sample all of the plants grown under a specific registration.

11. Under Article XVIII, Section 16 of the Colorado Constitution (Adopted by voters as "Amendment 64") "Industrial Hemp" is defined and regulated separately from "Marijuana". The Department therefore has no legal jurisdiction over cannabis that contains more than 0.3% THC on a dry weight basis because it is constitutionally defined as Marijuana and not Industrial Hemp. The Department thus does not have the authority to grant the possession or use of any cannabis material above 0.3% THC within its Industrial Hemp registration program; all such material is regulated as Marijuana under the authority of the Department of Revenue. Rule 2.5 is necessary to prevent the use or presence of plant material in a registered land area that would be outside the Department of Agriculture's jurisdiction. The proposed Rule language does not limit the right to possess or conduct Marijuana research but does prevent Marijuana material from knowingly being used under the Industrial Hemp program by excluding it from the area the registrant has agreed is dedicated to Industrial Hemp.

12. Rule 2.6 defines what may be included in a single registration. The change is necessary to track registration sites, what is planted on a registered land area and ensure accurate testing can be done. The current system has created administrative issues as registrants have added sites miles away from existing registrations during the growing season and cancelled growing areas registered under the same registration, creating situations where it has become difficult to track where plant material currently is being grown for inspection purposes. These changes in registrations have also increased the cost of program administration as the Department attempts to track sites currently registered to grow Industrial Hemp. The Rule does not limit the registrants ability to stagger planting within a registered land area. The Rule is also intended to facilitate the establishment of an equitable fee structure to self-fund the program as mandated in the Act.

13. The Department is proposing to increase the fees in Rule 2.8 and 2.9 to comply with the self-funding mandate set forth in Section 35-61-106 (2), C.R.S. Current fees have generated less than 20% of the necessary revenue to support the program. Section 35-61-106 (2), C.R.S., limits the sources of revenue to registration fees and land area. Leaving registration fees at current levels would require per acre fees to exceed $55. The new registration fee structure was developed to equitably generate sufficient revenue to self-fund the program at current registration levels. The fees for Commercial and Research & Development registrations were set at the same level so as not to favor either type of registration or disadvantage research for competitive advantage conducted under a commercial registration.

14. Section 35-61-104(3), C.R.S. defines the effective period of a valid registration to one year. To regulate the program it is necessary for plant material to be registered before planting as required in Rules 2.1 and 2.2. To insure that all plant material is regulated under a valid registration and therefore protected under Section 35-61-102(2), C.R.S., Rule 2.11 was created to clarify the requirement to harvest within a registration and add language necessary for the perpetuation of genetics.

15. Rule 2.12 is necessary to prohibit the expansion of a registration outside of the original land area described in the application for registration. Without this limitation it is very difficult and time consuming for the Department to track plant material to a registration or ensure compliance with planting reports. Registrants have used the current amendment language to establish new growing sites and assume sites originally registered to another registrant. The current system allowing registrants to add new locations through amendments without cost has significantly increased the administrative costs of the program which must be passed on to all registrants.

16. Rule 2.13 insures that the cost to process an application incurred by the Department prior and regardless of whether a registration is issued are not passed along to other registrants should a registration not be granted. Under Section 35-61-106(2), C.R.S., the Commissioner is required to collect fees to cover all of the program's costs, including those associated with applications that are denied.

17. The Department has spent considerable resources trying to contact the registrants after registration due to changes in contact information. This has increased administrative costs for the program. Rule 2.14 requires registrant contact information remain current so the Department can contact registrants regarding sampling and inspection without added administrative costs. Some registrants have changed their contact information including mailing address, e-mail address and phone numbers to evade requests by the Department to conduct inspections.

18. Rules 3.1.2 and 3.4.1 require a registrant to disclose all plant material intended for use in a registered land area to be disclosed. This is necessary to enable the Department to confirm that all plant material used within a land area registered with the Industrial Hemp program is of a type and variety that will produce plants with a THC content not to exceed 0.3% on a dry weight basis.

19. Rules 3.1.3 and 3.4.2 are necessary to facilitate the inspection and sampling of Industrial Hemp grown in the program. The Industrial Hemp inspection is done by a limited number of inspectors who also inspect multiple other programs for the Department. To accomplish inspections required for all the programs considerable planning and coordination occurs months prior to the need to facilitate optimum use of inspection staff and control costs.

20. The requirement of a planting report in Rules 3.2 and 3.5 is necessary for the Department to determine what fields have actually been planted so we can determine what fields may need inspection, allocate resources for inspection, collect variety information to support a seed certification program and collect agronomic data on the crop to determine economic value to the state.

21. Rule 3.5.3 is intended to ensure that research and development registrants plant material that they reasonably believe will not exceed 0.3% THC on a dry weight basis and that all material used in the research project is included in the planting report.

22. Rules 3.3.2 and 3.6.2 are necessary for the Department to determine what will be harvested compared to what was actually planted, identify gaps, and schedule inspections appropriately. This will also allow the Department to collect harvest data to determine the size of the final crop and document crop size developments for economic purposes.

23. Rule 3.7 is necessary to ensure that the Department has the most current information on all registrants so that it can effectively plan inspection resources and monitor industry developments.

24. The change in Rule 4.1 allowing sampling of up to 100% of registrants is necessary to accommodate the July 1, 2014 statutory change allowing year round registration while still conducting an effective inspection program including testing in the event an unanticipated violation is reported or suspected. The amended language also eliminates the exemption from testing after two years which could prevent the Department from retesting registrants with prior violations in a timely or effective manner. The current language has the potential for abuse by registrants who have been tested for two years and thus could grow Marijuana without concern of inspection the third year.

The amended language in Rule 4.1 with respect to notice of inspection allows the Department to communicate with the registrants in a method agreed to with the registrant or deemed effective from previous communications with the registrant. The use of certified mail has allowed some registrants to see the Department is sending them communication and avoid signing for it in an effort to evade inspection notification. In other cases the address provided has been returned as undeliverable via certified mail and the registrant has asked for an e-mail or phone call so they can comply.

The time period for response to notification was changed from 30 days after notification to 10 days to allow the Department to determine harvest timing and arrange for inspections. The 30 days hampered the Departments ability to coordinate inspections of multiple sites increasing the inspection travel costs for the registrant as harvest in many cases was more immediate once the registrant replied.

25. Registrants have agreed under Rule 2.5 not to include plant material known or that should reasonably be known will exceed 0.3% THC on a registered land as terms of registration. This amended section of 4.2 is necessary to support, verify and enforce Rules 2.5, 3.1.2, 3.4.1, 4.1, 4.3, and 4.3.1.

    The changes to Rule 4.2 are necessary to allow the Department to inspect all plants in the registered land area. Registrants have used the current Rule language to assert that some plants used by them for cultivation of Industrial Hemp cannot be tested by the Department because they are Marijuana that is being grown for personal use or under a Medical Marijuana card application. The amendments to Rule 4.2 are necessary to verify compliance with Rules 2.5, 3.1.2, 3.4.1, 4.2, 4.3, and 4.3.1 which prohibit the presence or use of Marijuana within a land area registered for the cultivation of Industrial Hemp.

26. The amended language in Rules 4.3 and 4.3.1 allows all cannabis material grown in a land area under an Industrial Hemp registration to be sampled. It allows the Department or registrant to determine if a specific plant or group of plants is to be sampled. This amended language allows the Department to work with Industrial Hemp breeding projects where sampling every individual plant would be cost prohibitive to a registrant and could effectively destroy a breeding program if all plants were selected for inspection.

27. The amended language in Rule 4.3.2 clarifies a procedural process that inaccurately represented scientific methodology. Samples are divided after preparation for testing so that the two samples are of the same composite make up.

28. The amended language in Rule 4.3.4 clarifies the legal effect of tests results that exceed 0.3% THC for both commercial and research and development registrants.

29. The amended language in Rule 4.4.2 is for administrative purpose. Registrants have used the lack of clear terms of payment in Rule as a negotiation point to make payment plans for services or delay payment until a new registration is needed.

30. Amending Rule 5.1 to include an upper THC limit in plant material used in research and development is necessary to ensure programs are not knowingly using Marijuana with a high THC content under an Industrial Hemp registration.

31. The amendment to Rule 6.1 clarifies that a registration may be summarily suspended in appropriate circumstances under 35-61-107 and 24-4-104, C.R.S.

32. The amendment to Rule 6.1.5 conforms with the changes to other Rules prohibiting the presence or use of plant material that exceeds 0.3% THC on a registered land area.

33. These amendments incorporate changes as a result of the Department's Regulatory Efficiency Review Process.

9.5 Adopted February 10, 2016-Effective March 30, 2016

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

1. Adopt a new Rule 1.2 defining "CDA Approved Certified Seed".

2. Adopt a new Rule 1.6 defining "Harvest".

3. Adopt a new Rule 2.1.8 requiring Registrants to have all legal rights necessary to cultivate Industrial Hemp on a Registered Land Area.

4. Amend language in Rule 2.11 to clarify the process for material that is perpetuated from one Registration to another Registration.

5. Adopt a new Rule 2.15 clarifying that land area cannot be covered by more than one Registration.

6. Amend Rules 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 to require reports be submitted on a form provided by the Commissioner.

7. Amend Rules 3.2 and 3.5 to address reporting of any volunteer Cannabis plants that the Registrant chooses to cultivate rather than destroy.

8. Adopt Rules 3.2.3 and 3.5.3 specifying when submission of a Planting Report is required.

9. Adopt Rules 3.3.3 and 3.6.3 requiring notification to the Commissioner of any changes to the reported harvest date of more than 5 days.

10. Adopt a new Rule 4.2 to allow the Commissioner to do additional inspection or sampling to confirm compliance with the Act and Rules.

11. Adopt a new Rule 4.3 to allow for inspection or sampling of a Registered Land Area that is voluntarily exiting the program.

12. Amend Rule 4.5.4 to clarify the legal limits where law enforcement has jurisdiction.

13. Adopt a new Rule 4.6 to allow reduced testing for Registrants who plant CDA Approved Certified Seed.

14. Adopt a new Rule 5.3 to establish a time period for requesting a waiver.

15. Adopt a new Part 7 to allow the Department to approve varieties of Industrial Hemp as CDA Approved Certified Seed and establish fees to cover the costs of the program.

16. Make non-substantive edits with respect to wording and capitalization changes throughout to improve consistency and readability.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. The definition in Rule 1.2 of “CDA Approved Certified Seed” is intended to establish the term used in the development of a seed program to assist Industrial Hemp growers to purchase seed that is known to produce mature plants that will not exceed 0.3% THC.

2. The definition in Rule 1.6 of “Harvest” is intended to clarify when reporting to the Department is required and assist Industrial Hemp growers in meeting the reporting requirements.

3. Rule 2.1.8 is intended to ensure that the Department has the ability to inspect and sample land areas Registered in the Industrial Hemp Program and ensure that Registrants understand their obligations when entering into land lease agreements.

4. Rule 2.11 will allow Registrants the ability to carry plant material over from one Registration that is expiring into another Registration. The Rule will allow plant material to finish its life cycle under a new Registration rather than requiring premature harvest under the Registration period in which it was planted. This will allow perpetuation of parent stock for breeding purposes.

5. Rule 2.15 will ensure the Department has the ability to determine which Registration covers the plant material on a Registered Land Area and can apply any sanctions that may occur only to the Registration the plants are cultivated under.

6. The Amendments to Rules 3.1 through 3.6 requiring use of forms provided by the Department will ensure that the information reported by Registrants is complete and consistent.

7. The amendments to Rules 3.2 and 3.5 allow for the Registration and cultivation of volunteer plants so long as they are reported within 10 days of emergence. This provision allows growers to register volunteer plants on land areas on which Industrial Hemp was previously grown.

8. Rules 3.2.3 and 3.5.3 are intended to clarify for Registrants how to document the movement of plant material within or into a Registered Land Area. This facilitates the movement of young plant material to final growing locations.

9. Rules 3.3.3 and 3.6.3 provide growers a 10 day window for harvest. This recognizes the harvest date may vary due to factors beyond a Registrant’s control such as weather events.

10. Rule 4.2 clarifies that the Department has the authority to conduct inspections and sampling in addition to the routine inspection and sampling described in Rule 4.1 when the Department determines that it is necessary to ensure compliance with the Act and Rules.

11. Rule 4.3 ensures that a Registrant cannot avoid inspection and sampling through early termination of their Registration.

12. Rule 4.5.4 was changed to clarify that 0.3% delta-9 THC concentration is the legal limit of the Program and does not limit the Departments ability to reach out to law enforcement when appropriate circumstances arise.

13. Rule 4.6 will allow the Department to set testing protocols for fields planted with CDA Approved Certified Seed that differ from the protocols for fields planted with non-certified seed. Registrants who plant CDA Approved Certified Seed will not be subjected to inspection and testing fees unless inspections establish that the variety planted was not the same variety as indicated on the Planting Report.

14. Rule 5.3 sets a reasonable time for a Registrant to indicate his desire to exercise the waiver provisions set forth in Rule 5.1 and 5.2. The Rule is necessary to ensure the Department can communicate with law enforcement the timeliness of actions the Registrant is taking to destroy the crop should he chose to exercise the waiver.

15. Under Rule 7.1 a variety of seed to be certified must first undergo testing conducted by the Department to verify that it will consistently produce mature plants with a delta-9 THC concentration at or below 0.3% on a dry weight basis. These trials will be conducted in various regions in the state to ensure stability across the different growing environments in the state. Varieties approved by the Department may be certified by Colorado State University or the authorized seed certifying agency of another state when produced under certified field standards.

16. Rules 7.2 and 7.3 establishes the mechanism for equitably funding the CDA Approved Certified Seed program between the breeder applicants and Registrants. This is intended to encourage the development of CDA Approved Certified Seed while also recognizing the economic benefits to Registrants of planting CDA Approved Certified Seed.

9.6. Adopted February 8, 2017 -Effective March 30, 2017

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Industrial Hemp Regulatory Program Act (the “act”), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purpose of these proposed Rules are to:

1. Amend the definition of “CDA Approved Certified Seed” in Rule 1.2.

2. Amend the definition of “Harvest” in Rule 1.6 to add the common language used to define the term “Harvest”.

3. Amend Rules 2.1.6, 2.2.6, 3.1.2 and 3.4.2 to remove premature requirement for submitting a variety location map.

4. Amend Rules 3.2.2 and 3.5.2 to move the variety location requirements to a more appropriate time when the Registrants can comply.

5. Amend Rule 3.5.3 to exempt reporting of changes in growing container except for larger sizes.

6. Adopt Rules 3.3.4 and 3.6.4 to allow the removal of unwanted male Cannabis plants prior to harvest without submitting a Harvest Report.

7. Amend Rule 4.2 to include both present and past tense of potential violations as cause for inspection.

8. Amend Part 6 to expand the scope of the obligation to cooperate and assist the Department to all aspects of the administration and enforcement of the Act and these Rules.

9. Amend Rule 7.1 to clarify the requirements for CDA Approved Certified Seed.

10. Adopt Rules 7.1.1, 7.1.2, 7.1.3 and 7.1.4 to add clarity to the CDA Approved Certified Seed process.

11. Make typographical, grammatical, and non-substantive changes throughout for clarification.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. Rule 1.2 was amended to clarify that the term “CDA Approved Certified Seed” is specific to seed lots that meet the program standards and not just the variety name.

2. The definition of “Harvest” in Rule 1.6 was amended to clarify that this term includes the normal and common practice of reaping a mature plant.

3. The map requirements under Rules 2.1.6, 2.2.6, 3.1.2 and 3.4.2 as part of their Pre-Planting requirement required premature reporting by Registrants. Realigning the time of reporting to the Planting Report in Rules 3.2.2 and 3.5.2 allows Registrants to accurately report their final planting locations at the appropriate time.

4. Amending Rule 3.5.3 to reduce the reporting burden for normal occurrences of the growing such as broken pots while still allows for the Department to adequately regulate the cultivation and growing cycle.

5. The removal of unwanted male plants is a common practice in breeding programs and all female plant production. New Rules 3.3.4 and 3.6.4 accommodate and facilitate this industry practice by eliminating the need to file unnecessary Harvest Reports for discarded male plants within some specific parameters.

6. Amend Part 6 to reflect the equal importance of cooperation and assistance by an applicant or registrant with all aspects of the administration of the program. This will help ensure the Commissioner has all information necessary to ensure compliance with the Program requirements.

7. The amendment to Rule 7.1 identifies CDA Approved Certified Seed as seed that will produce mature plants that will not exceed the .3% delta-9 tetrahydrocannabinol concentration standard. The Rule distinguishes CDA Approved Certified Seed from other certified seed not approved by the CDA for which the mature plants’ delta-9 tetrahydrocannabinol concentration has not been verified in CDA trials conducted across the state.

8. Rule 7.1.1 establishes a system through a variety review board to ensure that the investments in breeding and the intellectual property rights of breeders are protected. Breeders entering a variety must be able to demonstrate ownership of the variety to a panel of experts by identifying unique characteristics that distinguish their entry from other varieties.

9. Rule 7.1.2 ensures that the information submitted to the variety review board accurately represents the variety when viewed in the field and ensures integrity in the process.

10. Rule 7.1.3 ensures the same production practices used in other agricultural crops are applied to CDA Approved Certified Seed lots to ensure purity and trueness to type.

11. The labeling requirement in Rule 7.1.4 provides consumer confidence and easily identifies seed being purchased as true to type and pure, and verifies that mature plants of this variety have not surpassed the .3% delta-9 tetrahydrocannabinol concentration limit in CDA trials conducted across the state.

9.7. Adopted February 22, 2018 – Effective April 15, 2018

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "act"), Section 35-61-104(5), C.R.S.

Purpose

1. Amend and clarify the definitions of "commercial" and "research and development".

2. Amend the definition of "harvest" to add the common language used to define the term "harvest" to include the practice of taking cuttings.

3. The changes to Rule 4.7.2 are necessary to recapture language that was inadvertently deleted during the last rulemaking.

4. Amend Rule 7.3 to require reporting on a form provided by the Commissioner in order for the Department to capture additional information as deemed necessary by the certified seed program.

Factual and policy basis

1. To clarify the language in 1.3 and 1.12 and make it consistent with the implementation of the program.

2. The definition of "harvest" was amended to clarify that this term includes the normal and common practice of harvesting cuttings.

3. Add language that was intended to be included in Rule 4.7.2 and was inadvertently deleted during the last rulemaking.

4. The amendment to Rule 7.3 allows the Department to track varietal identity entering into the certified seed program.

9.8. Adopted February 13, 2019 – Effective March 30, 2019

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), § 35-61-104(5) and 35-61-105(2) C.R.S.

Purpose

The purposes of these proposed Rules are to:

1. Adopt a new Rule 1.9 to define “Planting,”

2. Amend Rule 2.1.2 to clarify that an entity can be a business or an individual.

3. Amend Rules 2.1.6 and 2.2.6 to clarify that both outdoor acres and indoor square feet should be included on the required map.

4. Amend Rule 2.2.2 by removing the types of businesses.

5. Amend Rule 2.2.3 by removing the term “Business.”

6. Amend Rule 2.2.4 to mirror correct language as written in Rule 2.1.4.

7. Amend registration fees in Rules 2.8 and 2.9 to cover the cost of administering the program. Amend Rule 2.9 to clarify that the application fee for an institution of higher education may be waived.

8. Adopt Rules 3.2.4 and 3.5.4 to document requirements for CDA Approved Certified Seed plantings on Planting Reports.

9. Amend Rules 3.3.3 and 3.6.3 to clarify harvest reporting requirements.

10. Amend Rules 3.3.4 and 3.6.4 to clarify when a Harvest Report does not need to be submitted.

11. Amend Rule 4.1 to change the requirement for disciplinary action.

12. Amend Rule 4.7 to include “costs” along with fees.

13. Amend Rule 4.7.1 to a fee that adjusts the inspection fee to a set amount.

14. Amend Rule 4.7.2 to clarify when fees and costs are due.

15. Amend Rule 7.1.1 to conditional approval with the Colorado Seed Growers Association, pending the Department’s validations of THC level and trueness to type.

16. Adoption of Rule 7.4 allows CDA to identify CDA Approved Certified Seed production fields at the time of application.

Factual and Policy basis

The factual and policy issues encountered when developing these Rules include:

1. The definition of “Planting” in Rule 1.9 clarifies that “Planting” includes all phases of the various types of cultivation practices, voluntary plant emergence, and plant movement including within Registered Land Areas and to Registered Land Areas. This rule is necessary to clarify when a Planting Report must be submitted.

2 Amended rule 2.1.2 deletes the word “business” before the word “entity”. This rule is necessary to clarify that a sole proprietor is an entity but not necessarily a business entity.

3. Amendments in Rules 2.1.6 and 2.2.6 clarify that an application for a Registered Land Area that includes both outdoor acreage and indoor square feet must include a map that shows the boundaries and dimensions of both the outdoor acreage and indoor square feet. The term “Registered” is deleted clarifying that a land area is not registered until a Registration is issued. The term “grow” replaces “cultivate” in accordance with generally accepted agricultural practices. These revisions are necessary because they provide accuracy in rule language which is good practice and contributes to program integrity.

4. Amendments in Rule 2.2.2. clarify that a business is not the type of organization that is issued a Research and Development Registration. This rule is necessary to clarify that non-commercial organizations such as institutions of higher education are issued Research and Development Registrations.

5. Amended language in Rule 2.2.3 deletes the term “business” as business organizations are not issued Research and Development Registrations. This Rule is necessary to clarify that the name of an organization on a Research and Development Registration cannot be a business organization.

6. Amended language in Rule 2.2.4 is a housekeeping correction that makes the language consistent with Rule 2.1.4.

7. The Department is proposing to increase the fees provided in Rules 2.8 and 2.9 for indoor square feet from $.33/1000 square feet to $3.00/1000 square feet. Under § 35-61-106(2) C.R.S. the Commissioner is required to collect fees to cover all of the program’s costs including those associated with indoor grow areas that generate multiple reports. Amended Rule 2.9 allows the Department to waive the application fee for a Research and development registration for an institution of higher education in an effort to encourage research and development.

8. Adoption of Rules 3.2.4 and 3.5.4 are necessary for the CDA to track and recognize plantings of CDA Approved Certified Seed.

9. Amended language in Rules 3.3.3 and 3.6.3 clarifies that reporting a change in harvest date must be done by submitting an “Amended Harvest Report”. Rules 3.3.3 and 3.6.3 also clarify that if a change in harvest date is submitted and the crop is sampled this may require that the Registrant retain possession and control of the crop in its harvested form until the Department receives test results. This rule is necessary because it prevents material from entering the stream of commerce pending test results.

10. The removal of both unwanted male and female plants is a common practice in breeding programs and a common production practice. Amended Rules 3.3.4 and 3.6.4 are necessary in order to accommodate and facilitate this industry practice of eliminating infested and unwanted plants.

11. Amended Rule 4.1 changes the disciplinary action from mandatory to allowing the Department discretion to work with a Registrant.

12. Amend Rule 4.7 to include “Costs” along with Fees is a non-substantive edit that clarifies Rule 4.7.

13. Amended Rule 4.7.1 allows the Department to set a statewide fee to cover inspection costs more equitably.

14. Amended Rule 4.7.2 clarifies that inspection fees and laboratory costs are due to the Department within 30 days of invoice.

15. Rule 7.1.1 establishes a system through a variety review board (Colorado State University Seed Certification or Association of Seed Certifying Agencies) to ensure that the investments in breeding and the intellectual property rights of breeders are protected. Breeders entering a variety must be able to demonstrate ownership of the variety to a panel of experts by identifying unique characteristics that distinguish their entry from other varieties. This rule is necessary to clarify that the variety review board will only conditionally approve the variety(s) prior to CDA validation of THC level.

16. Adoption of Rule 7.4 requires a member of the Colorado Seed Growers Association who intends to grow CDA Approved Certified Seed to provide on a form approved by the Commissioner to identify and track where the seed will be grown.

9.9. Adopted June 9, 2021 – Effective July 30, 2021

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to their authority under the Industrial Hemp Regulatory Program Act (the "Act"), § 35-61-104(5) and 35-61-105(2) C.R.S.

Purpose

The purposes of these proposed Rules are to align Colorado's hemp program with Federal law and Colorado SB 20-197, effective September 1, 2020. Generally, the proposed changes include updating the text to remove typographical and other errors, non-critical spelling and grammatical errors.

Specifically, the proposed changes to each of the parts are as follows:

1. Changes to Part 1, Definitions, to conform definitions within these rules to revisions made to the Industrial Hemp Regulatory Program Act and to USDA's Domestic Hemp Production Program.

2. Changes to Part 2 to identify additional information that USDA's Domestic Hemp Production Program requires a state agency with primary regulatory authority over the production of hemp to gather from registrants.

3. Changes to Part 3 to remove the references to the non-existent certified seed program. Removing 3.3.4, as it was an exception to harvest reporting that is no longer applicable. Finally, add specific identification of what records a registrant must maintain, how long those records must be maintained, and what agencies must be permitted access to those records.

4. Changes to Part 4 to conform the rule to the USDA's Domestic Hemp Production Program, including that 100 percent of all Registrants must be tested and that all lots grown at a Registered Land Area must be tested. Further revisions to Part 4 establish a random inspection program to comply with USDA's Domestic Hemp Production Program. The proposed changes to 4.6.5 through 4.6.7 establish that a producer may not harvest prior to sample collection and establish restrictions with what a producer may do with the producer's hemp after sampling and before receiving results and after receiving sample test results that show the tested hemp is above the Acceptable Hemp THC level. Part 4.6.8 provides specific restrictions against commingling hemp from any other lots during sampling or laboratory analysis. Changes to 4.7.1 contemplate that the department will not test all registrants and, therefore, must collect the testing fee from each one sampled.

The addition of Part 4.8 establishes the authorized sampler program, including to provide for authorized sampler training, testing, registration, and cancelation of registrations.

5. Changes to Part 6 to establish the three specific violations that result in a producer's having committed a violation negligently. As well, the new rules provide that any producer who has committed a negligent violation must submit to a correction action plan. The proposed change identifies the elements necessary to be part of any such corrective action plan. Finally, the proposed changes to Part 6 identify the increased penalties to any person who commits a violation with a culpable mental state greater than negligence.

6. Delete Part 7 to reflect that Hemp Seed Certification is no longer a provision contemplated by Colorado's Industrial Hemp Regulatory Program Act. Seed certification rests under the authority of the Colorado Seed Growers Association and Colorado State University.

7. Addition of Part 8 to identify that a list of testing laboratories will be maintained that the Colorado Department of Public Health and Environment have certified to conduct hemp testing in Colorado. The addition of Part 8 also requires that authorized samplers, as approved by the Department, must submit their sample results only to those laboratories that the Colorado Department of Public Health and Environment has certified.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

Changes to state and federal law constitute the factual issues that required the proposed changes to this rule.

In 2018, the US Congress amended the Agricultural Marketing Act of 1946, the Agricultural Improvement Act of 2018, Pub. L. 115-334 (the "2018 Farm Bill"). The 2018 Farm Bill legalized the production of hemp nationwide and offered states and tribes that wanted the authority to regulate the production of hemp within their borders to submit individual plans to USDA pursuant to rules USDA would adopt.

In 2019, Colorado's General Assembly amended the Industrial Hemp Regulatory Program Act to authorize the Commissioner to submit a hemp management plan in accordance with the 2018 Farm Bill. The General Assembly further authorized the Commissioner to consult with stakeholders, including local governments and state and federal and law enforcement agencies and required the Commissioner to consult with private industry. Throughout 2019, the Commissioner, by means of the Colorado Hemp Advancement and Management Plan (CHAMP) met with representatives of all the permissive and required stakeholders to gather information related to the development of industrial hemp in Colorado and to prepare to submit a state plan after USDA issued its rules.

In October 2019, USDA issued an interim final rule, and in 2020 Colorado's General Assembly again amended the Industrial Hemp Regulatory Program Act by means of SB 20-197 to comport to USDA's Interim Final Rules. In January 2021, USDA issued its final rule.

The proposed rules represent the Commissioner's response to revised federal and state requirements as well as her response to stakeholder input and involvement throughout the development process.

Senate Bill 20 -197 aligned Colorado's Industrial Hemp Program with Federal law. Rules were developed to further clarify and communicate with registrants and stakeholders regarding compliance with Federal law.

The Department considered comments received at its May 25, 2021, rule-making hearing. In consideration of the relevant comments, the Department provides the following. First, the Department will engage in subsequent rule-making upon USDA's approval of Colorado's submitted state plan. That rule-making will, in part, address the comment to make a Registrant's failure to report to the Farm Services Agency a violation of law; consider rules regarding third party samplers; and implement alternative and performance-based sampling. While the Department is aware of proposed legislation currently before Colorado's General Assembly, the Department will not promulgate changes to these rules to implement proposed statutory changes. The Department will await the bill's passage to be able to respond completely to all statutory changes. Use of the general word "cannabis" in parts of the rule is specific and intentional to distinguish those plants of the genus Cannabis Sativa L. Whose THC content is unknown from those whose THC content is known to be at or below 0.3 percent THC and thus "hemp." With regard to the suggestion to amend 4.6.6 to include a reference to a total THC concentration of 0.3 percent on a dry-weight basis, that is unnecessary in light of Rule 4.6.7. Finally, the five-year penalty for those who have committed three negligent violations of the law in a five-year period is required by USDA's Final Rule and may not be adjusted at the state level.

9.10. Adopted November 10, 2021 – Effective December 31, 2021

Statutory Authority

The Commissioner of Agriculture of the Colorado Department of Agriculture ("CDA") adopts these rules pursuant to her authority under the Industrial Hemp Regulatory Program Act (the "Act"), §§ 35-61-104(5) 35-61-105(2), 35-61-105.5(2)(a), 35-61-113(1), and 35-61-113(2)(a) and (c), C.R.S.

Purpose

The purposes of these Rules are to align Colorado's hemp program with federal law, including 7 CFR 990, which became effective January 19, 2021. Generally, the changes to these rules align Colorado's regulatory processes under the Industrial Hemp Regulatory Program with the federal law to ensure Colorado's compliance with federal law and Colorado's state plan to regulate hemp in Colorado, which USDA-AMS approved in July 2021. USDA's final rule for its "Domestic Hemp Production Program" created new opportunities for states to involve authorized samplers, to permit remediation of hemp that tested above the acceptable hemp THC level, and to authorize on-farm disposal of cannabis that tested above the acceptable hemp THC level and above the 1.0 percent THC on a dry-weight basis threshold.

In June 2021, the Department submitted its proposed plan to USDA-AMS, which plan USDA-AMS approved in July 2021, the "State Plan." With the Department's submission of its State Plan, the Department identified rules that it would change in its fall rule-making to authorize the Department and Commissioner to regulate Colorado's production of hemp consistently with federal law and Colorado's approved State Plan.

Specifically, the proposed changes to each of the parts are as follows:

1. Changes to Part 1, Definitions, add definitions and conform existing definitions to revisions made to the Industrial Hemp Regulatory Program Act and to USDA's Domestic Hemp Production Program.

2. Changes to Part 2 identify additional information that USDA's Domestic Hemp Production Program requires a state agency with primary regulatory authority over the production of hemp to gather from registrants and removes unnecessary statements related to reporting of confidential business information to law enforcement. Specific to these changes, the Department makes clear that no person may cultivate hemp in a proposed

registered land area until the Commissioner has approved, and noticed the registrant of such approval, of a registrant's application to cultivate hemp.

3. Changes to Part 3 reduce and streamline the information a registrant must submit to the Department to reduce the paperwork burden on registrants and the Department where the Department recognized that information is duplicative or unnecessary. Further, changes in Part 3 permit a registrant to cultivate a registered land area to remove plants that have been affected by poor health, pest, disease, or weather events and to remove hermaphrodite plants without requiring any harvest report to the Department. Finally, Part 3.7 requires registrants to file acreage reports, including reports of changes to acreage reports, with the Farm Services Agency of the United States Department of Agriculture to comply with the requirements in Colorado's State Plan and USDA's Domestic Hemp Production Program.

4. Changes to Part 4 conform the rule to the USDA's Domestic Hemp Production Program, including that all hemp must be sampled prior to harvest and that a registrant must coordinate such sampling by contacting an Authorized Sampler or the Department. Part 4 also introduces CDPHE's testing laboratory protocols and CDPHE's laboratory and testing standard operating procedures. Part 4 also clarifies that the Commissioner may exercise disciplinary actions, including suspension or revocation of a registration, for test results that are above the acceptable hemp THC level. Part 4 further introduces both remediation and disposal options and guidelines to permit registrants whose crop tests above the acceptable hemp THC level either to remediate or dispose of a non-compliant crop and sets forth the Department's standards for post-remediation sampling to ensure that remediated product tests at or below the acceptable hemp THC level. Finally, Part 4 establishes the Department's new performance-based sampling program, which identifies the categories of registrants who may, at the time of application for registration, petition the Department for inclusion in a sampling program that does not require 100 percent testing of all lots grown.

5. The Department removed the original Part 5 because introduction of the remediation and disposal options in Part 4 obviates the need for any kind of waiver from suspension or revocation.

6. The new Part 5 includes USDA's mandatory statements regarding culpable violations and articulates the effect of any felony conviction among any of a registrant's key participants.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

Changes to state and federal law constitute the factual issues that required the proposed changes to this rule.

In 2018, the US Congress amended the Agricultural Marketing Act of 1946, the Agricultural Improvement Act of 2018, Pub. L. 115-334 (the "2018 Farm Bill"). The 2018 Farm Bill legalized the production of hemp nationwide and offered states and tribes that wanted the authority to regulate the production of hemp within their borders to submit individual plans to USDA pursuant to rules USDA would adopt.

In October 2019, USDA issued an interim final rule, and in 2020 Colorado's General Assembly again amended the Industrial Hemp Regulatory Program Act by means of SB 20-197 to comport to USDA's Interim Final Rules. In January 2021, USDA issued its final rule, and the Department submitted its state plan to USDA-AMS in June 2021, including provisions of the rules that the Department would amend, consistent with its statutory authority, to comply with USDA's final rule.

The proposed rules represent the Commissioner's response to revised federal and state requirements as well as her response to stakeholder input and involvement throughout the development process.

The Department has considered comments received in conjunction with this rule-making, both those taken as testimony at the hearing on the rule and those received in written form on the proposed rule, and has revised the rule as follows.

Commenters requested that the Department use only the term "hemp" and exclude the general term "cannabis" from this rule set. Based on this recommendation, the Department has added a new definition for "non-compliant hemp" and exchanged the term "cannabis" for either "hemp" or "non-compliant hemp," dependent on the context where the terms are used.

One comment requested that Rule 2.2 be changed to strike "at least 30 days" from the language regarding submission of R&D registration. The Department agrees that the language should be consistent with applications for cultivation of commercial hemp and has, therefore, stricken the language.

The Department received a request to amend proposed rule 4.7.7 to accommodate the possibility that growers may need to transport harvested plant material off the RLA prior to receiving hemp sample test results. The Department agrees that producers may need to move such material for storage to prevent crop loss and amended 4.7.7 to reflect that possibility while including that the registrant must continue to maintain control and ownership of the material and must report to the Department the location of the storage area.

Commenters requested that the three, consecutive years required under rule 4.8.3 be changed to three, consecutive growth cycles to accommodate indoor grows that may have more than one cycle per year. The Department has considered this request and has determined to keep the requirement at three, consecutive years for an equitable application of the performance-based sampling at this time.

Several commenters requested that the Department modify its felony exemption language in rule 5.2 to mirror USDA's final rule exactly. The Department considered this option when promulgating this rule and decided to require that growers who had a felony conviction prior to December 20, 2018, must also show that they had registered to grow hemp in Colorado before December 20, 2018. The Department maintains this requirement because there is no federal database that the Department may access to confirm a registrant's statement that it had been lawfully registered in a state other than Colorado.

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Office of the Attorney General

Tracking number: 2021-00591

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

Commissioner of Agriculture

on 11/10/2021

8 CCR 1203-23

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE INDUSTRIAL HEMP REGULATORY PROGRAM ACT

The above-referenced rules were submitted to this office on 11/12/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:40:01

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

Permanent Rules Adopted

Department

Department of Agriculture

Agency

Agriculture Commissioner's Office

CCR number

8 CCR 1207-4

Rule title

8 CCR 1207-4 RULES PERTAINING TO FARM-TO-MARKET INFRASTRUCTURE GRANTS 1 - eff 12/30/2021

Effective date

12/30/2021

DEPARTMENT OF AGRICULTURE

Agriculture Commissioner's Office

RULES PERTAINING TO FARM-TO-MARKET INFRASTRUCTURE GRANTS

8 CCR 1207-4

Part 1. Definitions

1.1. "Agriculture" has the same meaning as set forth in 35-1-102(1) C.R.S., which is: "the science and art of production of plants and animals useful to man, including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products and farm production."

1.2. "Agricultural Processing" means the transforming, packaging, sorting, storage, or grading of Colorado livestock, livestock products, agricultural commodities, plants, or plant products.

1.3. "Award Effective Date" means the date on which the Commissioner of Agriculture, or her designee, sends written communication, whether by e-mail or post, that an applicant's grant application has been approved for a Grant Award.

1.4. "Award Period" means the period of time during which the Department will receive grant applications to process for consideration of grant awards.

1.5. "Commissioner" means the Commissioner of Agriculture.

1.6. "Department" means the Department of Agriculture created in 35-1-103 C.R.S.

1.7. "Eligible Business" means a business that: (a) earns a majority of its revenue from agricultural processing; and (b) in the judgment of the Department has managers and employees who possess sufficient education, training, and experience to operate the business; and provides an economic benefit to Colorado farmers or ranchers.

1.8. "Eligible Expense" means an expense that an applicant identified in its grant application and that an awardee incurred within the contract period as part of completing its awarded project.

1.9. "Eligible Farmer or Rancher" means an individual who: (a) is at least eighteen years of age; (b) is a resident of Colorado; (c) is an owner or operator in fact of a farm or ranch; and (d) in the judgment of the Department: possesses sufficient education, training, and experience to operate the farm or ranch; and possesses or has access to sufficient working capital, farm machinery, livestock, or land to operate the farm or ranch.

1.10. "Farm-to-Market Infrastructure Grant" means a grant of money from the fund, which money is used for the purpose of agricultural processing.

1.11. "Fund" means the Colorado Agricultural Future Loan Program Cash Fund created in 35-1.2-105 C.R.S.

1.12. “Grant Award” means an award of money from the Fund that the Department grants to an eligible business, eligible rancher, or eligible farmer for the exclusive purpose of agricultural processing.

Part 2. General Eligibility

2.1. Eligible businesses, eligible farmers, and eligible ranchers as defined in 1.7 and 1.9 above may apply to the Department for a Farm-to-Market Infrastructure Grant. The intent of the Department is to award grants totaling $2 million by June 30, 2022.

2.2. Eligible businesses, eligible farmers, and eligible ranchers applying for a Farm-to-Market Infrastructure Grant must have a physical operation(s) in the state of Colorado and the project for which the applicant requests such funds must also be located in Colorado.

2.3. Eligible businesses must be registered and in “good standing” with the Colorado Secretary of State.

2.4. Eligible farmers and eligible ranchers must be residents of Colorado and actively engaged in agriculture.

2.5. Grant Awards may be used only for projects that constitute Agricultural Processing, as that term is defined in 1.2 above.

2.6. The maximum Grant Award amount that the Department will award for any one project is $150,000.

2.7. Awardees shall have not more than two (2) years from the effective date of the Grant Award to fully complete the project.

Part 3. Application for a Grant

3.1. Eligible businesses, eligible farmers, and eligible ranchers interested in participating may apply to the Department at any time using the application processes and procedures on the Department’s web site at https://ag.colorado.gov/

3.2. While applications may be submitted at any time, the Department will adhere to the following schedule for review of applications:

3.2.1. Applications received prior to the close of business on November 30, 2021 (Award Period #1) will be reviewed and awardees selected no later than January 30, 2022. The intent of the Department will be to award $1 million in grants to applications received during this period.

3.2.2. Applications received prior to the close of business on February 28, 2022 (Award Period #2) will be reviewed and awardees selected no later than April 30, 2022. The intent of the Department will be to award $1 million in grants to applications received during this period.

3.2.3. Applications received after February 28, 2022 will be reviewed and awards made contingent upon the availability of grant funds.

3.3. Applicants not selected to receive a grant in an Award Period may resubmit their application or submit a new application for consideration in any subsequent Award Period.

3.4. At the time of application to the Department, an applicant must provide general eligibility information about the applicant, a description of the proposed project and business plan, project timeline, project budget, the grant amount being requested, identification of which expenses the grant funds would be used for, the applicant's contribution (financial or otherwise) to the project, the extent to which the proposed project will strengthen resiliency within Colorado's food and agricultural industry, and any projected changes to employment and sales/volume growth.

3.4.1. Applications from Eligible Businesses must also demonstrate that the Eligible Business earns greater than fifty (50) percent of its revenues from agricultural processing.

3.5. Applications will be reviewed by a panel inclusive of Department staff and the Colorado Value-Added Development Board. This panel will evaluate the merit of each application on the basis of criteria, including, but not limited to, the amount of funds requested, the applicant's contribution (financial or otherwise) to the project, the project's expected economic impact, potential for new job creation, and the extent to which the project will strengthen resiliency within Colorado's food and agricultural industry.

3.6. The review panel will make its recommendations to the Commissioner of projects proposed for selection and the Grant Award proposed to be awarded to fund such projects. To optimize the utilization of funds available, the review panel may recommend Grant Awards less than the amount of funds an applicant requests. The Commissioner of Agriculture, or the Commissioner's designee, will review such recommendations and make any final awards and grant amounts as deemed appropriate.

3.7. The Department will inform each applicant of the Department's decision regarding an applicant's request for a Grant Award via e-mail within 30 days of the end of each Award Period.

Part 4. Award of Funds

4.1. Grant Awards will be made available to awardees as a Small Dollar Grant Award (purchase order grant).

4.2. Grant Awards are subject to the State of Colorado Small Dollar Grant Award Terms and Conditions (incorporated by reference herein, effective July 1, 2019). Material incorporated by reference does not include any later amendments or editions of the incorporated material. Copies of material incorporated by reference are available for public inspection during regular business hours and may be obtained at a reasonable charge or examined by contacting the Markets Division, Colorado Department of Agriculture, 305 Interlocken Parkway, Broomfield, CO 80021. Further, the incorporated material may be examined at no cost on the Internet at: https://osc.colorado.gov/spco/ccu/purchase-order-terms-conditions

4.3. The Department will provide a copy of this material to any eligible business, eligible rancher, or eligible farmer who receives a Grant Award along with the notification of award.

4.4. A Grant Award is not a guarantee of funds as all disbursement of funds is contingent on the awardee's agreeing to and complying with all requirements as determined by the Department.

4.5. Funding from a Grant Award will be paid upon completion of the following milestones:

4.5.1 Milestone One – “Kick-Off Conference.” After an awardee has had its initial meeting with the Department, the “Kick-Off Conference,” an awardee may submit an initial invoice in an amount up to fifty (50) percent of the total Grant Award to receive an initial payment to start the project. If the Department makes such initial payment, or any portion of the requested initial payment, to the awardee for those non-incurred expenses, any remaining amount to be reimbursed from the Grant Award shall be reduced by the amount of that initial payment.

4.5.2 Milestones Two through Final Milestone: As an awardee incurs expenses, the awardee may submit invoices for those actual, incurred expenses with supporting documentation and proof of payment to the Department for reimbursement. To the extent that documented expenses are eligible expenses, the funds will then be reimbursed.

4.5.3 Final Milestone: Once the awardee has completed its project, the awardee must submit a final invoice, which final invoice must be submitted not later than three years following the effective date of the Small Dollar Grant Award.

4.6. Awardees may submit invoices at any time as expenses are incurred and paid.

4.7. As a condition of receiving a Grant Award, an awardee shall agree to cooperate with the Department in evaluating the economic impact of the project and any changes to employment in Colorado as a result of completing the project.

Part 5 through 9 Reserved

Part 10. Statement of Basis, Specific Statutory Authority and Purpose

10.1. Emergency Rule Adopted September 8, 2021 – Effective September 8, 2021

Statutory Authority

The Commissioner of Agriculture adopts these rules pursuant to § 35-1.2-103(7)(a) and (c), C.R.S., and § 24-4-103(6), C.R.S.

Purpose

1. To create the Farm-to-Market Infrastructure Grant Program providing funds to businesses, farmers, and ranchers for the development and expansion of agricultural processing.

2. To establish general eligibility requirements for the Program.

3. To establish application processes and procedures for the Program.

4. To establish processes and procedures for the review of applications and award of grant funds.

5. To establish processes and procedures for reimbursement of expenses to participating businesses, farmers, and ranchers.

Factual and Policy Issues

This temporary emergency rule is necessary to enable the Commissioner of Agriculture to fulfill the requirements of SB 21-248, which created a new “Colorado Agricultural Future Loan Program.” SB 21-248 authorized the Commissioner to commence distributing between five and ten million dollars on or before January 1, 2022, in part, to fund farm-to-market grants. SB 21-248, codified at § 35-1.2-101, et seq., C.R.S., limits the period of time during which the Commissioner may issue such farm-to-market grants, which time period ends June 30, 2022. Further, before the Commissioner may receive an application for a grant or issue a grant, the Commissioner must adopt rules to govern the grant process.

Engaging in the normal rule-making process would not permit these rules to be effective until the start of the new year. Such a delay would result in the Commissioner’s inability to begin receiving and processing grant applications until after the new year. Such a delay would impair the Commissioner’s ability to issue sufficient grants to comply with the statutory minimums before the statutory deadline of June 30, 2022.

Immediate adoption is therefore imperatively necessary to comply with state law and to enable the Commissioner to fulfill the General Assembly’s desire to fund such farm-to-market infrastructure grants.

In developing these Rules, the Department reviewed policies and program guidelines of previous grant programs administered by the Markets Division within the Department of Agriculture. The Department also conducted listening sessions with agricultural stakeholders relating to the New Agricultural Future Loan Program, which encompasses the Farm-to-Market Infrastructure Grant Program.

10.2. Adopted November 10, 2021 – Effective December 30, 2021

Statutory Authority

The Commissioner of Agriculture adopts these rules pursuant to § 35-1.2-103(7)(a) and (c), C.R.S.

Purpose

1. To create the Farm-to-Market Infrastructure Grant Program providing funds to businesses, farmers, and ranchers for the development and expansion of agricultural processing.

2. To establish general eligibility requirements for the Program.

3. To establish application processes and procedures for the Program.

4. To establish processes and procedures for the review of applications and award of grant funds.

5. To establish processes and procedures for reimbursement of expenses to participating businesses, farmers, and ranchers.

Factual and Policy Issues

This Commissioner adopts this Rule to fulfill the requirements of SB 21-248, which created a new “Colorado Agricultural Future Loan Program.” SB 21-248 authorized the Commissioner to commence distributing between five and ten million dollars on or before January 1, 2022, in part, to fund farm-to-market grants, and required the Commissioner to establish the program, including specifying the application process, the payment process, and the criteria to be used.

In developing these Rules, the Department reviewed policies and program guidelines of previous grant programs administered by the Markets Division within the Department of Agriculture. The Department also conducted listening sessions with agricultural stakeholders relating to the Colorado Agricultural Future Loan Program, which encompasses the Farm-to-Market Infrastructure Grant Program, as well as sought stakeholder input on this Rule as adopted to help inform this rulemaking process.

Finally, the Department revised provisions adopted in the emergency rule to clarify the reimbursement process and to amend an internal conflict related to reimbursement dates and deadlines.

PHILIP J. WEISER
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Chief Deputy Attorney General

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Tracking number: 2021-00589

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

Commissioner of Agriculture

on 11/10/2021

8 CCR 1207-4

RULES PERTAINING TO FARM-TO-MARKET INFRASTRUCTURE GRANTS

The above-referenced rules were submitted to this office on 11/12/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:38:55

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Child Support Services (Volume 6)

CCR number

9 CCR 2504-1

Rule title

9 CCR 2504-1 RULE MANUAL VOLUME 6, CHILD SUPPORT SERVICES RULES 1 - eff 01/01/2022

Effective date

01/01/2022

6.002 DEFINITIONS

"Application" - the state prescribed form which indicates that the individual is applying for Child Support Services. The application is signed by the individual applying for services and an application fee is assessed.

"Application Fee" - A fee assessed upon receipt of an application as required by Federal Regulation, to be paid out of State funds in the amount of 10 cents ($0.10).

6.201.2 NON-PUBLIC ASSISTANCE (NPA) CASES [Rev. eff. 4/1/12]

A. Continued Services Cases

1. The Child Support Services Unit shall provide to the person whose IV-A grant or IV-E foster care eligibility is discontinued, continued CSS services, without a formal application unless the CSS agency is notified to the contrary by the person whose IV-A grant or IV-E foster care eligibility is discontinued.

2. The Notice of Action and the CSE 34 Notice are notices that inform the recipient of public assistance, when they have discontinued temporary aid to needy families (TANF) that their child support case will remain open unless they request that the county close their case. These notices will be generated and mailed to the recipient ten (10) days prior to the effective date of the discontinuation.

3. Form SS-4, Notice of Social Service Action, will be completed by the county services worker and mailed to recipients when a person(s) is discontinued from IV-E foster care. The form will be sent to the recipient five (5) days prior to the effective date of the discontinuation.

   The Notice Of Action, the CSE 34 Notice, and the Notice of Social Service Action (SS-4) shall:

   a. Notify the person whose IV-A grant or IV-E foster care has been discontinued, that the CSS Unit shall continue to provide CSS services unless the CSS Unit is notified by the former IV-A or IV-E foster care recipient to the contrary;

   b. Specify the CSS services that are available;

   c. Inform the person that the quality of information provided will affect the category of the case;

   d. Specify the name of the person whose IV-A grant and/or IV-E foster care has been discontinued; and,

   e. Specify the household number;

   f. Specify the unique case identifiers;

   g. Require the signature of the person discontinued who wishes to terminate CSS services;

   h. Specify the CSS unit will collect overdue support to repay past IV-A or IV-E foster care maintenance.

   i. Contain any other information deemed appropriate by the State Department.

4. The county Low-Income Child Care Assistance unit must provide written notice to the person who's IV-A grant or IV-E foster care eligibility is discontinued, if continued cooperation with the CSS Unit will be required due to the receipt of Low-Income Child

Care Assistance within five days of referral from any of these referenced programs. The county Low-Income Child Care Assistance Program must also notify the county Child Support Services Unit within the same time frame.

B. Application Cases

1. Persons who do not receive public assistance or continued CSS services may apply for full CSS services by completing the Application for Child Support Services, as prescribed by the State Department. Applications for child support services shall be readily accessible to the public. If the county department has elected to require Low-Income Child Care Assistance recipients to cooperate with the CSS Unit, the recipients must complete the State prescribed application for Child Support Services. Applications will not be accepted if all of the children associated with a specific obligee and obligor are emancipated, as defined in the existing child support order and the laws of the state where the child support order was entered. This same requirement applies to new interstate referrals sent to Colorado from another initiating state or jurisdiction. In a responding intergovernmental case, if the case was opened in the other state prior to emancipation and/or has state debt due, the application shall be accepted.

2. Upon application, the services established for IV-A recipients to locate, establish paternity of a child (or children), establish court orders for child support, review and modify orders for child support, and secure support from noncustodial and/or alleged parents shall also be made available on behalf of children who are or were deprived of parental support due to the absence of a parent or parents, but, for other reasons, are not recipients of IV-A, including those children who are receiving foster care services from funds other than Title IV-E of the Social Security Act.

3. The application on behalf of the child for child support services may be made by either of the child's parents (custodial or noncustodial), an alleged father, legal guardian, or other person or agency.

4. When the applicant is not a parent of the child, an application for child support services must be obtained for each noncustodial parent.

5. Requests for Application

a. When an individual requests an application or CSS services in person, the CSS Unit shall provide an application on the day requested.

b. When an individual requests an application by phone or in writing, the application shall be sent by the county CSS Unit within no more than five (5) business days from the date of request.

c. The application shall include the following information:

1) available services;

2) the individual's rights and responsibilities;

3) fees, cost recovery and distribution policies;

4) case categorization and the information necessary to change the category; and

5) the lack of an attorney-client relationship.

d. The CSS Unit must maintain a log of requests for services which includes the following information:

1) name of person requesting an application;

2) type of request (in person, phone, mail);

3) date of request;

4) date the application was mailed or provided;

5) date the application is accepted.

6. The application for non-PA CSS services shall be made on the Application for Child Support Services, as prescribed by the state department. The standard Application for Child Support Services shall include the following elements:

   a. The full name of the noncustodial parent;

   b. The full name, date of birth, place of birth, sex and social security number of each child for whom support is sought;

   c. The signature, address, telephone number, date of birth and social security number of the applicant and date of application.

7. Acceptance of Applications

   a. An application may be filed in any CSS office. If there is an existing case in another county, then the application shall be forwarded to the appropriate enforcing county within two (2) working days of receipt in the original county.

   b. An application shall be accepted as filed on the date it is received in the CSS office, if one or more of the children associated with a specific obligee and obligor are not emancipated as defined in the child support order and the laws of the state where the child support order was entered, and it includes the following information:

      1) applicant's name, address and social security number;

      2) the name of the noncustodial parent(s), if known;

      3) name, birth date, sex, place of birth and social security number, if available, for each child;

      4) applicant's signature, either handwritten or electronic.

   c. Acceptance of an application involves recording the date of receipt on the application. The application must be entered into the ACSES for the application fee to be assessed..

8. County CSS Units may collect costs incurred in excess of fees. These costs shall be determined on a case by case basis and shall be used to reduce CSS program expenditures.

9. Non-PA obligees shall be charged an annual twenty-five dollar ($25) certification fee for collection of IRS tax refunds only if an actual intercept occurs. The fee shall be deducted from the tax refund intercept. The certification fee must be used to reduce CSS program expenditures.

   If there is more than one tax refund intercept for a case, the twenty-five dollar ($25) certification fee will be charged only once, regardless of the number of obligors, and will be deducted from the first intercept(s) that occurs. If the total amount of all tax refunds for a case is less than twenty-five dollars ($25), the amount of refunds will satisfy the certification fee.

10. Non-PA obligees shall be charged an annual thirty-five dollar ($35) service fee once five hundred and fifty dollars ($550) has been disbursed to the family.

    The service fee will be reported to the federal government as program income, and will be shared between the federal, state, and county governments.

    The service fee will be collected for each case set in all intrastate in-state and initiating intergovernmental cases on the ACSES if the $550 disbursement threshold is reached.

C. Locate Only Cases

Persons who request only noncustodial parent locator service may complete the Request for Parent Locator Service. The Colorado State Parent Locator Service shall provide such caretaker with instructions for completing the form and fees to be paid by the caretaker. A non-PA application form is not required.

6.201.3 FOSTER CARE CASES [Rev. eff. 4/1/12]

A. Appropriately referred IV-E or non-IV-E foster care cases pursuant to the CDHS Social Services staff manual (12 CCR 2509-1) shall be provided the full range of services as required by the Child Support Services program upon referral. Cases that are not appropriate for referral shall not be initiated.

B. Referral is defined as receipt of the referral packet from the county child welfare agency or the date the case appears in the county's on-line referral list. If the referral is manual, counties must document the date received by the CSS Unit as the referral date on the ACSES.

C. Child support services applications are not required for IV-E foster care cases. An application for child support services, as prescribed by the State Department, shall be completed by the county department having custody of the child(ren) for all non-IV-E foster care cases.

6.205 ENFORCING COUNTY [Rev. eff. 11/1/13]

Designation of the county responsible for accepting the Child Support Services application or processing the case, or both, provides for centralized legal and financial activities and prevents duplication of effort and establishment of unnecessary orders for support when an order exists.

Provisions pertaining to enforcing county designation and responsibilities shall apply to all new Child Support Services cases and for existing cases where there is a dispute regarding an enforcing county issue.

A. The enforcing county is the county responsible for processing a case for Child Support Services, including locating the noncustodial parent, establishment of paternity, establishment and modification of a support order and enforcement of a support order. Enforcing county means the enforcing county on the automated child support system. The enforcing county is responsible for financial management of the case.

   The enforcing county is also the county responsible for the case for audit purposes. When the noncustodial parent resides outside of Colorado, the enforcing county is the county responsible for initiating an intergovernmental action or appropriate instate action for CSS services. If the noncustodial parent is the only party in the case residing in Colorado and there is no existing court order and no public assistance has been paid in Colorado, the enforcing county will be considered the county where the noncustodial parent resides.

B. For all cases, the enforcing county for a Colorado Child Support Services case is the first county where a Child Support Services application or referral was made. The enforcing county shall provide the full range of services to the Low-Income Child Care Assistance referral case from another county, even if the enforcing county elected not to require the Low-Income Child Care Assistance recipients in its county to cooperate with the Child Support Services Unit.

C.

and documents to the enforcing county, as appropriate, utilizing the form as prescribed by the State Department. For a Low-Income Child Care Assistance referral case, the Low-Income Child Care Assistance Program unit shall deal directly with the Child Support Services (CSS) Unit located in its county. The CSS Unit will then communicate with the enforcing county.

D. Unless the CSS Units in the interested counties agree or there is an enforcing county resolution to change enforcing county designation, the enforcing county remains the enforcing county until the case is closed in accordance with this manual. The enforcing county does not change when the parties in the case relocate.

E. When a IV-D unit requests enforcing county designation and the interested CSS Units cannot agree, within five (5) calendar days, upon which county should be the enforcing county, the county directors, or their designees, in the counties will resolve the issue. If agreement cannot be reached, the CSS office shall refer the matter to the State Division of Child Support Services for resolution in accordance with the state procedure and prescribed form. The state decision is final and binding on the interested counties.

6.260.52 Closure of Non-Public Assistance Cases

Non-public assistance, including Low-Income Child Care Assistance, cases may be closed for one of the following reasons or the closure reasons in Section 6.260.51. Unless otherwise noted, case closure requires a 60-day advance notice of closure to the custodial party. If a Low-Income Child Care Assistance case is closed the county CSS Unit must notify the appropriate county Low-Income Child Care Assistance Program.

A. The Child Support Services Unit is unable to contact the custodial party within a 60 calendar day period despite a good faith effort to contact the recipient through at least two different methods: mail, electronic, or telephone. If contact is reestablished with the custodial party in response to the notice which could lead to the establishment of paternity or support, or enforcement of an order, the case must be kept open. After a notice of case closure has been sent, if the custodial party reports a change in circumstances within the 60 days contained in the advance notice of closure, the case shall remain open.

B. The Child Support Services Unit documents non-cooperation of the custodial party and that cooperation of the custodial party is essential for the next step in providing support enforcement services. If a Low-Income Child Care Assistance recipient fails to cooperate, then the county CSS Unit shall send the advance notice of closure to the recipient and to the appropriate county Child Care Assistance Program. The notice shall include the basis of the recipient's failure to cooperate and the dates on which it occurred.The applicant requests closure of the case in writing and there are no arrears owed to the State. The 60 day advance notice of closure is not required for these cases.

C. The Child Support Services Unit has provided location only services as requested. The 60 day advance notice of closure is not required for these cases.

D. The status of the case has changed from non-public assistance to public assistance. The 60 day advance notice is not required for these cases.

E. The children have reached the age of majority, the noncustodial parent is entering or has entered long-term care arrangements (such as a residential care facility or home health care), and the noncustodial parent has no income or assets available above the subsistence level that could be levied or attached for support.

F. The noncustodial parent is living with the minor child (as the primary caregiver or in an intact two parent household), and the IV-D agency has determined that services are not appropriate or are no longer appropriate.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2021-00547

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

Child Support Services (Volume 6)

on 11/05/2021

9 CCR 2504-1

RULE MANUAL VOLUME 6, CHILD SUPPORT SERVICES RULES

The above-referenced rules were submitted to this office on 11/08/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 17:24:47

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

Permanent Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 - eff 01/10/2022

Effective date

01/10/2022

DO NOT PUBLSIH THIS PAGE

Title of Rule: MSB 21-06-08-A, A Revision to the Medical Assistance Long-term Services and Supports HCBS Benefit Rule Concerning Expanding Electronic Monitoring to include Remote Supports, to revise Section 8.488.
Rule Number: MSB 21-06-08-A
Division / Contact / Phone: BSMD/ Courtney Montes/ 5066

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-06-08-A, A Revision to the Medical Assistance Long-term Services and Supports HCBS Benefit Rule Concerning Expanding Electronic Monitoring to include Remote Supports, to revise Section 8.488.

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected): Sections(s) 8.488

   Sections(s) MSB 21-06-08-A, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.488 with the proposed text beginning at 8.488 through the end of 8.488.50. Replace the current text at 8.500.94.A beginning at 8.500.94.A through 8.500.94.A.22. Replace the current text at 8.500.94.B with the proposed text beginning at 8.500.94.B.17 through the end of 8.500.94.B.22. This rule is effective January 10, 2022.

*to be completed by MSB Board Coordinator

DO NOT PUBLSIH THIS PAGE

Title of Rule: MSB 21-06-08-A, A Revision to the Medical Assistance Long-term Services and Supports HCBS Benefit Rule Concerning Expanding Electronic Monitoring to include Remote Supports, to revise Section 8.488.
Rule Number: MSB 21-06-08-A
Division / Contact / Phone: BSMD/ Courtney Montes/ 5066

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Office of Community Living (OCL), Benefits and Services Management Division is requesting to revise the current Electronic Monitoring regulations, already included in five HCBS adult waivers, to include the addition of a Remote Supports component that will increase efficiencies, improve quality of care, and achieve cost savings. When hands-on care is not required, Remote Supports makes it possible for direct care staff to provide supervision, prompting, or instruction from a remote location. Examples of Remote Supports include technology for cooking safely, overnight support, medication adherence, fall detection, and wandering. The Department must add a service definition and regulations for the operation of Remote Supports. The addition of regulations will give members and providers regulatory parameters for how Remote Supports can be utilized in HCBS to maintain service integrity and ensure member's health and safety.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 CFR 441.300

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   Sections 25.5-6-303, 25.5-6-307, C.R.S. (2021);

Initial Review **[date]** Final Adoption **[date]**
Proposed Effective Date **[date]** Emergency Adoption **[date]**
DOCUMENT #

DO NOT PUBLSIH THIS PAGE

Title of Rule: MSB 21-06-08-A, A Revision to the Medical Assistance Long-term Services and Supports HCBS Benefit Rule Concerning Expanding Electronic Monitoring to include Remote Supports, to revise Section 8.488.
Rule Number: MSB 21-06-08-A
Division / Contact / Phone: BSMD/ Courtney Montes/ 5066

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Individuals to be affected are those that utilize Home and Community-Based Services under the Elderly Blind and Disabled (EBD), Community Mental Health Supports (CMHS), Spinal Cord Injury (SCI), Brain Injury (BI), and Supported Living Services (SLS) waivers. Those that choose to utilize Remote Supports are anticipated to benefit from this rule. The proposed rules will also affect Medicaid providers and Case Management Agencies (CMAs) by codifying the implementation of Remote Supports.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Quantitatively, offering a Remote Supports benefit has the potential to reduce HCBS expenditures by providing services at a lower cost than residential or in-person care. The Department anticipates a reduction in General Fund dollars by $348,345 in FY 21-22 and $1,045,040 in FY 22-23.

   Qualitatively, using technology instead of residential services can increase independence for members while ensuring safety and support, address workforce shortages by increasing provider efficiency, and improve access to care in rural areas. Increased independence for members is one of the major benefits of a Remote Supports benefit, allowing a person to live in their own home, without staff or with a reduced staff presence, and with more control of their living companions.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   Through Long Bill SB 21 – 205 and SB 21-210, the Department received approval for the expansion of the Electronic Monitoring benefit, already authorized in select HCBS adult waivers (BI, SCI, SLS, CMHS, and EBD).

Short term, the Department anticipates spending time developing training materials and providing technical assistance to the case management agencies. Long term the Department anticipates a reduction in General Fund dollars by $348,345 in FY 21-22 and $1,045,040 in FY 22-23.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The benefits of this action include: Using technology instead of residential services can increase independence for members while ensuring safety and support, address workforce shortages by increasing provider efficiency, improve access to care in rural areas, and reduce expenditures by providing services at a lower cost than residential care. Increased independence for members is one of the major benefits of a Remote Supports benefit, allowing a person to live in their own home, without staff or with a reduced staff presence, and with more control of their living companions. Offering a Remote Supports benefit has the potential to reduce HCBS expenditures by providing services at a lower cost than residential or in-person care. The Department anticipates a reduction in General Fund dollars by $348,345 in FY 21-22 and $1,045,040 in FY 22-23. HCBS services can be critical to preventing unnecessary hospitalizations or placement in a nursing facility however Remote Supports benefit offers the opportunity for members to receive high quality care and support without an in-person attendant.

   There are no benefits of inaction as this approval to implement Remote Supports is included in the Department's Budget Request and is approved by the Long Bill, SB 21-205.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There do not appear to be any less costly methods or less intrusive methods for achieving the purpose of the proposed regulation changes. Remote Supports is a cost saving opportunity that allows members to have more choice and independence in their lives.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods for achieving the purpose for the proposed rule.

8.488 ELECTRONIC MONITORING

8.488.10 DEFINITIONS

.11 BACKUP SUPPORT PERSON means the person who is responsible for responding in the event of an emergency or when a Client receiving Remote Supports otherwise needs assistance or the equipment used for delivery of Remote Supports stops working for any reason. Backup support may be provided on an unpaid basis by a family member, friend, or other person selected by the Client or on a paid basis by an agency provider.

.12 ELECTRONIC MONITORING SERVICES means electronic equipment or adaptations or other remote supports that are related to an eligible person's disability and/or that enable the person to remain at home, and includes the installation, purchase or rental of electronic monitoring devices which:

A. Enable the Client to secure help in the event of an emergency;

B. May be used to provide reminders to the Client of medical appointments, treatments, or medication schedules;

C. Are required because of the Client's illness, impairment or disability, as documented in the department prescribed LOC Screen, the Assessment, and Service Plan;

D. Are essential to prevent institutionalization of the Client; and,

E. May allow an off-site direct service provider to monitor and respond to a Client's health, safety, and other needs using live communication.

.13 ELECTRONIC MONITORING PROVIDER means a provider agency as defined at Section 8.487 and Section 25.5-6-303. C.R.S., that has met all the certification standards for electronic monitoring services specified in Section 8.488.40.

.14 MONITORING BASE means the off-site location from which the Remote Supports Provider monitors the Client.

.15 REMOTE SUPPORTS mean the provision of support by staff at a Monitoring Base who are engaged with a Client to monitor and respond to the Client's health, safety, and other needs through technology/devices with the capability of live two-way communication.

.16 REMOTE SUPPORTS PROVIDER means the agency provider selected by the Client as the provider of Remote Supports.

.17 SENSOR means equipment used to notify the Remote Supports Provider of a situation that requires attention or activity which may indicate deviations from routine activity and/or future needs. Examples include, but are not limited to, seizure mats, door sensors, floor sensors, motion detectors, heat detectors, and smoke detectors.

8.488.20 INCLUSIONS

.21 Electronic Monitoring Services shall include personal emergency response systems, medication reminder systems, Remote Supports, or other devices which comply with the definition above and are not included in the non-benefit items below at 10 CCR 2505-10 section 8.488.30.

A. Remote Supports services shall include but are not limited to the following technology options:
   1. Motion sensing system;
   2. Radio frequency identification;
   3. Live audio feed;
   4. Web-based monitoring system; or,
   5. Another device that facilitates two-way communication.

B. Remote Supports includes the following general provisions:
   1. Remote Supports shall only be approved when it is the Client's preference and will reduce the need for in-person care.
   21. The Client, their case manager, and the selected Remote Supports provider shall determine whether Remote Supports is sufficient to ensure the Client's health and welfare.
   2. Remote Supports shall be provided in real time, not via a recording, by awake staff at a Monitoring Base using the appropriate technology. While Remote Support is being provided, the Remote Support staff shall not have duties other than the provision of Remote Supports.

8.488.30 EXCLUSIONS, RESTRICTIONS AND NON-BENEFIT ITEMS

.31 Electronic Monitoring Services shall be authorized only for Clients who live alone, or who are alone for significant parts of the day, or whose only companion for significant parts of the day is too impaired to assist in an emergency, and who would otherwise require extensive supervision.

A. Remote Supports shall not be utilized for Clients who reside in any congregate or HCBS provider owned setting.

.32 Electronic Monitoring Services shall be authorized only for Clients who have the physical and mental capacity to utilize the particular system requested for that Client.

.33 Electronic Monitoring Services shall not be authorized under HCBS if the service or device is available as a state plan Medicaid benefit.

.34 The following are not benefits of electronic monitoring services:

A. Augmentative communication devices and communication boards;

B. Hearing aids and accessories;

C. Phonic ears;

D. Environmental control units, unless required for the medical safety of a client living alone unattended; or as part of Remote Supports;

E. Computers and computer software unrelated to the provision of Remote Supports;

F. Wheelchair lifts for automobiles or vans;

G. Exercise equipment, such as exercise cycles;

H. Hot tubs, Jacuzzis, or similar items.

8.488.40 CERTIFICATION STANDARDS FOR ELECTRONIC MONITORING SERVICES

.41 Electronic monitoring providers shall conform to all general certification standards and procedures at Section 8.487, HCBS-EBD WAIVER PROVIDER AGENCIES.

.42 In addition, electronic monitoring providers shall conform to the following standards for electronic monitoring services:

A. All equipment, materials or appliances used as part of the electronic monitoring service shall carry a UL (Underwriter's Laboratory) number or an equivalent standard. All telecommunications equipment shall be FCC registered.

B. All equipment, materials or appliances shall be installed by properly trained individuals, and the installer and/or provider of electronic monitoring shall train the Client in the use of the device. C. All equipment, materials or appliances shall be tested for proper functioning at the time of installation, and at periodic intervals thereafter, and be maintained based on the manufacturer’s recommendations. Any malfunction shall be promptly repaired, and equipment shall be replaced when necessary, including buttons and batteries.

D. All telephone calls generated by electronic monitoring equipment shall be toll-free and all Clients shall be allowed to run unrestricted tests on their equipment.

E. Electronic monitoring providers shall send written information to each Client's case manager about the system, how it works, and how it will be maintained.

.43 In addition, Remote Supports Providers shall conform to the following additional standards for provision of Remote Supports services:

A. When Remote Supports includes the use of live audio and/or video equipment that permits a Remote Supports Provider to view activities and/or listen to conversations in the residence, the Client who receives the service and each person who lives with the Client shall consent in writing after being fully informed of what Remote Support entails including, but not limited to:

1. The Remote Supports Provider will observe their activities and/or listen to their conversations in the residence;

2. The location in the residence where the Remote Supports service will take place; and,

3. Whether or not the Remote Supports provider will record audio and/or video.

4. If the Client or a person who lives with the Client has a guardian, the guardian shall consent in writing. The Client's Case Manager and Remote Supports Provider shall keep a copy of each signed consent form.

B. The Remote Support Provider shall provide a Client who receives Remote Supports with initial and ongoing training on how to use the Remote Supports system(s)

C. The Remote Supports Provider shall provide initial and ongoing training to its staff to ensure they know how to use the Monitoring Base System.

D. The Remote Supports provider shall have a backup power system (such as battery power and/or generator) in place at the Monitoring Base in the event of electrical outages. The Remote Supports Provider shall haveadditional backup systems and additional safeguards in place which shall include, but are not limited to, contacting the Backup Support Person in the event the Monitoring Base System stops working for any reason.

E. The Remote Support Provider shall have an effective system for notifying emergency personnel in the event of an emergency.

F. If a known or reported emergency involving a Client arises, the Remote Supports Provider shall immediately assess the situation and call emergency personnel first, if that is deemed necessary, and then contact the Backup Support Person. The Remote Supports Provider shall maintain contactwith the Client during an emergency until emergency personnel or the Backup Support Person arrives.

G. The Backup Support Person shall verbally acknowledge receipt of a request for assistance from the Remote Supports Provider. Text messages, email, or voicemail messages will not be accepted as verbal acknowledgment.

H. When a Client requests in-person assistance, the Backup Support Person shall arrive at the Client's location within a reasonable amount of time (to be specified in documentation maintained by the Remote Support Provider.

I. When a Client needs assistance, but the situation is not an emergency, the Remote Supports provider shall:

1. Address the situation from the Monitoring Base, or,
2. Contact the Client’s Backup Support Person if necessary.

J. The Remote Support Provider shall maintain detailed and current written protocols for responding to a Client's needs, including contact information for the Backup Support Person to provide assistance.

K. The Remote Support Provider shall maintain documentation of the protocol to be followed should the Client request that the equipment used for delivery of Remote Supports be turned off.

L. The Remote Supports Provider shall maintain daily service provision documentation that shall include the following:

1. Type of Service,

2. Date of Service,

3. Place of Service,

4. Name of Client receiving service,

5. Medicaid identification number of Client receiving service,

6. Name of Remote Supports Provider,

7. Identify the Backup Support Person and their contact information, if/when utilized.

8. Begin and end time of the Remote Supports service,

9. Begin and end time of the Remote Supports service when a Backup Support Person is needed on site,

10. Begin and end time of the Backup Support Person when on site, whether paid or unpaid,

11. Number of units of Remote Supports service delivered per calendar day,

12. Description and details of the outcome of providing Remote Supports, and any new or identified needs that are outside of the individual's current Service Plan, which shall be communicated to the individual's case manager.

8.488.50 REIMBURSEMENT METHOD FOR ELECTRONIC MONITORING

.51 Payment for Electronic Monitoring Services shall be the lower of the billed charges or the prior authorized amount.

.52 For Electronic Monitoring, excluding Remote Supports, the unit of reimbursement shall be one unit per service for non-recurring services, or one unit per month for services recurring monthly.

.53 For Remote Supports, the unit of reimbursement shall include one unit per installation/equipment purchase and/or the units as designated on the Department's fee schedule and/or billing manuals for ongoing Remote Supports service.

.54 Effective 2/1/99, there shall be no reimbursement under this section for Electronic Monitoring Services provided in uncertified congregate facilities.

8.500.94 HCBS-SLS WAIVER SERVICES

8.500.94.A. SERVICES PROVIDED

1. Assistive Technology
2. Behavioral Services
3. Day Habilitation services and supports
4. Dental Services
5. Health Maintenance
6. Home Accessibility Adaptations
7. Home Delivered Meals
8. Homemaker Services
9. Life Skills Training (LST)
10. Mentorship
11. Non-Medical Transportation
12. Peer Mentorship
13. Personal Care
14. Personal Emergency Response System (PERS)
15. Professional Services, defined below in 8.500.94.B.14
16. Respite
17. Remote Supports
18. Specialized Medical Equipment and Supplies
19. Supported Employment
20. Transition Setup
21. Vehicle Modifications
22. Vision Services

8.500.94.B The following services are available through the HCBS-SLS waiver within the specific limitations as set forth in the federally approved HCBS-SLS waiver.

17. Remote Supports means services as defined at Section 8.488

18. Specialized Medical Equipment and Supplies include: devices, controls, or appliances that are required due to the Client's disability and that enable the Client to increase the Client's ability to perform activities of daily living or to safely remain in the home and community. Specialized medical equipment and supplies include:

    a. Kitchen equipment required for the preparation of special diets if this results in a cost savings over prepared foods;

    b. Specially designed clothing for a Client if the cost is over and above the costs generally incurred for a Client's clothing;

    c. Maintenance and upkeep of specialized medical equipment purchased through the HCBS-SLS waiver.

    d. The following items are specifically excluded under the HCBS-SLS waiver and not eligible for reimbursement:

        i) Items that are not of direct medical or remedial benefit to the Client are specifically excluded under the HCBS-SLS waiver and not eligible for reimbursement. These include but are not limited to; vitamins, food supplements, any food items, prescription or over the counter medications, topical ointments, exercise equipment, hot tubs, water walkers, resistance water therapy pools, experimental items or wipes for any purpose other incontinence.

19. Supported Employment services includes intensive, ongoing supports that enable a Client, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who because of the Client's disabilities needs supports to perform in a regular work setting.

    a. Supported employment may include assessment and identification of vocational interests and capabilities in preparation for job development and assisting the Client to locate a job or job development on behalf of the Client.

    b. Supported employment may be delivered in a variety of settings in which Clients interact with individuals without disabilities, other than those individuals who are providing services to the Client, to the same extent that individuals without disabilities employed in comparable positions would interact.

    c. Supported employment is work outside of a facility-based site, that is owned or operated by an agency whose primary focus is service provision to persons with developmental disabilities,

    d. Supported employment is provided in community jobs, enclaves or mobile crews.

    e. Group employment including mobile crews or enclaves shall not exceed eight Clients.

    f. Supported employment includes activities needed to sustain paid work by Clients including supervision and training.

    g. When supported employment services are provided at a work site where individuals without disabilities are employed, service is available only for the adaptations, supervision and training required by a Client as a result of the Client's disabilities.

h. Documentation of the Client's application for services through the Colorado Department of Labor and Employment Division for Vocational Rehabilitation shall be maintained in the file of each Client receiving this service. Supported employment is not available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. Section 1400, et seq.).

i. Supported employment does not include reimbursement for the supervisory activities rendered as a normal part of the business setting.

j. Supported employment shall not take the place of nor shall it duplicate services received through the Division for Vocational Rehabilitation.

k. The limitation for supported employment services is seven thousand one hundred and twelve (7,112) units per service plan year. One (1) unit equals fifteen (15) minutes of service.

l. The following are not a benefit of supported employment and shall not be reimbursed:

i) Incentive payments, subsidies or unrelated vocational training expenses, such as incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment,

ii) Payments that are distributed to users of supported employment, and

iii) Payments for training that are not directly related to a Client's supported employment.

20. Transition Setup as defined at Section 8.553.1.

21. Vehicle modifications are adaptations or alterations to an automobile or van that is the Client's primary means of transportation; to accommodate the special needs of the Client; are necessary to enable the Client to integrate more fully into the community; and to ensure the health and safety of the Client.

a. Upkeep and maintenance of the modifications are allowable services.

b. Items and services specifically excluded from reimbursement under the HCBS Waiver include:

i) Adaptations or improvements to the vehicle that are not of direct medical or remedial benefit to the Client,

ii) Purchase or lease of a vehicle, and

iii) Typical and regularly scheduled upkeep and maintenance of a vehicle.

c. The total cost of home accessibility adaptations, vehicle modifications, and assistive technology shall not exceed $10,000 over the five (5) year life of the HCBS Waiver except that on a case by case basis the Operating Agency may approve a higher amount. Such requests shall ensure the health and safety of the Client, enable the Client to function with greater independence in the home, or decrease the need for paid assistance in another HCBS-SLS Waiver service on a long-term basis. Approval for a higher amount will include a thorough review

of the current request as well as past expenditures to ensure cost-efficiency, prudent purchases and no duplication.

22. Vision services include eye exams or diagnosis, glasses, contacts or other medically necessary methods used to improve specific dysfunctions of the vision system when delivered by a licensed optometrist or physician for a Client who is at least 21 years of age

    a. Lasik and other similar types of procedures are only allowable when:

    b. The procedure is necessary due to the Client's documented specific behavioral complexities that result in other more traditional remedies being impractical or not cost effective, and

    c. Prior authorized in accordance with Operating Agency procedures.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Adult Dental Annual Limit Maximum, Section 8.201.6
Rule Number: MSB 21-07-07-A
Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-07-07-A, Revision to the Medical Assistance Act Rule concerning Adult Dental Annual Limit Maximum

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.201.6, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.201.6 with the proposed text beginning at 8.201.6 through the end of 8.201.6, This rule is effective January 10, 2022.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Adult Dental Annual Limit Maximum, Section 8.201.6
Rule Number: MSB 21-07-07-A
Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed rule extends the maximum adult dental annual benefit of $1,500 indefinitely per Senate Bill 21-211. SB21-211 restores the $1,500 maximum adult dental annual benefit that was reduced to $1,000 by the 2020 Long Bill (HB20-1360), and House Bill 20-1361, beginning when the higher federal match afforded through the federal "Families First Coronavirus Response Act", Pub.L. 116-127 (FFCRA) expires. The adult dental annual benefit is currently maintained at $1500 with the FFCRA higher match. This rule will maintain the $1,500 after the FFCRA higher federal match expires.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 CFR § 440.100 (2020)

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

   C.R.S. § 25.5-5-202(1)(w) (2020)

Initial Review **10/08/21** Final Adoption **11/12/21**
Proposed Effective Date **01/10/22** Emergency Adoption

DOCUMENT #06

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Adult Dental Annual Limit Maximum, Section 8.201.6
Rule Number: MSB 21-07-07-A
Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Adult members will be affected by this rule and will benefit from the adult dental annual limit remaining at $1,500.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The adult dental annual limit will remain at $1,500 after the Families First Coronavirus Response Act (FFCRA) higher federal match expires rather than being reduced to $1,000.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There are no costs to the Department to implement the proposed rule, as the Department will maintain the current annual limit. HB 20-1361 required the Department to reduce the limit to $1,000 after the end of the public health emergency and reduced the Department's appropriations in FY 2020-21 and FY 2021-22 accordingly. SB 21-211 eliminated that requirement and increased the Department's appropriations. Between the two bills, there was no change to the Department's funding.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   There are no probable costs to the proposed rule. The benefit of the proposed rule is maintaining the $1,500 adult dental annual limit after the FFCRA higher federal match expires. The cost of inaction is failure to align Department rule with state statute. There are no benefits to inaction.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly methods or less intrusive methods for aligning Department rule with state statute.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods for aligning Department rule with state statute.

8.201 ADULT DENTAL SERVICES

8.201.6 ANNUAL LIMITS

1. Beginning July 1, 2019, dental services for Adult Clients age 21 years and older shall be limited to a total of $1,500 per Medicaid Adult Client per state fiscal year. An Adult Client may make personal expenditures for any dental services that exceed the $1,500 annual limit.

2. The complete and partial dentures benefit shall be subject to prior authorization and shall not be subject to the annual maximum for dental services for Adult Clients age 21 years and older. Although the complete and partial dentures benefit is not subject to the annual maximum for the adult dental services, it shall be subject to a set Medicaid allowable rate.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assitance Rule concerning Provider Participation, Section 8.130
Rule Number: MSB 21-07-20-B
Division / Contact / Phone:Medicaid Operations / Jolene Guignet/ 6948

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-07-20-B, Revision to the Medical Assitance Rule concerning Provider Participation, Section 8.130

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.130, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.130 with the proposed text beginning at 8.130 through the end of 8.130. This rule is effective January 10, 2022.

*to be completed by MSB Board Coordinator

Title of Rule: Revision to the Medical Assitance Rule concerning Provider Participation, Section 8.130
Rule Number: MSB 21-07-20-B
Division / Contact / Phone: Medicaid Operations / Jolene Guignet/ 6948

STATEMENT OF BASIS AND PURPOSE

1. This revision is necessary to provide additional guidance on the expectations of all providers and to specifically outline the provider inactivation procedure.

2. Federal authority for the Rule, if any:

   42 CFR § 431.17; 42 CFR § 431.20; 42 CFR § 455.400

3. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

Title of Rule: Revision to the Medical Assitance Rule concerning Provider Participation, Section 8.130
Rule Number: MSB 21-07-20-B
Division / Contact / Phone:Medicaid Operations / Jolene Guignet/ 6948

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The change to the current rule will impact providers, as it allows for their provider participation agreements to be inactivated in certain situations. They have been afforded an ability to cure before the inactivation and appeal rights. This process is created to help the Department keep our enrollment records clean, giving us the ability to inactivate providers who are not billing.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   An inactivated provider may have to reapply if they are inactivated and pay the application fee. However, they are provided opportunities to cure before this will occur and they have to pay a new fee.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   No additional costs.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The benefit to HCPF is great as we can keep our enrollment records clean by removing inactive providers. There is little cost to the department and any provider.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There is no cost to the department and low cost to the provider.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   N/A

8.130 PROVIDER PARTICIPATION

Providers will not discriminate on the basis of race, color, ethnic or national origin, ancestry, age, sex, gender, sexual orientation, gender identity and expression, religion, creed, political beliefs, or disability.

8.130.1 DEFINITIONS

A. “Advanced Directive” means a written instruction, such as a Living Will or Durable Power of Attorney for health care, recognized under state law, whether statutory or as recognized by the courts of the state, that relates to the provision of medical care when the individual is incapacitated.

B. "Agent" means any person who has been delegated the authority to obligate or act on behalf of a Provider.

C. “Change of Information” means any change in information contained in the Provider’s current enrollment record with the Department, including, but not limited to, any change to a person or entity who holds a direct or indirect ownership interest in the Provider exceeding five percent and any change to the Provider’s licensure, certification registration status, accreditation, bankruptcy status, address (including any change to location(s) where good and services are rendered), contact person, telephone number, email address, or criminal conviction disclosures within the scope of 42 CFR § 455.106.D “Change of Ownership” means that a Provider has been issued a new tax identification number.

E. “Colorado Department of Health Care Policy and Financing” or “Department” means the Colorado State governmental agency responsible for the administration of the Medical Assistance Program, , Child Health Plan Plus, the old age pension health and medical care program, and the supplemental old age pension health and medical care program pursuant to Title XIX of the Social Security Act and Title 25.5 of the Colorado Revised Statutes.

F. “Inactivation” means a Provider’s billing privileges have been stopped but can be restored upon resolution of the basis of inactivation.

G. “Provider” means any person, public or private institution, agency, or business concern enrolled under the state Medical Assistance Program to provide medical care, services, or goods, and holding, where applicable, a current valid license or certificate to provide such services or to dispense such goods.

H. “Requesting Agency” means the US Department of Health and Human Services or its designees, the Department or its designees, the Colorado Department of Human Services or its designees, or the Medicaid Fraud Control Unit or its designees, acting through their representatives who have written or other authorization to act on behalf of these agencies.

8.130.2 MAINTENANCE OF RECORDS

A. Each Provider shall:

1. Maintain legible, complete, and accurate records necessary to establish that conditions of payment for Medical Assistance Program covered goods and services have been met, and to fully disclose the basis for the type, frequency, extent, duration, and delivery of goods and/or services provided to Medical Assistance Program members, including but not limited to:

    a. Billings,

    b. Prior authorization requests,

c. All medical records, service reports, and orders prescribing treatment plans,

d. Records of goods prescribed, ordered for, or furnished to, members, and unaltered copies of original invoices for such items,

e. Records of all payments received from the Medical Assistance Program, and

f. Records required elsewhere in Section 8.000 et seq.

2. The records shall be created at the time the goods or services are provided.

B. Records of Providers shall include employment records, including but not limited to shift schedules, payroll records, and time-cards of employees.

C. Providers who issue prescriptions shall keep in the patient's record, the date of each prescription and the name, strength, and quantity of the item prescribed.

D. Records must be maintained for seven (7) years unless an additional retention period is required elsewhere in Section 8.000 et seq., or in an individual Provider participation agreement.

E. Each Provider shall retain any other records created in the regular operation of business that relate to the type and extent of goods and/or services provided (for example, superbills). All records must be legible, verifiable, and must comply with generally accepted accounting principles, auditing standards, and all applicable state and federal laws, rules, and regulations.F. Each entry in a medical record must be signed and dated by the individual providing the medical service or good. Stamped signatures are not acceptable.G. Providers utilizing electronic record-keeping may apply computerized signatures and dates to a medical record if their record-keeping systems guarantee the following security measures:

1. Restrict application of an electronic signature to the specific individual identified by the signature. System security must prevent one person from signing another person's name.2. Prevent alterations to authenticated (signed and dated) records. If the Provider chooses to supplement a previous entry, the system must only allow a new entry that explains the supplement. The Provider must not be allowed to change the initial entry.

3. Printed or displayed electronic records must note that signatures and dates have been applied electronically.

H. At the discretion of the Requesting Agency, record verification may include, but will not be limited to, interviews with Providers, employees of Providers, billing services that bill on behalf of Providers, and any member of a corporate structure that includes the Provider as a member.

8.130.3 ADVANCE DIRECTIVES

A. Providers shall provide adult Medical Assistance Program members with written information about the individual's rights under state law to accept or refuse medical treatment, the right to formulate advance directives, and the Providers' policies regarding the implementation of such rights as follows:

1. Hospitals, at the time of the individual's admission as an inpatient.

2. Nursing facilities, at the time of the individual's admission as a resident.

3. Providers of home health care or personal care services, in advance of the individual coming under the care of the Provider.

4. Hospice programs, at the time of initial receipt of hospice care by the individual from the program.

5. Health maintenance organizations, at the time of enrollment of the individual with the organization.

B. The Provider shall maintain written policies and procedures with respect to all adult individuals receiving medical or personal care by or through the Provider, which shall include:

1. Documentation in the individual's medical records indicating whether the individual has executed an advance directive.

2. Documentation that the individual will not be discriminated against, nor will the provision of care be conditioned on whether he/she has executed an advance directive.

3. Documentation ensuring compliance with requirements of state law respecting advanced directives.4. Documentation in the individual's medical record substantiating the Provider's reason(s) for non-compliance with an advance directive based on conscience or professional ethics.

C. Providers shall provide education for staff and the patient/member community on issues concerning advance directives.

8.130.35 SCREENING FOR EXCLUDED EMPLOYEES AND CONTRACTORS

A. As a condition of enrollment and participation in the Medical Assistance Program, each Provider shall comply with the following requirements for screening for employees and contractors who have been excluded from participation in Medicaid and Medicare by the US Department of Health & Human Services Office of Inspector General:

1. Each Provider shall utilize the US Department of Health & Human Services Office of Inspector General's List of Excluded Individuals/Entities (www.oig.hhs.gov) to determine if a prospective employee or newly signed contractor has been excluded from participation in a Medical Assistance Program.

a. Such screening should be performed within five (5) business days of the date on which the new employee was hired or new contract was signed.

2. Each Provider shall screen its employees and contractors against the List of Excluded Individuals/Entities at least monthly to capture any exclusions or reinstatements that have occurred since the last search of the database.

3. If a Provider determines that an employee or contractor of the Provider has been excluded, then the Provider shall report this to the Department within five (5) business days of the date of discovery.

4. Each screening must be documented in a manner that can be provided to the Department upon request.

B. Except as otherwise provided in federal law, if the Medical Assistance Program pays for any goods or services furnished, ordered, or prescribed by an excluded individual or entity that is employed by or has contracted with a Provider, such payment shall constitute an overpayment

and shall be subject to overpayment recovery, pursuant to Section 8.076. Such Provider may also be subject to sanctions by the Department, including the termination of the Provider agreement, as described at 8.076.5., if the Provider knew or should have known of the exclusion. The Provider may also be subject to civil and monetary penalties imposed by the US Department of Health and Human Services.1. To the extent that such amount can be traced, the amount of the overpayment shall include any funds expended by the Medical Assistance Program to pay the excluded individual's or contractor's salary, expenses, or fringe benefits.

C. Subject to federal law and the Department's discretion, failure of a Provider to comply with the screening requirements listed at Section 8.130.35.A. may constitute good cause sufficient to justify termination of the Provider agreement, as described at 8.076.5.

8.130.40 PROVIDER EMPLOYEE OR CONTRACTOR LICENSE VERIFICATION

A. As a condition of participation in the Medical Assistance program, any Provider who provides or who has employees or contractors who provide services or supplies must ensure that, at the time services or supplies are provided, the Provider, the employee, or the contractor possesses the license, certification, or credential that is required in the State of Colorado to provide such services or supplies.

8.130.45 REPORTING CHANGES

A. Within thirty-five (35) calendar days, Provider shall update the provider portal of the Department's Medicaid Management Information System (MMIS) with any Change of Information or Change in Ownership.

B. Failure by the Provider to notify the Department of any Change of Information or Change in Ownership in accordance with section 8.130.45.A.:

1. May result in the denial, suspension, inactivation, or termination of the Provider agreement or contract.

2. Does not exempt a Medical Assistance Program Provider from compliance with 10 CCR 2505-3 and 10 CCR 2505-10.

8.130.50 REQUIREMENT TO VERIFY ENROLLMENT OF MEMBER AT TIME OF SERVICE

A. A Provider shall verify and document that the member is enrolled in the applicable Medical Assistance Program at the time the service is rendered.

B. A Provider shall verify that payments received are for medically necessary goods and services that were actually rendered, and that claims and encounters submitted for payment are true and correct.

8.130.60 PROVIDERS ARE RESPONSIBLE FOR ALL CLAIMS SUBMITTED

A. A Provider shall accept full legal responsibility for all claims submitted under the Provider's Medical Assistance Program ID number to the Medical Assistance Program, whether submitted by the Provider or submitted on the Provider's behalf.

1. A Provider shall comply with all federal and state civil and criminal statutes, regulations, and rules relating to the delivery of goods and services to eligible individuals, and to the submission of claims for such goods and services. A Provider's non-compliance may result in no payment for goods and services rendered.

B. A Provider shall furnish to the Department its National Provider Identifier (NPI) (if eligible for an NPI) and include the NPI on all claims submitted pursuant to Sections 8.125.8 and 8.126.3.

C. A Provider shall request payment only for those goods and services which are medically necessary, as such term is defined in Section 8.076.1.8. and in any other subsection of these rules defining medical necessity, and which are rendered personally by the Provider or rendered by qualified personnel under the Provider's direct and personal supervision.

1. A Provider shall submit claims only for those goods and services provided by health care personnel who meet the professional qualifications established by the State.

2. Any misrepresentation or falsification of a claim submitted by a Provider, or on a Provider's behalf, may subject the Provider to fines and/or imprisonment under state or federal law.

D. If at any time the Department determines that a Provider has failed to maintain compliance with any state or federal laws, rules, or regulations, the Provider may be suspended from participation in the Medical Assistance Program, and may be subject to administrative actions authorized by federal or state law or regulation, criminal investigation, and/or prosecution.

8.130.70 COMPLIANCE WITH GUIDANCE

A. Providers must comply with all state and federal statutes, rules, regulations, and guidance.

B. Guidance includes, but is not limited to:

1. Department Billing Manual

2. Department Provider Bulletins

3. Department Memo Series

4. Uniform Service Coding Standards

5. Current Procedural Terminology (CPT) code set

6. Current Healthcare Common Procedure Coding System (HCPCS)

7. Current International Classification of Diseases (ICD))

C. Failure to comply may subject the Provider to authorized administrative actions, civil investigation, and criminal investigation.

8.130.80 INACTIVATING PROVIDER AGREEMENTS

A. A Provider may have its Provider Participation Agreement inactivated and will no longer be able to bill for goods and services if any of the following occur:

1. The Provider's license, certification, or accreditation has expired or is subject to conditions or restrictions.

2. The Provider has failed to complete Provider revalidation.

3. The Provider is no longer eligible to participate as a Medical Assistance Program Provider or breaches the Provider agreement.

4. There is a Change of Ownership.

5. The Provider's business closes, or the business is nonoperational.

6. The Provider is deceased or retired.

7. The Provider is inactive and has not submitted any claims activity for 24 months.

B. The Provider will be sent written notice thirty (30) days prior to the inactivation, unless otherwise required by federal or state statute, regulation, or rule.

1. The notice will detail the reason for the inactivation.

2. The notice will give the Provider the opportunity to dispute the inactivation.

C. If the Provider elects to dispute the inactivation, the Department must receive the Provider's written request to dispute the inactivation within thirty (30) calendar days of the date of the inactivation notice.

D. The Department will review the request and issue a determination on the inactivation which will include the Provider's right to file an appeal in accordance with Section 8.050.

E. The effective date of the inactivation may be backdated to the date of the occurrence described in Section 8.130.80.A.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning the Home and Community Based Services Final Settings Rule, Section 8.484
Rule Number: MSB 21-02-09-A
Division / Contact / Phone: COB Section / Cassandra Keller / 303-866-5181

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-02-09-A, Revision to the Medical Assistance Rule concerning the Home and Community Based Services Final Settings Rule, Section 8.484

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) OP Pages, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Insert the newly proposed text beginning at 8.484 through the end of 8.484.5.H. This rule is effective January 10, 2022.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning the Home and Community Based Services Final Settings Rule, Section 8.484
Rule Number: MSB 21-02-09-A
Division / Contact / Phone: COB Section / Cassandra Keller / 303-866-5181

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).
   In 2014, the federal Centers for Medicare & Medicaid Services (CMS) published a rule requiring Home- and Community-Based Services (HCBS) to be provided in settings that meet certain criteria. The criteria ensure that HCBS participants have access to the benefits of community living and live and receive services in integrated, non-institutional settings. These rules codify in regulation the federal requirements for all HCBS Waivers.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   § 441.301(C)(4))

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

Initial Review **10/08/21** Final Adoption **11/12/21**
Proposed Effective Date **01/10/22** Emergency Adoption

DOCUMENT #08

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning the Home and Community Based Services Final Settings Rule, Section 8.484
Rule Number: MSB 21-02-09-A
Division / Contact / Phone: COB Section / Cassandra Keller / 303-866-5181

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The proposed regulations will impact all HCBS members, approximately 55,000 individuals. All providers who accept Medicaid funding are required to comply with these rules. Member's will greatly benefit from the implementation of these rules by ensuring everyone gets the most out of community living, all services are provided in integrated settings, and the provision of services are person-centered. There may be costs incurred by providers in order to come into compliance with these regulations. For example, a provider may need to invest in locks for bedroom doors. The Department has engaged stakeholders throughout the process to understand the potential costs incurred from the implementation of this rule.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The codification of the federal Final Settings Rule will have a significant, positive impact for our members. As noted, these regulations ensure services are delivered in an integrated, person-centered manner. A members' rights are outlined and protected within these regulations. If a right needs to be modified for some reason, informed consent must be given by the member or the guardian. These rules will ensure all providers follow these requirements and allows the oversight agency to survey on these requirements.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Department has partnered with the Department of Public Health and Environment on this project. There are no additional costs to CDPHE from these regulations. The work to conduct the surveys has already been incorporated into their existing workload.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The Department must implement these regulations otherwise we will be out of compliance with the federal regulations. By being out of compliance, there is a risk of losing the federal match on all HCBS services.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no other methods to achieve our purpose. These regulations must be promulgated in order to remain in compliance with federal regulations.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   No alternative methods were considered.

8.483 ADULT FOSTER CARE - REPEALED

[Repealed effective April 2, 2007]

8.484 HOME- AND COMMUNITY-BASED SERVICES SETTINGS FINAL RULE

8.484.1 STATEMENT OF PURPOSE, SCOPE, AND ENFORCEMENT

8.484.1.A The purpose of this Section 8.484 is to implement the requirements of the federal Home- and Community-Based Services (HCBS) Settings Final Rule, 79 Fed. Reg. 2947 (2014), codified at 42 C.F.R. § 441.301(c)(4). These rules identify individual rights that are protected at settings where people live or receive HCBS. They also set out a process for modifying these rights as warranted in individual cases. These rules apply to all HCBS under all authorities, except where otherwise noted.

8.484.1.B This Section 8.484 is enforced pursuant to existing procedures, subject to the following transition period exceptions:

1. The following settings were presumed compliant during the transition period and remain covered by this presumption until March 17, 2023:

    a. Residential settings owned or leased by individuals receiving HCBS or their families (personal homes);
    b. Professional provider offices and clinics;
    c. Settings where children receive Community Connector services under the Children's Extensive Supports (CES) Waiver; and
    d. Settings where people receive individual Supported Employment services.

2. Any setting for which a Provider Transition Plan (PTP) has been submitted by December 30, 2021 may continue to transition toward compliance according to the schedule set forth in the PTP. This exception is to be narrowly construed and does not apply to other situations, such as, by way of illustration only, non-compliance:

    a. At case management agencies;
    b. At a setting for which a PTP was not submitted by December 30, 2021 for any reason;
    c. At a setting after the applicable deadline in the setting's PTP, with the deadline being (i) three months after the PTP was submitted unless adjusted with departmental approval and (ii) in no event after March 17, 2023; or
    d. Involving compliance issues that have been verified as resolved through the PTP process and therefore no longer subject to transition.

8.484.2 DEFINITIONS

8.484.2.A Age Appropriate Activities and Materials means activities and materials that foster social, intellectual, communicative, and emotional development and that challenge the individual to use their skills in these areas while considering their chronological age, developmental level, and physical skills.

8.484.2.B Covered HCBS means any Home- and Community-Based Service(s) provided under the Colorado State Medicaid Plan, a Colorado Medicaid waiver program, or a State-funded program administered by the Department. This category excludes Respite Services, Palliative/Supportive

Care services provided outside the child's home under the Children with Life-Limiting Illness Waiver, and Youth Day Services under the CES Waiver.

8.484.2.C HCBS Setting means any physical location where Covered HCBS are provided.

1. HCBS Settings include, but are not limited to, Provider-Owned or -Controlled Non-residential Settings, Other Non-residential Settings, Provider-Owned or -Controlled Residential Settings, and Other Residential Settings.
2. If Covered HCBS are provided at a physical location to one or more individuals, the setting is considered an HCBS Setting, regardless of whether some individuals at the setting do not receive Covered HCBS. The requirements of this Section 8.484 apply to the setting as a whole and protect the rights of all individuals receiving services at the setting regardless of payer source.

8.484.2.D Informed Consent means the informed, freely given, written agreement of the individual (or, if authorized, their guardian or other legally authorized representative) to a Rights Modification. The case manager ensures that the agreement is informed, freely given, and in writing by confirming that the individual (or, if authorized, their guardian or other legally authorized representative) understands all of the information required to be documented in Section 8.484.5 and has signed the Department-prescribed form to that effect.

8.484.2.E Intensive Supervision means one-on-one (1:1), line-of-sight, or 24-hour supervision. Intensive Supervision is a Rights Modification if the individual verbally or non-verbally expresses that they do not want the supervision or if the supervision would be covered by the Department's processes for rights suspensions or restrictive procedures pursuant to the version of Sections 8.600.4, 8.604.3, and 8.608.1-2 in effect on December 30, 2021.

8.484.2.F Other Non-residential Setting means a physical location that is non-residential and that is not owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing nonresidential services.

1. Other Non-residential Settings include, but are not limited to, locations in the community where Covered HCBS are provided.

8.484.2.G Other Residential Setting means a physical location that is residential and that is not owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing residential services.

1. Other Residential Settings include, but are not limited to, Residential Settings owned or leased by individuals receiving HCBS or their families (personal homes) and those owned or leased by relatives paid to provide HCBS unless such relatives are independent contractors of HCBS providers.8.484.2.H Person-Centered Support Plan means a service and support plan that is directed by the individual whenever possible, with the individual's representative acting in a participatory role as needed, is prepared by the case manager under Sections 8.393.2.E or 8.519.11, identifies the supports needed for the individual to achieve personally identified goals, and is based on respecting and valuing individual preferences, strengths, and contributions.

8.484.2.I Plain Language means language that is understandable to the individual and in their native language, and it may include pictorial methods, if warranted;

8.484.2.J Provider-Owned or -Controlled Non-residential Setting means a physical location that is non-residential and that is owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing non-residential services.

1. Provider-Owned or -Controlled Non-residential Settings include, but are not limited to, provider-owned facilities where Adult Day, Day Treatment, Specialized Habilitation, Supported Community Connections, Prevocational Services, and Supported Employment Services are provided.

8.484.2.K Provider-Owned or -Controlled Residential Setting means a physical location that is residential and that is owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing residential services.

1. Provider-Owned or -Controlled Residential Settings include, but are not limited to, Alternative Care Facilities (ACFs); Supported Living Program (SLP) and Transitional Living Program (TLP) facilities; group homes for adults with intellectual or developmental disabilities (IDD); Host Homes for adults with IDD; any Individual Residential Services and Supports (IRSS) setting that is owned or leased by a service provider or independent contractor of such a provider; and foster care homes, Host Homes, group homes, residential child care facilities, and Qualified Residential Treatment Programs (QRTPs) in which Children's Habilitation Residential Program (CHRP) services are provided.

8.484.2.L Restraint means any manual method or direct bodily contact or force, physical or mechanical device, material, or equipment that restricts normal functioning or movement of all or any portion of a person's body, or any drug, medication, or other chemical that restricts a person's behavior or restricts normal functioning or movement of all or any portion of their body. Physical or hand-over-hand assistance is a Restraint if the individual verbally or non-verbally expresses that they do not want the assistance or if the assistance is a safety or emergency control procedure or would be covered by the Department's processes for rights suspensions or restrictive procedures pursuant to the version of Sections 8.600.4, 8.604.3, and 8.608.1-2 in effect on December 30, 2021.

8.484.2.M Restrictive or Controlled Egress Measures means devices, technologies, or approaches that have the effect of restricting or controlling egress or monitoring the coming and going of individuals. The following measures are deemed to have such an effect and are Restrictive or Controlled Egress Measures: locks preventing egress; audio monitors, chimes, motion-activated bells, silent or auditory alarms, and alerts on entrances/exits at residential settings; and wearable devices that indicate to anyone other than the wearer their location or their presence/absence within a building. Other measures that have the effect of restricting or controlling egress or monitoring the coming and going of individuals are also Restrictive or Controlled Egress Measures.

8.484.2.N Rights Modification means any situation in which an individual is limited in the full exercise of their rights.

1. Rights Modifications include, but are not limited to:

    a. the use of Intensive Supervision if deemed a Rights Modification under the definition in Section 8.484.2.E above;
    b. the use of Restraints;
    c. the use of Restrictive or Controlled Egress Measures;
    d. modifications to the other rights in Section 8.484.3 (basic criteria applicable to all HCBS Settings) and Section 8.484.4 (additional criteria for HCBS Settings);
    e. any provider actions to implement a court order limiting any of the foregoing individual rights;
    f. rights suspensions under Section 25.5-10-218(3), C.R.S.; and

g. all situations formerly covered by the Department's processes for rights suspensions or restrictive procedures pursuant to the version of Sections 8.600.4, 8.604.3, and 8.608.1-2 in effect on December 30, 2021.

2. Modifications to the rights to dignity and respect, the rights in Sections 8.484.3.A.6-11 (covering such matters as person-centeredness; civil rights; freedom from abuse; and Plain-Language explanations of rights, dispute resolution policies, and grievance/complaint procedures), and the right to physical accessibility are not permitted.
3. For children under age 18, a limitation or restriction to any of the rights in Sections 8.484.3 and 8.484.4 that is typical for children of that age, including children not receiving HCBS, is not a Rights Modification. Consider age-appropriate behavior when assessing what is typical for children of that age. If the child is not able to fully exercise the right because of their age, then there is no need to pursue the Rights Modification process under Section 8.484.5. However, if the proposed limitation or restriction is above and beyond what a typically developing peer would require, then it must be handled as a Rights Modification under Section 8.484.5.

8.484.3 BASIC CRITERIA APPLICABLE TO ALL HCBS SETTINGS

8.484.3.A All HCBS Settings must have all of the following qualities and protect all of the following individual rights, based on the needs of the individual as indicated in their Person-Centered Support Plan, subject to the Rights Modification process in Section 8.484.5:

1. The setting is integrated in and supports full access of individuals to the greater community, including opportunities to seek employment and work in competitive integrated settings, control personal resources, receive services in the community, and engage in community life, including with individuals who are not paid staff/contractors and do not have disabilities, to the same degree of access as individuals not receiving HCBS.

    a. Individuals are not required to leave the setting or engage in community activities. Individuals must be offered and have the opportunity to select from Age Appropriate Activities and Materials both within and outside of the setting.
    b. Integration and engagement in community life includes supporting individuals in accessing public transportation and other available transportation resources.
    c. Individuals receiving HCBS are not singled out from other community members through requirements of individual identifiers, signage, or other means.
    d. Individuals may communicate privately with anyone of their choosing.
    e. Methods of communication are not limited by the provider.

        i. The setting must always provide access to shared telephones if it is a Provider-Owned or -Controlled Residential Setting and during business hours if it is a Provider-Owned or -Controlled Non-residential Setting.

        ii. Individuals are allowed to maintain and use their own cell phones, tablets, computers, and other personal communications devices, at their own expense.

        iii. Individuals are allowed to access telephone, cable, and Ethernet jacks, as well as wireless networks, in their rooms/units, at their own expense.

    f. Individuals have control over their personal resources. If an individual is not able to control their resources, an assessment of their skills must be completed and documented in their Person-Centered Support Plan. The assessment and

Person-Centered Support Plan must identify what individualized assistance the provider or other person will provide and any training for the individual to become more independent, based on the outcome of the assessment.

i. Providers may not insist on controlling an individual's funds as a condition of providing services and may not require individuals to sign over their Social Security checks or paychecks.

ii. A provider may control an individual's funds if the individual so desires, or if it has been designated as their representative payee under the Social Security Administration's (SSA's) policies. If a provider holds or manages an individual's funds, their signed Person-Centered Support Plan must:

a) Document the request or representative payee designation;

b) Document the reasons for the request or designation; and

c) Include the parties' agreement on the scope of managing the funds, how the provider should handle the funds, and what they define as "reasonable amounts" under Section 25.5-10-227, C.R.S.

iii. The provider must ensure that the individual can access and spend money at any time, including on weekends, holidays, and evenings, including with assistance or supervision if necessary.

2. The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the Person-Centered Support Plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.
3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

a. The right of privacy includes the right to be free of cameras, audio monitors, and devices that chime or otherwise alert others, including silently, when a person stands up or passes through a doorway.

i. The use of cameras, audio monitors, chimes, and alerts in (a) interior areas of residential settings, including common areas as well as bathrooms and bedrooms, and in (b) typically private areas of non-residential settings, including bathrooms and changing rooms, is acceptable only under the standards for modifying rights on an individualized basis pursuant to Section 8.484.5.

ii. If an individualized assessment indicates that the use of a camera, audio monitor, chime, or alert in the areas identified in the preceding paragraph is necessary for an individual, this modification must be reflected in their Person-Centered Support Plan. The Person-Centered Support Plans of other individuals at that setting must reflect that they have been informed in Plain Language of the camera(s)/monitor(s)/chime(s)/alert(s) and any methods in place to mitigate the impact on their privacy. The provider must ensure that only appropriate staff/contractors have access to the camera(s)/monitor(s)/chime(s)/alert(s) and any recordings and files they

generate, and it must have a method for secure disposal or destruction of any recordings and files after a reasonable period.

iii. Cameras, audio monitors, chimes, and alerts on staff-only desks and exterior areas, cameras on the exterior sides of entrances/exits, and cameras typically found in integrated employment settings, generally do not raise privacy concerns, so long as their use is similar to that practiced at non-HCBS Settings. In provider-owned or -controlled settings, notice must be provided to all individuals that they may be on camera and specify where the cameras are located. If such devices have the effect of restricting or controlling egress or monitoring the coming and going of individuals, they are subject to the Rights Modification requirements of Section 8.484.5.

iv. Audio monitors, chimes, motion-activated bells, silent or auditory alarms, and alerts on entrances/exits at residential settings have the effect of restricting or controlling egress and are subject to the Rights Modification requirements of Section 8.484.5. If such devices on entrances/exits at non-residential settings have the effect of restricting or controlling egress or monitoring the coming and going of individuals, they are subject to the Rights Modification requirements of Section 8.484.5.

b. The right of privacy includes the right not to have one's name or other confidential items of information posted in common areas of the setting.

4. The setting fosters individual initiative and autonomy, and the individual is afforded the opportunity to make independent life choices. This includes, but is not limited to, daily activities, physical environment, and with whom to interact.
5. The setting facilitates individual choice regarding services and supports, and who provides them.
6. The Person-Centered Support Plan drives the services afforded to the individual, and the setting staff/contractors are trained on this concept and person-centered practices, as well as the concept of dignity of risk.
7. Each individual is afforded the opportunity to:

   a. Lead the development of, and grant Informed Consent to, any provider-specific treatment, care, or support plan;
   b. Have freedom of religion and the ability to participate in religious or spiritual activities, ceremonies, and communities;
   c. Live and receive services in a clean, safe environment;
   d. Be free to express their opinions and have those included when any decisions are being made affecting their life;
   e. Be free from physical abuse and inhumane treatment;
   f. Be protected from all forms of sexual exploitation;
   g. Access necessary medical care which is adequate and appropriate to their condition;
   h. Exercise personal choice in areas including personal style;
   i. Receive the same consideration and treatment as anyone else regardless of race, color, ethnic or national origin, ancestry, age, sex, gender, sexual orientation, gender identity and expression, religion, creed, political beliefs, or disability; and
   j. Accept or decline services and supports of their own free will and on the basis of informed choice.

8. Nothing in this rule shall be construed to prohibit necessary assistance as appropriate to those individuals who may require such assistance to exercise their rights.
9. Nothing in this rule shall be construed to interfere with the ability of a guardian or other legally authorized representative to make decisions within the scope of their guardianship order or other authorizing document.
10. Providers shall supply all individuals at the setting with a Plain Language explanation of their rights under this Section 8.484.
11. Providers shall supply all individuals at the setting with a Plain Language explanation of available dispute resolution and grievance/complaint procedures, along with outside agency contact information, including phone numbers, for assistance. Providers must allow grievances/complaints to be submitted anonymously and at any time (not subject to a deadline).

8.484.4 ADDITIONAL CRITERIA FOR HCBS SETTINGS

8.484.4.A Provider-Owned or -Controlled Residential Settings must have all of the following qualities and protect all of the following individual rights, based on the needs of the individual as indicated in their Person-Centered Support Plan, subject to the Rights Modification process in Section 8.484.5:

1. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord/tenant laws do not apply, a lease, residency agreement, or other form of written agreement must be in place for each individual, and the document must provide protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law.

    a. The lease, residency agreement, or other written agreement must:

        i. Provide substantially the same terms for all individuals;

        ii. Be in Plain Language, or if the provider/its independent contractor cannot adjust the language, at least be explained to the individual in Plain Language;

        iii. Provide the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of their State, county, city, or other designated entity (or comparable responsibilities and protections, as the case may be), and indicate the authorities that govern these responsibilities, protections, and related disputes;

        iv. Specify that the individual will occupy a particular room or unit;

        v. Explain the conditions under which people may be asked to move or leave;

        vi. Provide a process for individuals to dispute/appeal and seek review by a neutral decisionmaker of any notice that they must move or leave, or tell individuals where they can easily find an explanation of such a process, and state this information in any notice to move or leave;

        vii. Specify the duration of the agreement;

viii. Specify rent or room-and-board charges;

ix. Specify expectations for maintenance;

x. Specify that staff/contractors will not enter a unit without providing advance notice and agreeing upon a time with the individual(s) in the unit;

xi. Specify refund policies in the event of a resident's absence, hospitalization, voluntary or involuntary move to another setting, or death; and

xii. Be signed by all parties, including the individual or, if within the scope of their authority, their guardian or other legally authorized representative.

b. The lease, residency agreement, or other written agreement may:

i. Include generally applicable limits on furnishing/decorating of the kind that typical landlords might impose; and

ii. Provide for a security deposit or other provisions outlining how property damage will be addressed.

c. The lease, residency agreement, or other written agreement may not modify the individual rights protected under Sections 8.484.3 and 8.484.4, such as (a) by imposing individualized terms that modify these conditions or (b) by requiring individuals to comply with house rules or resident handbooks that modify everyone's rights.

d. Providers and their independent contractors must engage in documented efforts to resolve problems and meet residents' care needs before seeking to move individuals or asking them to leave. Providers and their independent contractors must have a substantial reason for seeking any move/eviction (e.g., protection of someone's health/safety), and minor personal conflicts do not meet this threshold.

e. A violation of a lease or residency agreement, a change in the resident's medical condition, or any other development that leads to a notice to leave must include at least 30 days' notice to the individual (or, if authorized, their guardian or other legally authorized representative).

f. If an individual has not moved out after the end of a 30-day (or longer) notice period, the provider/its independent contractor may not act on its own to evict the individual until the individual has had the opportunity to pursue and complete any applicable grievance, complaint, dispute resolution, and/or court processes, including obtaining a final decision on any appeal, request for reconsideration, or further review that may be available.

g. A provider/its independent contractor may not require an individual who has nowhere else to live to leave the setting.

h. This Section 1 does not apply to children under age 18.

2. Individuals have the right to dignity and privacy, including in their living/sleeping units. This right to privacy includes the following criteria:

a. Individuals must have a key or key code to their home, a bedroom door with a lock and key, lockable bathroom doors, privacy in changing areas, and a lockable

place for belongings, with only appropriate staff/contractors having keys to such doors and storage areas. Staff/contractors must knock and obtain permission before entering individual units, bedrooms, bathrooms, and changing areas. Staff/contractors may use keys to enter these areas and to open private storage spaces only under limited circumstances agreed upon with the individual.

b. Individuals shall have choice in a roommate/housemate. Providers must have a process in place to document expectations and outline the process to accommodate choice.

c. Individuals have the right to furnish and decorate their sleeping and/or living units in the way that suits them, while maintaining a safe and sanitary environment and, for individuals age 18 and older, complying with the applicable lease, residency agreement, or other written agreement.

3. The Residential Setting does not have institutional features not found in a typical home, such as staff uniforms; entryways containing numerous staff postings or messages; or labels on drawers, cupboards, or bedrooms for staff convenience.
4. Individuals have the freedom and support to determine their own schedules and activities, including methods of accessing the greater community;
5. Individuals have access to food at all times, choose when and what to eat, have input in menu planning (if the setting provides food), have access to food preparation and storage areas, can store and eat food in their room/unit, and have access to a dining area for meals/snacks with comfortable seating where they can choose their own seat, choose their company (or lack thereof), and choose to converse (or not);
6. Individuals are able to have visitors of their choosing at any time and are able to socialize with whomever they choose (including romantic relationships);
7. The setting is physically accessible to the individual, and the individual has unrestricted access to all common areas, including areas such as the bathroom, kitchen, dining area, and comfortable seating in shared areas. If the individual wishes to do laundry and their home has laundry machines, the individual has physical access to those machines; and
8. Individuals are able to smoke and vape nicotine products in a safe, designated outdoor area, unless prohibited by the restrictions on smoking near entryways set forth in the Colorado Clean Indoor Air Act, Section 25-14-204(1)(ff), C.R.S., or any law of the county, city, or other local government entity.

8.484.4.B Other Residential Settings in which one or more individuals receiving 24-hour residential services and supports reside must have all of the qualities of and protect all of the same individual rights as Provider-Owned or -Controlled Residential Settings, as listed above, other than Section 8.484.4.A relating to a lease or other written agreement providing protections against eviction, subject to the Rights Modification process in Section 8.484.5.

8.484.4.C Other Residential Settings in which no individuals receiving 24-hour residential services and supports reside are excluded from this Section 8.484.4.

1. This group of settings includes, but is not limited to, homes in which no individual receives IRSS and one or more individuals receive Consumer-Directed Attendant Support Services (CDASS), Health Maintenance Services, Homemaker Services, In-Home Support Services (IHSS), and/or Personal Care Services.

8.484.4.D Provider-Owned or -Controlled Non-residential Settings must have all of the qualities of and protect all of the same individual rights as Provider-Owned or -Controlled Residential Settings, as listed above, other than Section 8.484.4.A relating to a lease or other written

agreement providing protections against eviction and Section 8.484.4.B relating to privacy in one's living/sleeping unit, subject to the Rights Modification process in Section 8.484.5.

1. Provider-Owned or -Controlled Non-residential Settings must afford individuals privacy in bathrooms and changing areas and a lockable place for belongings, with only the individuals and appropriate staff/contractors having keys to such doors and storage areas.
2. This Section 8.484.4 does not require Non-residential Settings to provide food if they are not already required to do so under other authorities. This Section 8.484.4 does require Non-residential Settings to ensure that individuals have access to their own food at any time.

8.484.4.E Other Non-residential Settings must have all of the qualities of and protect the same individual rights as Provider-Owned or -Controlled Non-residential Settings, as stated immediately above, to the same extent for HCBS participants as they do for other individuals, subject to the Rights Modification process in Section 8.484.5.

8.484.5 RIGHTS MODIFICATIONS

8.484.5.A Any modification of an individual's rights must be supported by a specific assessed need and justified in the Person-Centered Support Plan, pursuant to the process set out in Sections 8.484.5.C and 8.484.5.D below. Rights Modifications may not be imposed across-the-board and may not be based on the convenience of the provider. The provider must ensure that a Rights Modification does not infringe on the rights of individuals not subject to the modification. Wherever possible, Rights Modifications should be avoided or minimized, consistent with the concept of dignity of risk.

8.484.5.B The process set out in Sections 8.484.5.C-D below applies to all Rights Modifications.

8.484.5.C For a Rights Modification to be implemented, the following information must be documented in the individual's Person-Centered Support Plan, and any provider implementing the Rights Modification must maintain a copy of the documentation:

1. The right to be modified.
2. The specific and individualized assessed need for the Rights Modification.
3. The positive interventions and supports used prior to any Rights Modification, as well as the plan going forward for the provider to support the individual in learning skills so that the modification becomes unnecessary.
4. The less intrusive methods of meeting the need that were tried but did not work.
5. A clear description of the Rights Modification that is directly proportionate to the specific assessed need.
6. A plan for regular collection of data to measure the ongoing effectiveness of and need for the Rights Modification, including specification of the positive behaviors and objective results that the individual can achieve to demonstrate that the Rights Modification is no longer needed.
7. An established timeline for periodic reviews of the data collected under the preceding paragraph. The Rights Modification must be reviewed and revised upon reassessment of functional need at least every 12 months, and sooner if the individual's circumstances or needs change significantly, the individual requests a review/revision, or another authority requires a review/revision.
8. The Informed Consent of the individual (or, if authorized, their guardian or other legally authorized representative) agreeing to the Rights Modification.
9. An assurance that interventions and supports will cause no harm to the individual, including documentation of the implications of the modification for the individual's

everyday life and the ways the modification is paired with additional supports to prevent harm or discomfort and to mitigate any undesired effects of the modification.

10. Alternatives to consenting to the Rights Modification, along with their most significant likely consequences.
11. An assurance that the individual will not be subject to retaliation or prejudice in their receipt of appropriate services and supports for declining to consent or withdrawing their consent to the Rights Modification.

8.484.5.D Additional Rights Modification process requirements:

1. Prior to obtaining Informed Consent, the case manager must offer the individual the opportunity to have an advocate, who is identified and selected by the individual, present at the time that Informed Consent is obtained. The case manager must offer to assist the individual, if desired, in identifying an independent advocate who is not involved with providing services or supports to the individual. These offers and the individual's response must be documented by the case manager.
2. Any providers that desire or expect to be involved in implementing a Rights Modification may supply to the case manager information required to be documented under this Section 8.484.5, except for documentation of Informed Consent and the offers and response relating to an advocate, which may be obtained and documented only by the case manager. The individual determines whether any information supplied by the provider is satisfactory before the case manager enters it into their Person-Centered Support Plan.

8.484.5.E Use of Restraints

1. If Restraints are used with an individual at an HCBS Setting, their use must:

    a. Be based on an assessed need after all less restrictive interventions have been exhausted;
    b. Be documented in the individual's Person-Centered Support Plan as a modification of the generally applicable rights protected under Section 8.484.3, consistent with the Rights Modification process in this Section 8.484.5; and
    c. Be compliant with any applicable waiver.

2. Prone Restraints are prohibited in all circumstances. Nothing in this Section E permits the use of any Restraint that is precluded by other authorities.

8.484.5.F If Restrictive or Controlled Egress Measures are used at an HCBS Setting, they must:

1. Be implemented on an individualized (not setting-wide) basis;
2. Make accommodations for individuals in the same setting who are not at risk of unsafe wandering or exit-seeking behaviors;
3. Be documented in the individual's Person-Centered Support Plan as a modification of the generally applicable rights protected under Section 8.484.3, consistent with the Rights Modification process in this Section 8.484.5, with the documentation including:

    a. An assessment of the individual's unsafe wandering or exit-seeking behaviors (and the underlying conditions, diseases, or disorders relating to such behaviors) and the need for safety measures;
    b. Options that were explored before any modifications occurred to the Person-Centered Support Plan;

c. The individual's understanding of the setting's safety features, including any Restrictive or Controlled Egress Measures;
d. The individual's choices regarding measures to prevent unsafe wandering or exit-seeking;
e. The individual's (or, if authorized, their guardian's or other legally authorized representative's) consent to restrictive- or controlled-egress goals for care;
f. The individual's preferences for engagement within the setting's community and within the broader community; and
g. The opportunities, services, supports, and environmental design that will enable the individual to participate in desired activities and support their mobility; and

4. Not be developed or used for non-person-centered purposes, such as punishment or staff/contractor convenience.

8.484.5.G If there is a serious risk to anyone's health or safety, a Rights Modification may be implemented or continued for a short time without meeting all the requirements of this Section 8.484.5, so long as the provider immediately (a) implements staffing and other measures to deescalate the situation and (b) reaches out to the case manager to set up a meeting as soon as possible, and in no event past the end of the third business day following the date on which the risk arises. At the meeting, the individual can grant or deny their Informed Consent to the Rights Modification. The Rights Modification may not be continued past the conclusion of this meeting or the end of the third business day, whichever comes first, unless all the requirements of this Section 8.484.5 have been met.

8.484.5.H When a provider proposes a Rights Modification and supplies to the case manager all of the information required to be documented under this Section 8.484.5, except for documentation that may be obtained only by the case manager, the case manager shall arrange for a meeting with the individual to discuss the proposal and facilitate the individual's decision regarding whether to grant or deny their Informed Consent. Except when the timeline in Section 8.484.5.G applies, the case manager shall arrange for this meeting to occur by the end of the tenth business day following the date on which they received from the provider of all the required information. The individual may elect to make a final decision during or after this meeting. If the individual does not inform their case manager of their decision by the end of the fifth business day following the date of the meeting, they are deemed not to have consented.

8.485 HOME AND COMMUNITY BASED SERVICES FOR THE ELDERLY, BLIND AND DISABLED (HCBS-EBD) GENERAL PROVISIONS

8.485.10 LEGAL BASIS

The Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) program in Colorado is authorized by a waiver of the amount, duration and scope of services requirements contained in Section 1902(a)(10)(B) of the Social Security Act. The waiver was granted by the United States Department of Health and Human Services, under Section 1915(c) of the Social Security Act. The HCBS-EBD program is also authorized under state law at C.R.S. section 25.5-6-301 et seq. – as amended.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Non-Medical Transportation, Sections 8.494 and 8.611
Rule Number: MSB 21-08-10-C
Division / Contact / Phone:Benefits and Services Management/ Cassandra Keller/ 5181

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-08-10-C, Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Non-Medical Transportation, Sections 8.494 and 8.611

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected): 8.494 and 8.611

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.494 with the proposed text beginning at 8.494 through the end of 8.494.50.56. Replace the current text at 8.611 with the proposed text beginning at 8.611 through the end of 8.611.C.6. This rule is effective January 10,2022.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Non-Medical Transportation, Sections 8.494 and 8.611
Rule Number: MSB 21-08-10-C
Division / Contact / Phone: Benefits and Services Management/ Cassandra Keller/ 5181

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The purpose of these revisions is to modify the requirements for our Home and Community Based Services (HCBS) transportation providers. Effective July 1, 2021, House Bill 21-1206 transferred the responsibility of safety and oversight for Non-Medical Transportation (NMT) and Non-Emergent Medical Transportation (NEMT) from the Public Utilities Commission (PUC) to the Department, with the exception of taxi providers. These regulations remove the requirement that providers obtain a Medicaid Client Transport (MCT) permit through the PUC and outline the new provider agency, vehicle and driver requirements developed with the assistance of stakeholders.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021); Sections 25.5-6 and Sections 25.5-10 C.R.S. and 25.5.-1-802 C.R.S.

Initial Review **10/08/21** Final Adoption **11/12/21**
Proposed Effective Date **01/10/22** Emergency Adoption

DOCUMENT #09

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Non-Medical Transportation, Sections 8.494 and 8.611
Rule Number: MSB 21-08-10-C
Division / Contact / Phone:Benefits and Services Management/ Cassandra Keller/ 5181

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The revisions to these regulations will positively impact both members and providers. Members impacted include those served under the Elderly Blind and Disabled (EBD), Community Mental Health Supports (CMHS), Spinal Cord Injury (SCI), and Brain Injury (BI), Supported Living Services (SLS), and Developmental Disabilities (DD) waivers. Previously, when oversight was through the Public Utilities Commission (PUC), providers had to comply with very onerous regulations and purchase vehicle stamps for each vehicle used. This was very costly for providers who already operate on thin margins. With the proposed regulations, the provider requirements are far more reasonable while maintaining appropriate oversight for member safety; they are not so arduous that providers feel forced to no longer provide services. By maintaining a robust provider network, members will have the ability to access critical services and engage with their community.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   These revisions will have a positive impact on members served in all the adult Home and Community Based Services (HCBS) waivers where NMT is a benefit. Members rely on the Non-Medical Transportation (NMT) benefit to attend day program, travel to and from work, and visit their family and friends. Without this critical service and our providers, members access to the community would be cut-off. The new regulations will allow the Department to have the necessary oversight of drivers and vehicles, without creating burdensome requirements that deter providers from providing this service.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The proposed rule will not have a budgetary impact on the Department. Funds appropriated through House Bill 21-1206 will be used to ensure provider compliance with these regulations.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   There would be noted costs by not revising these regulations. The Department is legislatively mandated to implement an oversight process for NMT providers. Without revising these regulations and implementing these oversight requirements, the Department would be out of compliance with the legislation. Moreover, it would pose an issue with the Centers for Medicare and Medicaid Services (CMS). The Department is required to have oversight of providers; if the Department fails to do so, we could be at risk for federal financial participation (FFP).

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or intrusive methods available. Revising these regulations to include the new requirements is the best course of action.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   No other alternative methods were considered. In order to ensure compliance with the provider requirements, they must be outlined in regulation to be enforceable.

8.494 NON-MEDICAL TRANSPORTATION

8.494.1 DEFINITIONS

Non-Medical Transportation (NMT) services means transportation which enables eligible participants to gain physical access to non-medical community services and supports, as required by the care plan to prevent institutionalization.

Non-Medical Transportation Provider (provider) means a provider agency that has met all standards and requirements as specified in Section 8.494.40 of this regulation.

8.494.20 INCLUSIONS

.21 Non-Medical Transportation services shall include, but not be limited to, transportation between the participant's home and non-medical services or supports such as Adult Day Centers, shopping, activities that encourage community integration, therapeutic swimming, counseling sessions not covered by State Plan, and other services as required by the care plan to prevent institutionalization.

8.494.30 EXCLUSIONS

.31 Non-Medical Transportation services shall not be used to substitute for medical transportation, as defined in Section 8.014.1.

.32 Non-Medical Transportation services shall only be used after the case manager has determined that free transportation is not available to the participant.

8.494.40 PROVIDER STANDARDS FOR NON-MEDICAL TRANSPORTATION SERVICES

.41 Providers shall conform to all general standards and procedures set forth within Department regulations Sections 8.494 and 8.487.

.42 Providers must maintain liability insurance with the following automobile liability minimum limits:

A. Bodily injury (BI) $300/$600K per person/per accident; and

B. Property damage $50,000.

C. Drivers that utilize their personal vehicle on behalf of a provider agency to provide NMT must maintain the following minimum automobile insurance limits, in addition to the insurance maintained by the provider agency:

1. Bodily injury (BI) $25/$50K per person/per accident; and

2. Property damage $15,000.

.43 Providers shall ensure that each driver rendering NMT meets the following requirements:

A. Drivers must be 18 years of age or older to render services; B. Have at least one year of driving experience; C. Possess a valid Colorado driver’s license;

D. Provide a copy of their current Colorado motor driving vehicle record, with the previous seven years of driving history; and

E. Complete a Colorado or National-based criminal history record check.

.44 Drivers shall be disqualified from serving as drivers for any program participants for any of the following:

A. A conviction of substance abuse occurring within the seven (7) years preceding the date the criminal history record check is completed;

B. A conviction in the State of Colorado, at any time, of any Class 1 or 2 felony under Title 18, C.R.S.;

C. A conviction in the State of Colorado, within the seven (7) years preceding the date the criminal history record check is completed, of a crime of violence, as defined in C.R.S. § 18-1.3-406(2);

D. A conviction in the State of Colorado, within the four (4) years preceding the date the criminal history record check is completed, of any Class 4 felony under Articles 2, 3, 3.5, 4, 5, 6, 6.5, 8, 9, 12, or 15 of Title 18, C.R.S.;

E. A conviction of an offense in any other state that is comparable to any offense listed in subparagraphs (f)(II)(A) through (D) within the same time periods as listed in subparagraphs (f)(II)(A) through (D) of Rules Regulating Transportation by Motor Vehicle, 4 C.C.R. 723-6; § 6114;

F. A conviction in the State of Colorado, at any time, of a felony or misdemeanor unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or of a comparable offense in any other state or in the United States at any time;

G. A conviction in Colorado within the two (2) years preceding the date the criminal history record check is completed of driving under the influence, as defined in § 42-4-1301(1)(f), C.R.S.; driving with excessive alcoholic content, as described in §42-4-1301(1)(g), C.R.S;

H. A conviction within the two (2) years preceding the date the criminal history record check is completed of an offense comparable to those included in subparagraph (f)(III)(B), 4 C.C.R. 723-6; § 6114 in any other state or in the United States; and

For purposes of 4 C.C.R. 723-6; § 6114(f)(IV), a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.

.45 Vehicles used during the provision of NMT must be safe and in good working order. To ensure the safety and proper functioning of the vehicles, vehicles must pass a vehicle safety inspection prior to it being used to render services.

A. Safety inspections shall include the inspection of items as described in Rules Regulating Transportation by Motor Vehicle, 4 C.C.R. 723-6; § 6104.

B. Vehicles must be inspected on a schedule commensurate with their age:

1. Vehicles manufactured within the last five (5) years: no inspection.

2. Vehicles manufactured within the last six (6) to ten (10) years: inspected every 24 months.

3. Vehicles manufactured eleven (11) years or longer: inspected annually.

4. Vehicles for wheelchair transportation: inspected annually, regardless of the manufacture date of vehicle.

C. The vehicle inspector must be trained to conduct the inspection and be employed by an automotive repair company authorized to do business in Colorado.

.46 Transportation providers who maintain a certificate or permit through the Public Utilities Commission (PUC) are not required to meet the above requirements. PUC certificate and permit holders shall submit a copy of the certification to the Department for verification of provider credentials.

8.494.50 LIMITATIONS AND REIMBURSEMENT

.51 Reimbursement for non-medical transportation shall be the lower of billed charges or the prior authorized unit cost at a rate not to exceed the cost of providing medical transportation services.

.52 A provider's submitted charges shall not exceed those normally charged to the general public, other public or private organizations, or non-subsidized rates negotiated with other governmental entities.

.53 Provider charges shall not accrue when the recipient is not physically present in the vehicle.

.54 Providers shall not bill for services before they are an approved Medicaid provider and may bill only for those NMT services performed by a qualified driver utilizing a qualified vehicle.

.55 Excluding transportation to HCBS Adult Day facilities, a participant may not receive more than the equivalent of two (2) round trip services per week, or 104 round trip services per annual certification period utilizing NMT, unless otherwise authorized by the Department.

.56 A bus pass or other public conveyance may be used only when it is more cost effective than, or comparable to, the applicable service type and duration. Costs cannot exceed the total Wheelchair Van, Mileage Band 1 allowable per service plan. The most current HCBS Rate Schedule can be found on the Department website.

8.611 TRANSPORTATION

A. Definitions

1. Non-Medical Transportation (NMT) services means transportation which enables eligible participants to gain physical access to non-medical community services and supports, as required by the care plan to prevent institutionalization.

2. Non-Medical Transportation Provider (provider) means a provider agency that has met all standards and requirements as specified in Section 8.611.

3. Transportation acquisition services refers to the purchase or provision of transportation for participants receiving day program services under comprehensive services which enables them to gain access to programs and other community services and resources required by their Individualized Plan/Plan of Care. Funding for transportation activities incidental to the Residential Program are included in the Residential rate.

B. Exclusions

1. Non-Medical Transportation services shall not be used to substitute for medical transportation, as defined in Section 8.014.

2. Non-Medical Transportation services shall only be used after the case manager has determined that free or no-cost transportation is not available to the participant. Prior to the use of funds for transportation acquisition services, the Community Centered Board, case management agency or program approved service agency shall investigate the feasibility of the use of public transportation options. If public transportation options are found to be inadequate or inappropriate, this shall be documented.

C. Provider Standards for Non-Medical Transportation Services

1. Providers shall conform to all general standards and procedures set forth in Department regulations at Section 8.611.

2. Providers must maintain liability insurance with the following automobile liability limits:

   a. Bodily injury (BI) $300/$600K per person/per accident; and

   b. Property damage $50,000.

   c. Drivers that utilize their personal vehicle on behalf of a provider agency to provide NMT must maintain insurance that meets the following minimum automobile insurance requirements in addition to the insurance maintained by the provider agency :

      i. Bodily injury (BI) $25/$50K per person/per accident; and

      ii. Property damage $15,000.

3. Providers shall ensure that each driver rendering NMT meets the following requirements:

   a. Drivers must be 18 years of age or older to render services;

   b. Have at least one year of driving experience;

   c. Possess a valid Colorado driver’s license;

   d. Provide a copy of their current Colorado motor driving vehicle record, with the previous seven years of driving history; and

   e. Complete a Colorado or National-based criminal history record check.

4. Drivers shall be disqualified from driving for any of the following:

   a. A conviction of substance abuse occurring within the seven (7) years preceding the date the criminal history record check is completed;

   b. A conviction in the State of Colorado, at any time, of any Class 1 or 2 felony under Title 18, C.R.S.;

   c. A conviction in the State of Colorado, within the seven (7) years preceding the date the criminal history record check is completed, of a crime of violence, as defined in C.R.S. § 18-1.3-406(2);

d. A conviction in the State of Colorado, within the four (4) years preceding the date the criminal history record check is completed, of any Class 4 felony under Articles 2, 3, 3.5, 4, 5, 6, 6.5, 8, 9, 12, or 15 of Title 18, C.R.S.;

e. A conviction of an offense in any other state that is comparable to any offense listed in subparagraphs (f)(II)(A) through (D), when conviction for that offense occurs within the same time periods as listed in subparagraphs (f)(II)(A) through (D) of 4 C.C.R. 723-6, § 6114;

f. A conviction in the State of Colorado, at any time, of a felony or misdemeanor unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or of a comparable offense in any other state or in the United States at any time;

g. A conviction in Colorado within the two (2) years preceding the date the criminal history record check is completed of driving under the influence, as defined in § 42-4-1301(1)(f), C.R.S.; driving with excessive alcoholic content, as described in §42-4-1301(1)(g), C.R.S;

h. A conviction within the two (2) years preceding the date the criminal history record check is completed of an offense comparable to those included in subparagraph (f)(III)(B) in any other state or in the United States; and

For purposes of 4 C.C.R. 723-6 § 6114(f)(IV), a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.

5. Vehicles used during the provision of NMT must be safe and in good working order. To ensure the safety and proper functioning of the vehicles, vehicles must pass a vehicle safety inspection prior to it being used to render services.

   a. Safety inspections shall include the inspection of items as outlined in Rules Regulating Transportation by Motor Vehicle, 4 C.C.R. 723-6; §6104.

   b. Vehicles must be inspected on the following schedule:

      i. Vehicles manufactured within the last five (5 years:): no inspection.

      ii. Vehicles manufactured within the last six (6) to ten (10) years: every 24 months.

      iii. Vehicles manufactured eleven (11) years or later: annually.

      iv. Vehicles for wheelchair transportation: annually, regardless of the manufacture date of vehicle.

   c. The vehicle inspector must be trained to conduct the inspection and be employed by an automotive repair company authorized to do business in Colorado.

6. Transportation providers who maintain a certificate or permit through the Public Utilities Commission (PUC) are not required to meet the above requirements. PUC certificate and permit holders shall submit a copy of the certification to the Department for verification of provider credentials.

DO NOT PUBLISH THIS PAGE

Title of Rule: MSB 21-08-05-B, A Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Service Plan Authorization Limits (SPAL) and the Exception Review Process, to revise Section 8.500.102
Rule Number: MSB 21-08-05-B
Division / Contact / Phone: BSMD/ Lindsay Westlund/ 5453

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-08-05-B, A Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Service Plan Authorization Limits (SPAL) and the Exception Review Process, to revise Section 8.500.102

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected): Sections(s) 8.500.102

   Sections(s) MSB 21-08-05-B, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the text at 8.500.102 with the proposed text beginning at 8.500.102.E through the end of 8.500.102.5.a. This rule is effective January 10, 2022.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: MSB 21-08-05-B, A Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Service Plan Authorization Limits (SPAL) and the Exception Review Process, to revise Section 8.500.102
Rule Number: MSB 21-08-05-B
Division / Contact / Phone: BSMD/ Lindsay Westlund/ 5453

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The Office of Community Living (OCL), Benefits and Services Management Division (BSMD) is requesting to revise regulations to include the addition of The SLS Waiver Exception Review Process as requested through R – 08 and approved through the Long Bill, SB 21 – 205. The addition of this review process is a policy change and this rule revision will allow specific members on the HCBS – SLS waiver to access additional supports and services beyond the current SPAL and/ or service unit limitation caps. This review process is anticipated to allow for members to continue to live in the community of their choice while postponing or eliminating the need for an emergency enrollment onto the HCBS – DD waiver.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   § 42 CFR 441.300, 440.180

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   Sections 25.5-6-404, C.R.S.

Initial Review **10/08/21** Final Adoption **11/12/21**
Proposed Effective Date **01/10/22** Emergency Adoption

DOCUMENT #11

DO NOT PUBLISH THIS PAGE

Title of Rule: MSB 21-08-05-B, A Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Service Plan Authorization Limits (SPAL) and the Exception Review Process, to revise Section 8.500.102
Rule Number: MSB 21-08-05-B
Division / Contact / Phone: BSMD/ Lindsay Westlund/ 5453

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The persons affected by this rule will include those members who are enrolled on the HCBS – SLS waiver who demonstrate a need to exceed current SPAL and/or service limitations. This proposed rule will benefit these persons by allowing access to additional services and supports to maintain living in the community of their choice.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The qualitative impact of the proposed rule is positively affecting the quality of life of our members by allowing additional control over and access to services and supports that better meet their needs without having to seek enrollment in a program that possibly would be more restrictive, when 24-hour supports are not required.

   The proposed rule has the potential to achieve cost savings for the Department when members remain on the less costly program, SLS, as compared to the more expensive DD waiver program.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The costs associated with implementation of this rule revision have been factored into the appropriations given to the Department with the approval to implement this Exceptions Review Process. The costs associated with this rule make up less than 0.5% of the Department’s long bill appropriations.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

There are no benefits of inaction as this approval to implement the Exception Review Process is included in the Department's budget Request (R-08) and is approved by the Long Bill, SB 21 – 205.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no alternative methods for achieving the purpose of the proposed rule as alternative methods were explored during the budget request development process.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The alternative methods for achieving access to services and supports that will meet the needs of an individual with an Intellectual or Developmental Disability is to allow all waiver members access to the Developmental Disability (DD) waiver, when their needs are not fully met through other waivers. The ability to enroll members onto the DD waiver is restricted due to the cost and waiting list associated with this waiver, and therefor rejected as an alternative method.

8.500 HOME AND COMMUNITY-BASED SERVICES FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABLITIES(HCBS-DD) WAIVER

8.500.102 SERVICE PLAN AUTHORIZATION LIMITS (SPAL)

8.500.102.A The service plan authorization limit (SPAL) sets an upper payment limit of total funds available to purchase services to meet a Client's ongoing service needs within one (1) service plan year.

8.500.102.B The following services are not subject to the service plan authorization limit: non-medical transportation, dental services, vision services, assistive technology, home accessibility adaptations, vehicle modifications, health maintenance activities available under the Consumer Directed Attendant Support Services (CDASS), home delivered meals, life skills training, peer mentorship, and transition setup.

8.500.102.C The total of all HCBS-SLS services in one service plan shall not exceed the overall authorization limitation as set forth in the federally approved HCBS-SLS waiver.

8.500.102.D Each SPAL is assigned a specific dollar amount determined through an analysis of historical utilization of authorized waiver services, total reimbursement for services, and the spending authority for the HCBS-SLS waiver. Adjustments to the SPAL amount may be determined by the Department and Operating Agency as necessary to manage waiver costs.

8.500.102.E Each SPAL is associated with one of the six support levels determined by an algorithm which analyzes the level of support needed by a Client as determined by the SIS assessment, and additional factors, including whether a Client meets the definition of Public Safety Risk-Convicted, Public Safety Risk-Non Convicted, and Extreme Safety Risk to Self..

8.500.102.F The SPAL determination shall be implemented in a uniform manner statewide and the SPAL amount is not subject to appeal.

1. If a Client's HCBS waiver eligibility and/or services are adversely affected at any time, the Client will be sent their appeal rights as required at 8.612.4.E. and 8.057.2.A (10 C.C.R. 2505-10).

8.500.102.G The Department and/or Utilization Review Contractor (URC) shall implement an Exception Review to allow a Member's SPAL and/ or HCBS unit limitations to be exceeded in certain situations.

1. To be eligible for the Exception Review Process, the following shall be demonstrated:

a. The Client must be at risk for seeking an emergency Developmental Disability (DD) waiver enrollment because one or more of the following criteria such as listed below are not currently being met through other Long-Term Services and Supports (LTSS) and or State Plan services:

i. Medically fragile with skilled care needs;

ii. Behavioral and/or Mental Health needs;

iii. Criminal convictions and/or law enforcement involvement;

iv. Homelessness;

v. Mistreatment, Abuse, Neglect, Exploitation (MANE) reports with potential need to remove from home;

vi. Extreme danger to self/others;

vii. Caregiver capacity or;

viii. 1:1 supervision needed.

b. The Client must demonstrate that less than 10% of current SPAL remains; or

c. The Client must demonstrate that the current rate of utilization of Home and Community-Based Services (HCBS) will exhaust the number of approved units prior to the Client's regularly scheduled monitoring.

2. When a client is eligible for the Exception Review Process, the Case Manager (CM) shall send the following documentation to the URC for review:

a. "Request for Exception Review Process" form;

b. Service Plan;

c. PAR; and,

d. Any documentation from current providers that demonstrate need to exceed service limitation caps for additional planned services.

3. The URC shall review and approve or deny the Exception Review Process requests made.

a. Upon completion of the review, the URC shall notify the CM of the outcome.

i. The outcome letter shall include the reason for approval or denial, and/or any information on partial approvals or negotiated outcomes.

b. The URC shall compete the review in accordance with the timelines as identified in their contract.

4. The Exception Review Process shall not be used in place of a Support Level Review or request for a Support Intensity Scale (SIS) reassessment. Provider rates shall not be changed based on the outcome of the Exception Review Process.

5. The Exception Review Process shall be implemented in a uniform manner applied to Members statewide, but outcomes shall be based on individual needs and circumstances. The Exception Review Process outcome is not an adverse action subject to appeal.

a. If a Client's HCBS waiver eligibility and/or services are adversely affected at any time, the Client will be sent their appeal rights as required at 8.612.4.E. and 8.057.2.A (10 C.C.R. 2505-10).

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Office of the Attorney General

Tracking number: 2021-00616

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

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 11/12/2021

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

The above-referenced rules were submitted to this office on 11/17/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:55:21

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-1

Rule title

12 CCR 2509-1 OVERVIEW OF CHILD WELFARE SERVICES 1 - eff 12/30/2021

Effective date

12/30/2021

7.000.1 PROGRAM AREAS (PA) AND TARGET GROUPS

Services are available from county departments in the following Program Areas:

A. Program for Prevention and Intervention Services to Children, Youth and Families at Risk of Involvement with Child Welfare (PA3)

The Program Area 3 (PA3) program provides prevention and intervention services for children, youth, and families at risk of involvement with child welfare. Services may be provided to assist families to safely care for their children.

B. Program for Youth in Conflict (PA 4)

Program Area 4 services are provided to reduce or eliminate conflicts between a child/youth and their family members, which may include the community, when those conflicts affect the child/youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the child/youth, family, and the community, re-establishing family stability, and/or assisting the youth to emancipate successfully.

Target groups for Program Area 4 are children/youth who are youth in conflict, as defined in 7.000.2.

C. Program for Children in Need of Protection (PA 5)

Program Area 5 services are provided to protect children, whose physical, mental or emotional well-being is threatened by the actions or omissions of parents, legal guardians or custodians, or persons responsible for providing out-of-home care, including a foster parents, an employee of a residential child care facility, and a provider of family child care or center-based child care.

Target groups for Program Area 5 are children whose physical, mental, or emotional well-being is threatened or harmed due to the abuse or neglect and children who are subjected to circumstances in which there is a reasonable likelihood that they are at risk of harm due to abuse or neglect by their parents or caretakers which shall include children who are alleged to be responsible for the abuse or neglect and are under the age of ten (10).

D. Program for Children and Families in Need of Specialized Services (PA 6)

Program Area 6 services are to provide statutorily authorized services to specified children/YOUTH and families in which the reason for service is not protective services or youth in conflict. These services are limited to children/youth and families in need of adoption assistance, relative guardianship assistance, or Medicaid only services, ~~or~~ to children/youth for whom the goal is no longer reunification, or youth who opt into services provided by the Foster Youth in Transition Program as established in § 19-7-301, C.R.S. The purpose of services in Program Area 6 is to fulfill statutory requirements in the interests of permanency planning for children/youth. Children/youth must meet specific program requirements to receive services under the target groups.

Target Group information is located at Section 7.203 (12 CCR 2509-3).

E. Program for Resource Development (PA 7)

The purpose of Program Area 7 is to develop and coordinate the external resources necessary to fulfill the objectives of the social services programs.

Target Groups served by this program area are the individuals who will be serving children and families in such roles as volunteers, foster or kinship parents for children, adults, personal caregivers, homemakers or child care parents, or adoptive parents.

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7.000.2 DEFINITIONS [Rev. eff. 1/1/16]

“Housing First” means an approach to quickly and successfully connect individuals and families experiencing homelessness to permanent housing without preconditions and barriers to entry, such as sobriety, treatment or service participation requirements. Supportive services are offered to maximize housing stability and prevent returns to homelessness as opposed to addressing predetermined treatment goals prior to permanent housing entry.

"Voluntary Services Agreement" means a standardized voluntary services agreement approved by the state department and is entered into by a participating youth pursuant to section 19-7-306, C.R.S.

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PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00553

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

on 11/05/2021

12 CCR 2509-1

OVERVIEW OF CHILD WELFARE SERVICES

The above-referenced rules were submitted to this office on 11/08/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 17:25:58

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-2

Rule title

12 CCR 2509-2 REFERRAL AND ASSESSMENT 1 - eff 12/30/2021

Effective date

12/30/2021

7.103 Receipt Of Referral Alleging Intrafamilial Or Third Party Abuse And/Or Neglect And/Or A Youth In Conflict– Information To Be Gathered

A. Upon receipt of a report alleging intrafamilial or third party abuse and/or neglect, and/or a youth in conflict, the county departments or the Hotline County Connection Center shall gather and document the following information, when available.

1. Reporting party's:

a. Name;

b. Address;

c. Telephone number;

d. Reporter type; and

e Relationship to the alleged victim child(ren)/youth and/or a youth in conflict.

2. Alleged victim child(ren)/youth's and/or a youth in conflict:

a. Name;

b. Address;

c. Current specific location;

d. School or child care (if applicable);

e. Birth date(s) or estimated age(s);

f. Information as to whether or not the child(ren)/youth have American Indian or native Alaskan heritage, and if so, the tribal affiliation; and

g. Any developmental delays, physical disabilities, competency or cultural considerations.

3. Family and household members:

a. Names;

b. Birth date(s) or estimated age(s);

c. Relationship to each other;

d. Relationship to the alleged victim child(ren)/youth and/or a youth in conflict; and

e. Any developmental delays, physical disabilities, competency or cultural considerations.

4. Person(s) alleged to be responsible for the abuse and/or neglect:

    a. Name;

    b. Birth date(s) or estimated age(s);

    c. Present location;

    d. Current or last known address;

    e. Relationship to the alleged victim child(ren)/youth; and

    f. Any developmental delays, physical disabilities, competency or cultural considerations.

5. Narrative describing the presenting problems and specific allegations of the abuse and/or neglect, including but not limited to:

    a. When it occurred;

    b. Location;

    c. Witness(es) of the incident; and

    d. Description of any injury that was sustained.

6. The date, time, and location the alleged victim child(ren)/youth and/or a youth in conflict were last seen by the reporting party.

7. The nature of any other environmental hazards in the home which may impact child(ren)/youth or worker safety.

8. The name and contact information of any individuals who may have information about the referral, and/or the identity and contact information of collateral agencies and individuals involved with the family.

9. Date and time referral received.

10. Family strengths and supports, and/or other protective factors or actions taken.

B. If at any point during the referral process, a county department becomes aware of an allegation that a child(ren)/youth is, or may be, a victim of sex trafficking, the county department shall:

1. Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and,

2. Document the details of the report to law enforcement in the comprehensive child welfare information system.

C. If at any point during the referral process when the reporting party is a runaway and homeless youth provider, and a county department becomes aware that a youth is experiencing homelessness, has run away, or is unaccompanied and is seeking shelter, then the county department shall gather and document the following information:

1. Does the provider believe there is a reasonable plan in place to keep the child or youth free from harm, and, if not, what the provider believes would prevent harm,

2. Has the shelter provider notified parent(s)/guardian(s) and, if so, what is their response; and

3. When did intake of the child or youth occur and how many days are left in the 21-day shelter period allowable pursuant to section 26-5.7-107, C.R.S.

****

7.103.3 RECEIPT OF REFERRAL, JURISDICTION, AND INITIAL REVIEW WHEN A YOUTH IS SEEKING RE-ENTRY SERVICES THROUGH THE FOSTER YOUTH IN TRANSITION PROGRAM

A. Upon receipt of a report regarding a youth in need of services to re-enter through the Foster Youth in Transition Program pursuant to the Colorado Revised Statutes, pursuant to section 19-7-301, C.R.S., et seq, the county or Hotline County Connection Center shall gather the following information, when available:

1. The reporting party's:

a. Name;

b. Address;

c. Telephone number;

d. Reporter type; and

e. Relationship to the youth seeking services.

2. The following information regarding the youth seeking services:

a. Legal name;

b. Address or county where the youth self attests to reside;

c. Current specific location and contact information; and

d. Birth date(s) or estimated age(s).

B. The county in which a youth self attests to reside shall have jurisdiction for a re-entry referral to the Foster Youth in Transition Program.

C. Upon receipt of a request for re-entry services through the Foster Youth in Transition Program a county department shall initiate a review of eligibility, notifications, provision of services, and timelines as described in 7.203.40, ET SEQ. (12 CCR 2509-3).

7.103.4 Initial Review [Eff. 3/1/18]

When available, the county department shall gather the information in Section 7.103.1, A and/or B, and conduct an initial review. The initial review shall decide if no further action is required, if the referral shall be assigned for assessment, the appropriateness of an immediate response to an assessment, the need

for red team review, and/or the appropriateness of a referral to prevention services. It shall include, but not be limited to, the following actions:

A. Review the child(ren)/youth's vulnerability as defined in section 7.000.2.

B. Review the comprehensive child welfare information system and any available county department files within twenty-four (24) hours for:

1. Prior referrals and/or involvement with the alleged victim child(ren), family, and person(s) alleged to be responsible for the abuse and/or neglect;

2. Actions taken; and

3. Services provided to inform whether there is known or suspected abuse and/or neglect or serious threats of harm to a child.

C. As available and appropriate, obtain information from collateral sources such as schools, medical personnel, law enforcement agencies, or other care providers.

D. All referrals shall be reviewed and approved by a supervisor, and documented in the comprehensive child welfare information system. The review shall include, at a minimum, two certified child welfare staff. If there is disagreement in the determination, the referral shall be reviewed through the red team process.

E. Prevention services shall be considered, if available, for screened out referrals.

7.103.45 Referrals Requiring No Further Action

County departments may determine that a referral does not require further action and screen it out for the following reasons:

A. The current allegations have previously been assessed;

B. The alleged victim child(ren) or youth in conflict are not located or reside in the State of Colorado. In this circumstance, the county department shall inform the other state or county department of the referral;

C. Referral does not meet criteria of abuse and/or neglect as defined in statutes and regulations;

D. Referral lacks sufficient information to locate the alleged victim child(ren) or youth in conflict; or

E. Referral is duplicative of a previous referral. In this circumstance, the county department shall associate the duplicate referral with the previous referral in the comprehensive child welfare information system.

A referral cannot be considered duplicate if the following circumstances are present:

1. Different incident date;

2. Different alleged victim;

3. Different alleged person responsible for abuse and/or neglect;

4. Different household; and/or

5. Additional information poses a new or renewed threat of safety to the child(ren)/youth.

F. The person alleged to be responsible for the abuse and/or neglect is a third (3rd) party and ten (10) years of age or older. In this circumstance, the county department shall send the referral to the appropriate law enforcement agency.

G. There is no current allegation of child abuse and/or neglect;

H. More appropriate services for the child/youth who is alleged to be a youth in conflict are currently being provided by another agency;

I. Referral does not meet the definition of youth in conflict as defined in section CCR 2509-1, 7.000.2; and

J. The decision to screen out a referral shall be made by a minimum of two (2) certified child welfare staff from the same county or in conjunction with another county. When there is disagreement to screen out, the referral shall be reviewed through the red team process.

7.103.6 Criteria For Assigning A Referral For Assessment

A. County departments shall screen in and assign a referral for assessment if it:

1. Contains specific allegations of known or suspected abuse and/or neglect as defined in Section 7.000.2;

2. Provides sufficient information to locate the alleged victim; and

3. Identifies a victim under the age of eighteen (18).

B. Any time a case is opened, it shall come through the referral or assessment process in the comprehensive child welfare information system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, out of state Medicaid, Interstate Compact on Adoption and Medicaid Assistance (ICAMA), or Division of Youth Services (DYS) Medicaid only.

C. The county department shall review and respond, either with a face-to-face intervention or by telephone, when notified by the court-appointed detention screener or a law enforcement officer of a child or/youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.

7.103.70 Response Time for Referrals Assigned for Assessment

A. County departments shall assign the appropriate response time for assessments based upon the date the referral is received using the following criteria:

1. An immediate response is required when a referral indicates that:

a. There may be present danger of moderate to severe harm; or,

b. The child's vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight increase the need for immediate response.

c. An immediate response shall require a response within eight (8) hours from the receipt of the referral. If the victim child(ren)/youth cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made every twenty-four (24) hours from the time of the initial attempted contact.

2. A three (3) calendar day response is required when a referral indicates that:

a. There may be impending danger of moderate to severe harm; or,

b. The alleged victim child(ren)'s vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight, increase the need for intervention in the near future.

c. The three (3) calendar day count starts on the day following the receipt of a referral, and expires at the end of the third calendar day at 11:59 PM following receipt of the referral.

d. If the victim child(ren)/youth cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made within every subsequent three calendar days.

3. A five (5) working day response is required when:

a. A referral indicates an absence of safety concerns.

b. The five (5) day count starts on the first business day following the receipt of a referral and expires at the end of the fifth business day at 11:59 PM following the receipt of the referral.

c. If the victim child(ren)/youth or child/youth in conflict cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made within every subsequent five business days.

B. The decision of how quickly to initiate an assessment shall be based on specific reported information that is credible and that indicates whether a child may be unsafe or at risk of harm.

7.103.71 Red Teams

A. County departments shall implement a process utilizing the Red Team framework to review referrals with:

1. Child welfare history that includes three (3) or more assessments within the past year regarding the household members in the current referral;

2. Narrative that identifies the alleged victim child(ren)/youth as a child/youth with a vulnerability as defined in section 7.000.2;

3. Two (2) or more screened out non-duplicative referrals with no assessment in the prior twelve (12) months; and/or

4. Criminal history that includes felony and/or misdemeanor convictions related to child abuse and/or neglect, including crimes of violence, domestic violence,

and/or unlawful sexual behavior regarding the household members in the current referral.

B. County departments practicing Differential Response shall utilize the RED Team process for track assignment decisions when considering the Family Assessment Response (FAR) track on assessments requiring three (3) calendar or five (5) business day response times.

C. The Red Team process is not required for review of the following exceptions:

1. Referrals necessitating an immediate response;

2. Referrals necessitating a response prior to the next business day;

3. Referrals alleging institutional abuse and/or neglect; or

4. Referrals alleging youth in conflict.

D. County departments may choose to utilize the RED team process for the above exceptions.

E. The RED team process shall be documented in the framework. The documentation shall reflect the discussion and justification for the decisions.

F. All RED team decisions shall be approved by a certified supervisor by the end of the calendar day and documented in the comprehensive child welfare information system by the end of the next business day.

7.103.~~7~~8 DIFFERENTIAL RESPONSE [Eff. 1/1/15]

A. County departments interested in participating in Differential Response shall conduct the following:

1. Submit a letter of interest to the State Department;

2. Form a County Differential Response Implementation Committee;

3. Attend Differential Response Training and Coaching Sessions as determined by the State Department;

4. Complete the Readiness Self-Assessment Process;

5. Demonstrate the ability to meet the State Department's performance expectations on safety and well-being measures; and,

6. Demonstrate county staff understands how to correctly enter information into the comprehensive child welfare information system.

Upon successful completion of the above efforts, a county may be selected to participate in Differential Response by the Executive Director of the State Department.

B. County departments that implement Differential Response shall utilize the RED Team framework to review referrals, determine response times, and determine the appropriate track assignment in accordance with the approved RED Team process.

1. High Risk Assessment (HRA) is mandatory for a child fatality, near fatality, or egregious incident determined to be the result of abuse and/or neglect, institutional abuse, and intrafamilial sexual abuse. RED Teams may use discretion to assign a High Risk Assessment (HRA) based on the following factors: present danger, multiple previous referrals, and/or presenting case characteristics such as type of alleged maltreatment paired with high vulnerability of the alleged victim.

2. The Family Assessment Response (FAR) is for referrals with low to moderate risk. RED teams may use discretion to assign the Family Assessment Response (FAR) in assessments alleging a child fatality, near fatality, or egregious incident. If it is determined that a child fatality, near fatality or egregious incident is the result of abuse and/or neglect, the track shall be changed to a High Risk Assessment. Institutional abuse or intrafamilial sexual abuse shall not be assigned the Family Assessment Response (FAR).

3. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the comprehensive child welfare information system by the end of the next business day.

7.103.~~8~~9 DUTIES TO REPORTING PARTIES – INFORMATION TO BE PROVIDED [Eff. 1/1/15]

A. Within SIXTY (60) calendar days of receiving a referral alleging abuse and/or neglect from a mandatory reporter listed in Section 19-1-307(2)(e.5)(I), C.R.S., the county department shall notify such individual when:

1. The county department is aware the individual is and continues to be officially and professionally involved in the ongoing care of the child who was the subject of the referral; and,

2. The mandatory reporter has a need to know in order to fulfill his or her professional and official role in maintaining the child's safety; and,

3. Unless the county department has actual knowledge that the mandatory reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report, a county department shall request written affirmation from a mandatory reporter stating that the reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report and describing the nature of the involvement.

B. The county department shall notify the mandatory reporter of the following information:

1. The name of the child and the date of the referral;

2. Whether the referral was accepted for assessment;

3. Whether the referral was closed without services;

4. Whether the assessment resulted in services related to the safety of the child;

5. The name of and contact information for the county caseworker responsible for the assessment; and,

6. Notice that the reporting mandatory reporter may request updated information within ninety (90) calendar days after the county department received the referral and information concerning the procedure for obtaining updated information.

7.103.10 DOCUMENTATION REQUIREMENTS – WHEN SUPERVISOR APPROVAL IS REQUIRED [Eff. 1/1/15]

A. All referrals including the information gathered pursuant to Sections 7.103.1 and 7.103.2 shall be entered into the comprehensive child welfare information system by the end of the next business day following receipt of the referral.

B. The initial review shall be documented in the comprehensive child welfare information system by the end of the next business day following receipt of the referral. The supervisor is to ensure that the review and the documentation have occurred.

C. The decision to screen out a referral for further action shall be documented in the comprehensive child welfare information system by the end of the following business day that the decision is made. This shall include an explanation of the reasons why no further action was needed. The determination to screen out a referral for further action must be approved by a supervisor.

D. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the comprehensive child welfare information system by the end of the next business day.

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Office of the Attorney General

Tracking number: 2021-00554

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

on 11/05/2021

12 CCR 2509-2

REFERRAL AND ASSESSMENT

The above-referenced rules were submitted to this office on 11/08/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 17:26:37

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-3

Rule title

12 CCR 2509-3 PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS 1 - eff 12/30/2021

Effective date

12/30/2021

(12 CCR 2509-3)

7.203.4 FOSTER YOUTH IN TRANSITION PROGRAM

The Foster Youth in Transition Program provides developmentally appropriate, voluntary services to eligible youth and shall be available to all eligible youth. Services shall be offered using a housing first strategy to provide housing solutions to participating youth who are experiencing, or are at imminent risk of, homelessness.

7.203.41 Eligibility

Eligible youth include youth who:

A. Are at least eighteen but less than twenty-one years of age or such greater age of foster care eligibility as required by federal law;

B. Have had prior foster care or kinship care involvement in one of the following ways:

1. The youth was in foster care, as defined in 19-1-103 (51.3), C.R.S., on or after the youth's sixteenth birthday; or

2. The youth was in non-certified kinship care, as defined in 19-1-103 (78.7), C.R.S., on or after the youth's sixteenth birthday and was adjudicated dependent and neglected pursuant to Article 3 of Title 19, C.R.S; and

C. Are engaged in, or intends to engage in, at least one of the following, unless an exception applies or are waived by federal law:

1. Completing secondary education or an educational program leading to an equivalent credential;

2. Attending an institution that provides post secondary or vocational education;

3. Working part- or full-time for at least eighty hours per month; or

4. Participating in a program or activity designed to promote employment or remove barriers to employment.

5. The requirement described in 7.203.41(C) does not apply to a youth who is incapable of engaging in any of the activities as a result of a medical condition that is supported by regularly updated documentation in the 90 day supervisory review; and

D. Seek to enter into a voluntary services agreement, or the youth has entered into and is substantially fulfilling the youth's obligations pursuant to a voluntary services agreement with the appropriate county department.

7.203.42 Eligibility determinations, appeals, and notifications upon receipt of a referral for services through the Foster Youth in Transition Program the county shall:

A. Determine if the youth is eligible for the Foster Youth in Transition Program within three (3) business days;

1. If the youth is eligible:

a. Within three (3) business days of referral, provide the youth:

i. Notice of eligibility;

ii. A description of the program, including the voluntary nature, services available, and ongoing eligibility requirements; and

iii. A copy of the voluntary services agreement.

b. Within three (3) business days of a youth opting into the Foster Youth in Transition Program:

i. Execute a voluntary services agreement in collaboration with the youth and provide them with a copy; and then

ii. Provide written notice to the office of the child's representative that the youth has entered into a voluntary services agreement in the Foster Youth in Transition Program.

c. When a youth enters into a voluntary services agreement, a case shall be opened through program area 6.

d. If an eligible youth does not opt in, the county shall close the referral within 30 days of receipt of the referral.

2. If the county determines the youth is not eligible, the county shall notify the youth within three (3) business days of receiving the referral:

a. That they are not eligible and the reasons for that determination in developmentally appropriate language;

b. Contact information for the office of the child's representative; and

c. A written description of their right to appeal and contact information for the individual or unit assigned to hear appeals at the state department.

3. The state department shall be authorized to hear eligibility appeals and make a final determination of eligibility based on information available in the comprehensive child welfare information system and juvenile court records within three (3) business days of receiving the request for appeal. The state department shall provide the youth and their counsel an opportunity to explain why they believe they are eligible for the program prior to making a final determination. Final determinations of eligibility made by the state department are final agency decisions and subject to judicial review. The state department shall make the appeal policy available to the public.

7.203.43 Foster Youth in Transition Program services and procedures

A. Procedures

1. When a youth enters the Foster Youth in Transition Program the program area is program area 6.

2. The participating youth shall have a new case opened in the child welfare information system as follows:

   a. The new case shall be opened effective either:

      i. The day the youth and county execute the voluntary services agreement if a youth is reentering; or

      ii. The day the court terminates any existing custody order, in either a dependency and neglect case or a juvenile delinquency case, if the youth is transitioning from an open program area 4 or 5 child welfare case; and

   b. Prior to opening a new case or creating a new client id, the caseworker or supervisor shall complete a search in the comprehensive child welfare information system for any existing open cases or clients and ensure that only one program area 4 or 5 case is open that includes the youth as participating as a child; and

   c. For youth entering the program directly from an open case under program area 4, 5, or 6, there shall be no resulting interruption in case management services, housing, Medicaid coverage, or in foster care maintenance payments.

3. The county department shall ensure the family services plan contains an updated roadmap to success as described in 7.305.2 (12 CCR 2509-04). The family services plan in Foster Youth in Transition Program cases does not require treatment plan or visitation sections for the youth's parents or caregivers. Updates to the family services plan shall be entered into the comprehensive child welfare information system within sixty (60) days of the youth entering into a voluntary services agreement. The youth shall be provided a copy of the family services plan.

4. When the youth's residence has changed after jurisdiction has been established, county departments shall work cooperatively to:

   a. Ensure services are provided by the appropriate county;

   b. Petitions are filed in the court of the appropriate county;

   c. Taking into consideration, the following, in no particular order or prioritization:

      i. Which county is currently working with the youth;

      ii. The county in which the youth self attests to reside;

      iii. Indications the youth intends to stay in the self attested county;

      iv. Access to services, supports, and/or relationships the youth needs in order to successfully transition to adulthood; and

      v. The youth's preference.

B. Services

Each county department shall offer, at a minimum, the following services and supports to participating youth in the transition program. All services shall be provided by the county in a manner that is consistent with the youth's developmental needs, culture, and supports the youths successful transition to adulthood.

1. Assistance with enrolling in the appropriate category of Medicaid for which the participating youth is eligible;

2. Assistance with securing safe, affordable, and stable housing. If a county department has legal authority for physical placement through a voluntary services agreement pursuant to 19-7-306, C.R.S.

    a. The participating youth's housing is fully or partially funded through foster care maintenance payments, in addition to any other housing assistance the youth is eligible to receive. Any expectations for the youth to contribute to the youth's own expenses must be based upon the youth's ability to pay.

    b. With the participating youth's consent, the participating youth's housing may be in any placement approved by the county department or the court for which the participating youth is otherwise eligible and that is the least restrictive option to meet the participating youth's needs; or

    c. If the participating youth needs placement in a qualified residential treatment program, then such placement must follow all relevant procedures pursuant to section 19-1-115, C.R.S., concerning the placement of a child or youth in a qualified residential treatment program.

    d. If a county department does not have legal authority for physical placement, such as when a youth is nearing emancipation and entering into their next housing arrangement, the participating youth may:

        i. Reside anywhere that the participating youth is otherwise eligible to reside or a licensed host family home, as defined in section 26-5.7-102 (3.5), C.R.S.; and

        ii. Access any financial support for housing that the participating youth is otherwise eligible to receive.

3. Case management services, including the development of a case plan with a roadmap to success for the participating youth, as well as assistance in the following areas, as appropriate, and with the agreement of the participating youth:

    a. Provision of appropriate community resources and public benefits to assist the participating youth in the transition to adulthood as documented by the roadmap to success;

    b. Obtaining employment or other financial support and enhancing financial literacy;

    c. Obtaining a driver's license or other government-issued identification card;

4. Upon request, and if services are available, support the youth with complying with any juvenile or criminal justice system requirements which may include referrals to assist with expunging the participating youth's court records, as appropriate, pursuant to section 19-1-306, C.R.S.;

5. Pursuing educational goals and applying for financial aid, if necessary;

6. Upon request, and if services are available, referral to services for obtaining the necessary state court findings and applying for special immigrant juvenile status pursuant to federal law, as applicable, or applying for other immigration relief for which the participating youth may be qualified;

7. Obtaining copies of health and education records;

8. Maintaining and building relationships with individuals who are important to the participating youth, including searching for individuals with whom the participating youth has lost contact. These services may be offered using family search and engagement as described in 7.304.52 (12 CCR 2509-04); and

9. Accessing information about maternal and paternal relatives, including any siblings.

C. Court procedures when youth transition from a Program Area 4 or 5 case into the Foster Youth in Transition Program

For a youth approaching their 18th birthday who is currently in foster care, or who is in non-certified kinship care and there is an open dependency and neglect case, the county shall partner with the youth to support the youth in making informed decisions about what the youth needs to emancipate successfully and whether to enter the Foster Youth in Transition Program. The county shall partner with the youth in preparing for the transition hearing described below:

1. The county shall request that a transition hearing be held within 35 days of the youth's 18th birthday pursuant to 19-3-705, C.R.S.

2. At least seven (7) days prior to the transition hearing the county shall submit a report to the court that includes:

   a. A description of the county's reasonable efforts toward achieving the youth's permanency goals and a successful transition to adulthood;

   b. An affirmation that the county has provided the youth with all of the records and documents the youth needs to successfully transition to adulthood, including the documents required by 7.305.5, written information concerning the youth's family history, and contact information for siblings if available and appropriate;

   c. an affirmation that the county has informed the youth, in a developmentally appropriate manner, of the benefits and options available to the youth by the Foster Youth in Transition Program as described in 7.203.4 (12 CCR 2509-3) and the voluntary nature of the program;

d. A statement of whether the youth has made a preliminary decision whether to emancipate or to enter into the Foster Youth in Transition Program and either or both of the following:

i. If it is anticipated that the youth will choose to emancipate, the report must include a copy of the youth's emancipation transition plan as described in 7.305.2(F);

ii. If it is anticipated that the youth will choose to enter the Foster Youth in Transition Program, the county shall file a petition pursuant to 19-7-307 at the same time as the report described in this section.

3. Permanency planning requirements are described in 7.304.54 (12 CCR 2509-4).

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7.205 CASE CLOSURE [Eff. 1/1/15]

When there is no court jurisdiction and at least one of the following are met, services shall be terminated and the case shall be closed.

A.

1. Specific program eligibility criteria are not met.

2. Client no longer needs the service.

3. Client has died.

4. Services are completed.

5. The child reaches his/her 21st birthday.

B. The worker shall document the following in the case record:

1. Reason(s) for case closure.

2. A summary of services provided, which includes progress made toward stated goals.

3. A safety assessment at case closure for all program area 4 and 5 cases.

4. An emancipation transition plan for all youth who are eligible described in 7.305.2(F) (12 CCR 2509-04).

C. The county department shall close a case in the comprehensive child welfare information system no later than ninety (90) days after the last direct client contact. The county department shall assure the case is closed in the automated system as prescribed by the State.

D. The county department shall close a case in the comprehensive child welfare information system if there has been no direct client contact with the child and parents for ninety (90) calendar days despite the repeated efforts of the county department to maintain contact.

E. Exceptions to the ninety (90) calendar day limit may be necessary in cases where the county department has custody of the child. In such cases the county department shall

document efforts to terminate county custody or document why such efforts are not in the best interest of the child.

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Tracking number: 2021-00555

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

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on 11/05/2021

12 CCR 2509-3

PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS

The above-referenced rules were submitted to this office on 11/08/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 17:27:21

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

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12 CCR 2509-4

Rule title

12 CCR 2509-4 CHILD WELFARE SERVICES 1 - eff 12/30/2021

Effective date

12/30/2021

7.301.2 FAMILY SERVICES PLAN REQUIREMENTS [Eff. 09/1/07]

The county department shall complete the Family Services Plan document for each child/youth receiving services to assure that the child/youth's needs for safety, permanency, and well-being are met. The Family Services Plan shall incorporate the following principles:

A. A child/youth's safety is paramount;

B. Children/youth belong in families;

C. Families need the support of communities; and,

D. Community partners are key to achieving strong outcomes for children/youth and families.

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7.301.23 Family Service Plan Documentation

The treatment/prevention plan in the Family Services Plan shall document:

A. That services to be provided are directed at the areas of need identified in the assessment. Outcomes to be achieved as a result of the services provided will be described in terms of specific, measurable, agreed upon, realistic, time-limited objectives and action steps to be accomplished by the parents, child/youth, service providers and county staff. For youth in foster youth in transition cases, the roadmap to success fulfills this requirement, as provided in 7.203.4 (12 CCR 2509-3).

B. That placement prevention strategies for the child/youth allow the child/youth to remain safely at home or with kin.

C. That services to be provided are designed to assure that the child/youth receives safe and proper care.

D. That services to be provided are culturally and ethnically appropriate and trauma-informed. Appropriate cultural or ethnic considerations should include, but are not limited to, consideration of the child/youth's family, community, neighborhood, faith or religious beliefs, school activities, friends, and the child/youth's and family's primary language.

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7.301.24 Family Service Plan Out-of-Home Placement Documentation

For child(ren)/youth in out-of-home placement, the Family Services Plan documents:

A. The child/youth meets all of the out-of-home placement criteria listed in Section 7.304.3.

B. When the child/youth is part of a sibling group and the sibling group is being placed out of the home, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children/youth in order to sustain family relationships. Such presumption may be rebutted by the county by a preponderance of the evidence that placement of the entire

sibling group in the joint placement is not in the best interests of a child/youth or of the children/youth. The county shall make reasonable and continued efforts to locate a joint placement for all of the children/youth in the sibling group unless:

(1) it is not in the best interests of the children/youth to be placed as a group as determined by the county in consultation with the family, youth, and gal when possible, and

(2) these efforts do not unreasonably delay permanency for any child/youth.

These efforts depend upon the county's ability to locate an appropriate, capable, willing, and available joint placement for all of the children/youth in the sibling group. As soon as practicable after making a decision affecting sibling placement, the county department shall notify the GAL(s) appointed to the case. Efforts to place siblings as a group shall be documented in the Colorado child welfare information system (CCWIS).

C. The problems to be resolved in order to facilitate reunification of the child/youth and family, and to safely maintain the child/youth in the home.

D. A description of the type of facility in which the child/youth is placed and the reason(s) the placement is appropriate and safe for the child/youth.

E. A description of the county's efforts to place the child/youth in reasonable proximity to the home of the parents and to the "school of origin" as defined in § 22-32-138(g), C.R.S. For a child/youth placed a substantial distance from the home of the parent(s), from his or her "school of origin," or in out-of-state placement, the county shall document how the placement meets the best interests of the child/youth, including how the county took into account proximity to parents and school in making its placement decision (see sections 7.304.54, J and 7.301.241, B, 2).

F. A summary of efforts to ensure educational stability as outlined in Section 7.301.241.

G. That the placement is the least restrictive, safe, and most appropriate setting available consistent with the best interests and specific needs of the child. This includes documentation of initial and on-going efforts to place the child/youth with kin.

If the child/youth is moved to a more restrictive placement after the initial placement, the Family Services Plan documents how the more restrictive placement meets the child/youth's needs.

H. Health and educational information shall be documented in the State Department's automated system and updated at the time of each case review, including addresses and other contact information about the child/youth's current:

1. Education providers, including school, school district, and Board of Cooperative Education Services (BOCES) contacts who assist in the coordination of enrollment and services, and the child/youth's academic progress.

2. Health care providers and the status of health care information.

I. Specific plans for how the county will carry out any court determinations or orders concerning the child/youth.

J. A description of the services and resources needed by the foster parents or kinship providers to meet the needs of the child/youth and how those services and resources will be provided.

K. A description of the services provided to reunite the family, including the plan for visitation, or to accomplish another permanency goal. The visitation plan shall specify the frequency, type of

contact, and the person(s) who will make the visit. At a minimum the visitation plan shall provide the methods to meet the following:

1. The growth and development of the child/youth;

2. The child/youth's adjustment to placement;

3. The ability of the provider to meet the child/youth's needs;

4. The appropriateness of the parent and child/youth visitation, including assessment of risk;

5. The efforts to ensure the child/youth's wishes as to sibling contact were considered;

6. The child/youth's contact with parents, siblings, and other family members; and

7. Visitation between the child/youth and his/her family shall increase in frequency and duration as the goal of reuniting the family is approached.

L. For child(ren) under the age of fourteen (14), a description of services and a plan for accomplishing tasks to prepare child(ren) to be age appropriately self-sufficient, when independent living services are provided.

M. For youth age fourteen (14) and older, a roadmap to success as early in placement as possible but no later than sixty (60) calendar days after the youth's fourteenth (14th) birthday.

N. Reasonable efforts have been made to maintain the child/youth in the home, or prevent or eliminate the need for removal of the child/youth from the home, or make it possible for the child/youth to return to the home; or when applicable, documentation of the circumstances that exist in which reasonable efforts to prevent removal or reunite the child and the family are not required (see Section 7.304.53, B, 3).

O. The specified permanency goal for the child/youth shall be based on the individual needs and best interests of the child/youth. Permanency goals shall include one of the following:

- Remain home;
- Return home;
- Permanent placement with a relative through adoption;
- Permanent placement with a relative through legal guardianship or permanent custody;
- Adoption (non-relative);
- Legal guardianship/permanent custody (non-relative);
- Return home through reinstatement of parental rights;
- Other planned permanent living arrangement through emancipation;
- Other planned permanent living arrangement through relative long term foster care;
- Other planned permanent living arrangement through non-relative long term foster care.

Permanency goals shall include the projected date (month, day, and year) by which the goal is to be accomplished for each child/youth receiving services.

1. The initial permanency goal for the child/youth is to return home with the following exceptions:

    a. Children/youth whose parents are both deceased or have both voluntarily relinquished custody;

    b. Children/youth whose parents cannot be located after family search and engagement activities, which shall begin no later than three working days following placement and shall not exceed three months;

    c. Children/youth whose parents have been guilty of repeated and/or severe abuse or neglect of the child/youth or the child/youth's siblings such that termination of parental rights of both parents is appropriate; or,

    d. children/youth for whom it appears, after investigation, that a safe return home will not be possible even with the provision of reasonable efforts.

2. After twelve months, the child/youth's caseworker and supervisor shall include written justification on the Family Services Plan for continuation of the goal of return home.

3. After eighteen months, the extraordinary circumstances which exist and the reasons which support the permanency goal of return home shall be documented in the Family Services Plan. Approval of the return home permanency goal by the caseworker, supervisor and county administrative review is documented in the case record.

4. In concurrent planning cases the alternate permanency goal shall be documented.

5. The permanency goal of other planned permanent living arrangement through emancipation shall only be used for youth ages sixteen to twenty-one.

6. For a child/youth who has been in foster care under the responsibility of the state for fifteen (15) of the last twenty-two (22) months, the county shall either file a motion for termination of parental rights no later than the end of the fifteenth (15th) month or document and submit to the court at the next review the compelling reason why it is in the child/youth's best interest not to terminate parental rights.

P. The steps the agency is taking to find an adoptive or other permanent living arrangement for a child/youth for whom the permanency plan is adoption or placement in another permanent home.

Q. The permanency goal for the child would be to remain home barring case circumstances that would indicate the need for an alternative permanency goal when a teen mother and her child are placed together in the same foster home and if a case is opened on the child. The county must see the child when visiting the teen mother in the foster home.

R. Requirements for use of Other Planned Permanent Living Arrangement goals as follows:

1. The county department may consider Other Planned Permanent Living Arrangement (OPPLA) as a permanency goal:

    For youth who are sixteen (16) years of age or over and are demonstrating exceptional circumstances that prevent the youth from returning home, adoption, legal guardianship or permanent custody.

2. The goal shall be reviewed through the use of a family engagement meeting or equivalent team that reviews permanency needs. All of the following shall be submitted to and considered by the review team, and the recommendation shall be submitted to the court.

    a. Documentation pertaining to the completion of an intensive and ongoing examination of kin and permanent connections. This process shall also address:

        1) A comprehensive assessment of the youth's strengths and needs. In addition to updating the assessment of the youth's strengths and needs, the updated assessment or staffing shall address the youth's capacity to live within a family setting.

        2) This review team shall also consider the youth’s desired permanency outcome.

    b. A detailed description of efforts made to achieve permanency through the other goals and identification of the barriers to achieve them.

    c. A detailed description of how OPPLA is in the best interest of the youth.

3. The following is to be documented and made available to the court at each court review.

    a. Documentation of the barriers to permanency to date and compelling reasons why the other permanency goals are not attainable.

    b. Documentation of the youth’s desired permanency outcome including giving the youth an opportunity to attend each hearing to voice his/her desired goal.

    c. Documentation of intensive, ongoing, and as of the date of the hearing, unsuccessful efforts to return the youth home or secure a placement for the youth with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including thorough efforts that utilize technology (including social media) to find biological family members for the youth.

    d. Documentation of the steps taken to ensure that youth are being supported in-engaging in age or developmentally appropriate activities and social events including:

        1) The youth’s foster family home or other placement is following the reasonable and prudent parent standard; and,

        2) The youth has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including consulting with the youth in an age-appropriate manner about the opportunities of the youth to participate in the activities).

4. Documentation which includes the review team's reasons for approving Other Planned Permanent Living Arrangement (OPPLA) shall also be entered in the Family Service Plan as directed by the Division of Child Welfare.

5. The use of this goal shall be reviewed by a family engagement or equivalent review team at a minimum of every six (6) months. The county shall request that the court review the case every twelve (12) months to determine if the youth is demonstrating exceptional

circumstances that prevent the youth from returning home, adoption, legal guardianship or permanent custody.

6. If this goal is not achieved through relative care, a family-like network of significant people shall be developed to provide the youth with a sense of belonging and with support expected to endure over a lifetime.

7. Youth who have an open case through the Foster Youth in Transition Program are presumed to meet the above requirements for a goal of other permanent planned living arrangement through emancipation. The goal shall be reviewed by the court on an annual basis pursuant to 19-7-311, C.R.S.

S. Reinstatement of Parental Rights

1. The county department of human or social services may explore the use of reinstatement of parental rights as a permanency option for:

   a. Children twelve (12) years of age and older, or child(ren) younger than twelve (12) years of age if they are part of a sibling group where at least one of the child(ren) or youth is twelve or older and is pursuing reinstatement of parental rights; and,

   b. Child(ren) younger than twelve (12), if they are part of a sibling group where at least one of the child(ren) is twelve or older, and is pursuing reinstatement of parental rights; and,

   c. Child(ren) who currently do not have a legal parent; and,

   d. Child(ren) who currently are not in an adoptive placement and not likely to be adopted within a reasonable period of time; and,

   e Child(ren) who had all other permanency options exhausted; and,

   f. Cases when the termination of parental rights was ordered at least three-years-prior or when it is determined by the court to be in the best interest of the Child(ren) when termination occurred less than three years prior to the date of the petition for reinstatement is being filed with the court; and,

   g. Child(ren) and former parent(s) that consent to parental rights being reinstated; and,

   h. Child(ren) where it is in their best interest, including the financial best interest, to have parental rights reinstated; and,

   i. Former parent(s) who have remedied the issues that led to the termination and those issues did not involve founded allegations of sexual abuse or an incident of egregious abuse or neglect against a child, a near fatality, or a suspicious fatality.

   j. The child is in the legal custody of a county department.

2. A county department of human or social services that identifies reinstatement as a permanency option shall complete an assessment of the former parent(s). Completion of the assessment and the results of the assessment will be documented in the statewide case management system. The assessment shall include all of the following:

a. Completing the Colorado family risk assessment tool, which must include a visit and inspection of the former parent's home;

b. Reviewing the reasons for the termination of parental rights and determining if the concerns identified have been remedied and do not currently exist or present a safety concern;

c. Conducting the following background checks on the former parent(s) and any other adults eighteen (18) years of age or older in their home and share the results with all parties to the case:

1) Child abuse/and/or neglect records check in every state where any adult residing in the home has lived in the five years preceding the filing of the petition for reinstatement;

2) Fingerprint-based criminal history checks from the Colorado Bureau of Investigation (CBI), or other state background check if the parent lives in another state, and the Federal Bureau of Investigation (FBI);

3) Review the state Judicial Department's case management system and include in the case record; and,

4) Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice for:

a) Known names and addresses of each adult residing in the home; and,

b) Address only of the home.

3. A safety assessment shall be completed.

4. Upon the decision to pursue reinstatement of parental rights; only the county department, guardian ad litem, or a child sixteen (16) years of age or older may file the petition for reinstatement.

a. The petition for reinstatement of parental rights should be filed in the county who has custody of the child(ren) through the dependency and neglect court case.

b. The petition shall be filed in the dependency and neglect court case where the termination of parental rights occurred for the former parent(s) or in the event that the current open dependency and neglect case is a termination of the adoptive parent's rights, then the petition shall be filed in that court case, as it grants custody of the child(ren) to the county.

c. If the county is contacted by a former parent inquiring about reinstatement, the county must notify the guardian ad litem (gal) within thirty (30) calendar days after the contact and provide them with the name and address of the former parent(s).

d. Once the court sets an initial hearing, the county shall develop and report to the court the following:

1) Whether the former parent(s) has remedied the conditions that led to the termination;

2) Based on the assessment of the former parent, including the outcome of the Colorado family risk assessment tool, the transition plan shall include supports or treatment needed for the child(ren) and former parent(s) to help make the reinstatement a success;

3) Whether the former parent(s) can provide a safe and stable home for the child(ren);

4) A visitation or temporary placement plan with the former parent(s) for up to a six month trial period where custody remains with the department; this plan will be approved or modified at this initial hearing.

a) Updates about the visits, transition plan, and supports shall be provided at each review hearing and no later than thirty (30) calendar days prior to the expiration of the trial home period.

b) At any point the placement is deemed no longer safe or in the best interest of the child(ren), removal shall be in accordance with procedures outlined in Sections 19-3-401 and 19-3-403, C.R.S.

5) Whether the child(ren) will lose or gain any benefits or services (Medicaid, Chafee, etc.) as a result of the reinstatement being granted.

5. If the court grants the order, the county shall select reinstatement of parental rights as the closure reason, in the state automated case management system.

6. If the court denies the order the county department shall:

a. Arrange for immediate placement of the child(ren), if the child(ren) is still in the former parent's home;

b. Set a permanency hearing to determine a new permanency goal and plan for the child(ren).

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7.304.1 DESCRIPTION [Rev. eff. 1/1/16]

A. Placement services are services provided to children in Program Areas 4, 5, and 6 who:

1. Meet the criteria for out-of-home placement and the target group criteria; and,

2. Are placed outside their homes because of a temporary emergency removal by law enforcement, court action, a voluntary placement agreement, or a voluntary services agreement; and,

3. Are in a placement approved by the county department.

B. The range of placement services for children for whom the goal is to return home includes kinship care, foster care homes, specialized group facilities, and residential child care facilities.

C. The range of placement services for children for whom the goal is not to return home includes adoption, kinship care, foster care homes, specialized group facilities, and residential child care facilities.

D. Placement options in this section do not apply to American Indian/Native Alaskan children. Refer to Section 7.309.7 for order of placement preference as required by the Indian Child Welfare Act.

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7.304.3 OUT-OF-HOME PLACEMENT CRITERIA

Not every child at risk needs out-of-home placement. These criteria are designed to provide a decision making model to assist in determining whether Core Service Program services and/or out-of-home placement are indicated. All three criteria must be met unless the youth is eligible for the foster youth transition program as described in 12 CCR 2509-3, 7.203.4.

Criterion 1: The child may be at imminent risk of out-of-home placement, as defined in Section 26-5.3-102(1)(b), C.R.S., because one or more of the following conditions exist:

A. Abandonment by or incarceration of parents/relatives/caretakers;

B. Abuse/neglect - as defined in the Children's Code;

C. Domestic violence - as defined in Section 18-6-800.3, C.R.S.;

D. Conditions that exist to such a degree for either the child or caretaker so that the caretaker is unable to care for the child:

1. substance abuse; drug exposed infants

2. mental illness

3. disability

4. physical illness

5. homelessness

E. Beyond control of parents;

F. Danger to self, others, or community;

G. Infant or young child of teen parent in placement;

H. Delinquency - adjudicated delinquent meeting current out-of-home placement criteria written pursuant to Section 19-2-212, C.R.S.;

I. Relinquishment or termination of parental rights;

J. Child returning home from out-of-home placement or moving to less restrictive level-of-care.

Criterion 2: Before considering placement, an assessment is completed to determine the level of risk. If assessment of risk determines that the child is at imminent risk of out-of-home placement, then child/family strengths are determined, and the appropriate services and/or community supports (reasonable efforts) needed to address the existing Criterion #1 conditions are identified. When these

services are not immediately available, or are absent, unsuccessful, or exhausted, placement in the Core Services Program and/or out-of-home may be considered.

Reasonable efforts include the intervention strategies and advocacy efforts used:

A. To identify/locate appropriate parent/relative/caretakers if necessary to prevent out-of-home placement;

B. To assess the parent/relative/caretaker's ability to protect children;

C. To assist the parent/relative/caretaker and/or child in accessing and utilizing the identified services to address the presenting conditions.

Criterion 3: When placement is the best choice of available options/alternatives at this time to reduce risk to the child while continuing reasonable efforts to resolve the conditions which led to imminent risk, then, placement in the Core Services Program and/or out-of-home may occur.

7.304.4 AGE AND RESIDENCY REQUIREMENTS AND PAYMENT RESPONSIBILITY FOR CHILDREN/YOUTH IN OUT-OF-HOME CARE [Rev. eff. 4/1/13]

A. A child is eligible for placement services on the basis of need from birth to age 18 when the child meets target group eligibility and all three of the placement criteria, regardless of whether the placement is voluntary or court ordered. A youth continues to be eligible for placement services if the court had jurisdiction prior to the 18th birthday or the youth is eligible for and receiving services through the youth in transition program as described in 7.203.4 (12 CCR 2509-3).

B. All children residing or present in the state are eligible for placement services when the criteria in the Target Group sections 7.201, 7.202, and 7.203, the Out-of-Home Placement Criteria section 7.304.3, and the Authority for Placement section 7.304.51, are met.

C. The child's county of residence shall be the county department which has financial and case decision-making responsibility for a child in out-of-home placement shall be the child's county of residence. The child's residence follows the parents' residence unless one or more of the following circumstances exist:

1. When the parent-child legal relationship has been terminated, the child's residence is the county in which the county department has legal custody of the child.

2. When the court has transferred legal custody to a county department and the parent-child legal relationship has not been terminated, the child's residence is that county until the court transfers custody to some other entity, including changes of venue as described in the following section, 7.304.4, E.

3. When a county department has legal custody and the court has also appointed a guardian, the child's residence is that of the county department holding legal custody.

4. When a child is in parental custody, the child's residence is that of the parents, or of the last caretaker parent, unless there is a court order giving custody to one of the parents. In that case, the child's residence is that of the parent with legal custody.

5. When a child is in the legal custody of an individual, the child's residence is that of the individual.

6. When the youth is receiving services through the Foster Youth in Transition Program, the youth’s residence shall be the county in which the youth resides, based on their self attestation. Any changes of jurisdiction for this population shall be determined as described in 7.203.43(A)(4).

D. Residence for school purposes may be determined on other factors, such as the type of facility in which the child is placed or the legal status of the child. See Educational Assessments in the Assessment and Case Planning section.

E. The county department shall transfer financial and service planning, and financial responsibility as follows:

If a parent whose residence is used to determine the county department's financial responsibility for a child in out-of-home placement moves to another Colorado county, the county department shall initiate procedures to transfer the financial responsibility to the new county, unless:

1. The court or the county department finds that the transfer of jurisdiction would be detrimental to the best interest of the child(ren); or,

2. The legal custodian has a history of frequent moves, except when there is evidence of stability in the most recent move, such as a signed lease whose term is six or more months, or there is other firm evidence of the intent to remain in the new residence for six or more months; or,

3. The case is within 3-6 months of resolution; or,

4. The custodial parent is committed to a state mental institute or correctional facility; or,

5. The custodial parent is residing temporarily in the receiving county to receive rehabilitation services, employment training, education, medical care, or shelter services; or,

6. Adjudication has not taken place; or,

7. Change in venue hinders achieving the child's permanency goal; or,

8. The case is an expedited permanency planning case, unless pursuant to Section 19-3-201(2), C.R.S., wherein it states that is shall be presumed that any transfer of proceedings without good cause shown that results in a delay in the judicial proceedings would be detrimental to the child's best interest. Such presumption may be rebutted in court by preponderance of evidence; or,

9. When parental rights have been terminated for the child(ren); or,

10. If the case involves a juvenile for whom a juvenile delinquency filing has been made, pursuant to Section 19-2-105(1)(b), C.R.S.

F. Each county shall designate a Change of Venue coordinator.

G. When a motion for a Change of Venue has been made by the sending county, the sending county shall mail the Change of Venue motion to all parties and attorneys of record in the case and to the county attorney in the receiving county.

H. Within fifteen (15) calendar days after a court signs an order granting a Change of Venue and transferring jurisdiction, the sending county shall:

1. Provide written case information, if not located in the state automated system, to the designated Change of Venue coordinator in the receiving county which shall include, but need not be limited to:

    a. Permanency goals;

    b. Target dates related to the case;

    c. Evaluations;

    d. A current Family Services Plan;

    e. Court reports;

    f. Dates of placement moves;

    g. Progress of the child(ren) in placement;

    h. All Title IV-E eligibility determinations; and,

    i. Recommendations for continuing progress in the case.

2. Update all documentation in the case file and in the state automated system.

3. Provide information, to the extent known, concerning the physical location of the child's parents, guardians, legal custodians, and relatives.

4. Prepare the case for transfer by:

    a. Scheduling a family engagement meeting involving all parties, county department caseworkers and supervisors, and community providers; or,

    b. Conducting a case staffing between county caseworkers and supervisors in the sending and receiving county departments; or,

    c. Submitting a written case transfer summary.

5. Forward a complete copy of the case file from the sending county attorney's office to the receiving county attorney's office. Privileged attorney-client communications do not need to be included in the transferred case file.

I. The child, family, and foster care provider shall be prepared for the transition by the sending county department.

J. The sending county department is responsible for financial and service planning for the case and for payment of services through the calendar month in which the Change of Venue becomes effective. This date is to be confirmed by the sending county department in writing and there shall

be no lapse in financial coverage during this process. If venue does not change, the sending county department retains financial responsibility.

K. The receiving county department shall provide courtesy supervision and available services during this transition. If venue does not change, the sending county department retains financial responsibility.

L. If a child is born while the mother is committed to a state mental institute or correctional facility, the county of residence prior to commitment shall be the county of fiscal responsibility.

M. When a child is placed for adoption, the county department holding legal custody and guardianship shall have fiscal responsibility for the child until the adoption is finalized.

N. If a child needs placement out of the home following finalization of adoption, the child's residence is that of the adoptive parents.

O. Residence related to subsidized adoption is addressed in the Adoption Services section.

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7.304.51 Authority for Placement

The county department shall ensure that a child may enter any out-of-home placement only when:

A. Target group and placement criteria are met; and~~,~~

B. An emergency is determined to exist and s/he is removed from the home by a law enforcement officer, with or without a court order, or~~,~~

C. A parent has signed a voluntary placement agreement under conditions established by the county department and according to the Children's Code; or~~,~~

D. A juvenile court, or a court acting as a juvenile court (including a tribal court), has ordered the child to be placed out of the home and has transferred legal custody to the county department or a social services department of a federally recognized Indian tribe, for placement in a family care home or other child care facility.; OR~~,~~

E. A youth who is eligible for the Foster Youth in Transition Program as described in 7.203.41 (12 CCR 2509-3) has entered into a voluntary services agreement with the county department.

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7.304.52 Family Search and Engagement

A. Family search and engagement shall:

1. Be commenced for the noncustodial parent within three (3) working days. The county department must provide notification to the absent parent of the following:

a. The child or youth has been removed from the home; and,

b. The option to participate in the care, treatment, or placement of the child or youth.

2. Be completed within thirty (30) calendar days for all grandparent(s) and other adult relatives or the parent of a sibling of a child/youth who has been removed from his/her legal custodian's home. The latter shall not be construed as subordinating the rights of foster or adoptive parents of a child or youth to the rights of the parents of a sibling of the child or youth. The county department of human or social services shall provide notification of the following information:

    a. The child or youth has been removed from the home;

    b. Options to participate in the care or placement of the child or youth;

    c. Options that may be lost by failing to respond to the notice;

    d. The requirements to become a foster parent, and services and supports available to the child and/or youth placed in the family foster care home; and,

    e. A description of the Relative Guardianship Assistance Program.

B. The county department shall assure that:

1. Parents are consulted regarding their suggestions for appropriate caretakers.

2. Children and youth are consulted as appropriate regarding their suggested relative caretakers.

3. When the court orders a delay in contacting specific relatives for good cause including, but not limited to, domestic or other family violence, then the county department shall discontinue the family search and engagement involving the relative until otherwise authorized by the court.

C. Family search and engagement shall occur for all children including American Indian/Alaskan Native children and youth at least every six (6) months throughout the life of the case until the child or youth has achieved permanency, except as noted in Section 7.304.52, B, 3, or when the following conditions exist:

1. A placement is stable with a relative or kin a minimum of six (6) consecutive months; and,

2. The relative or kin has committed to the legal permanence of the child or youth; and,

3. There is agreement among the parties that the relative or kin is the appropriate permanent option, the juvenile or district court finds it is the appropriate permanency plan, and it is in the best interest of the child or youth that family search and engagement be discontinued.

4. A non-relative foster care parent without a prior relationship to a youth twelve (12) years of age or older and his/her siblings residing in the same placement commits to the permanency of the youth and children. in addition, the juvenile or district court adopted a permanency plan of guardianship or Allocation Of Parental Responsibilities (APR) and the requirements in section 7.311.1, c, 2 (relative guardianship assistance program) are met.

D. A family engagement meeting shall occur within thirty (30) calendar days when any of the following conditions exist:

1. The child or youth is in a family-like permanent setting without the provider expressing formal intent to provide legal permanence at the time that any of the following conditions exist:

   a. The child or youth has been in out-of-home placement fifteen (15) of twenty-two (22) months; or,

   b. The child or youth has had two (2) or more unplanned moves within a twelve (12) month period; or,

   c. The child or youth is assigned a permanency goal of Other Planned Permanent Living Arrangement (OPPLA).

2. The child or youth is in out-of-home placement in a non-family-like setting without an approved permanency plan and any of the conditions in Section 7.304.52, D, 1, a-c, exist.

E. 7.304.52 does not apply to youth who are participating in the Foster Youth in Transition Program unless the youth consents and signs all applicable releases of information. The services described in this section shall be offered to these youth.

F. The county shall document all efforts in the Family Services Plan for the child or youth. Initial and ongoing family search and engagement results shall be reviewed and documented during ninety (90) day supervisory reviews.

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7.304.54 Court Procedures Related to Permanency Planning [Rev. eff. 3/1/16]

A. The county department must develop a permanent plan for any child who is in out-of-home placement and is the subject of any court action, including Dependency and Neglect, Delinquency, Petition to Review the Need for Placement, or a Foster Youth in Transition Program case and a concurrent plan for cases filed under Section 19-3-102(2), C.R.S., regarding habitual abuse. The purpose of the plan is to establish treatment needs related to the stated goal for the child and to decide a method to provide a safe, stable, permanent environment for the child as quickly as possible

B. The county department shall submit this plan at the permanency court hearing. That hearing must be held before twelve (12) months have elapsed from the date of the child's original out-of-home placement, and shall be held as soon as possible following the dispositional hearing. Following the initial permanency hearing, subsequent permanency hearings must be held every twelve months thereafter while the child remains in out-of-home care. These hearings shall be combined with a periodic review when possible.

C. The county department shall provide the court with documentation of the efforts made by the department to finalize the permanency plan for the child. The county department shall request the court to make a finding (if the evidence so warrants) that the department made reasonable efforts to finalize the permanency plan for the child.

D. Paper reviews, ex parte hearings, agreed orders or other actions or hearings which are not open to the participation of the parents of the child (if appropriate age) and foster parents or pre-adoptive parents are not permanency hearings.

E. When the court determines that reasonable efforts to return the child home are not required, the county shall request that the permanency hearing be held no later than thirty (30) calendar days

after such court determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which such a determination is made.

F. The county department shall ensure and document that a request is made to the court for such a hearing in sufficient time to assure that the hearing is held within the twelve (12) month time frame. Permanency hearings shall be combined with a review hearing when possible.

G. The county department shall include, in the permanency plan, recommendations to the court on either:

1. Returning the child to his/her parent or guardian within the next six months; or,

2. Permanent placement with a relative through adoption; or,

3. Permanent placement with a relative through guardianship or permanent custody; or,

4. Adoption (non-relative); or,

5. Legal guardianship/permanent custody (no-relative); or,

6. Return home through reinstatement of parental rights; or,

7. Other planned permanent living arrangement through emancipation; or,

8. Other planned permanent living arrangement through relative long term foster care; or,

9. Other planned permanent living arrangement through non-relative long term foster care.

H. For permanency goals 8 or 9, the county department shall ensure that the plan contains the name or other identifier, such as the system provider number, if the name of the provider must be kept confidential, of the specific placement and the date that placement shall end.

I. For permanency goals 7, 8, and 9, the following requirements shall apply to the county department of human or social services for purposes of approving the case plan and the case review procedure for youth, except for youth participating in the Foster Youth in Transition Program:

1. At each permanency hearing held with respect to the youth, provide documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to address the following:

a. Return the youth home;

b. Secure a placement for the youth with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent; and,

c. Include efforts that utilize search technology (including social media) to find biological family members for the youth.

2. Provide compelling reasons why it continues not to be in the best interests of the youth to return home, be placed for adoption, with a legal guardian, or with a fit and willing relative.

J. The county department shall request that the court order contain specific findings regarding the above goals.

K. The county department shall assure that the permanency hearings determine whether an out-of-state placement continues to be appropriate and is in the best interest of the child.

L. The county department shall assure that the permanency hearings determine whether the permanency plan includes services for a successful adulthood for a child fourteen years of age or older.

M. Permanency hearings are required to be held if a termination is under appeal, for children placed in a permanent foster home with a specific caregiver, and for children who are free for adoption and are placed in adoptive homes pending the finalization of the adoption.

N. The county department shall file for termination of parental rights no later than the end of the 15th month of placement for any child who has been in foster care under the responsibility of the state for 15 of the last 22 months unless there is a compelling reason submitted to the court identifying why it is in the child's best interest to not terminate parental rights.

O. The county department shall file for termination of parental rights no later than sixty (60) calendar days after the court determines that the child is an abandoned infant, unless there is a compelling reason submitted to the court identifying why it is in the child's best interest to not terminate parental rights.

P. The county department shall file for termination of parental rights no later than sixty (60) calendar days after a judicial determination is made that reasonable efforts to reunify the child with the parent are not required, unless there is a compelling reason submitted to the court identifying why it is in the child's best interest to not terminate parental rights.

Q. The county department shall discuss the purpose and responsibilities of relative guardianship with the parents or legal custodian of a youth or child and the importance of achieving permanency.

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7.304.61 Pre-Placement Activities

A. The child/youth shall have a medical examination before placement or a screening as soon as is reasonably possible after placement. The county department shall assure that the screening is consistent with the Early Periodic Screening Diagnosis and Treatment initial screening described in Section 8.286.01 of the Department of Health Care Policy and Financing's Medical Assistance manual (10 CCR 2505-10). If a medical, dental, or psychological evaluation is necessary and cannot be covered under Medicaid, third-party insurance, or other sources, the county department may purchase it under program services. See General Information and Policies section (7.000) and Resources, Reimbursement, and Reporting Section (7.400) of this manual.

B. Prior to the placement of a child/youth in a child placement agency or county foster care home, the placing agency may review the written family assessment, home study, and background checks of the foster parent(s) for use in determining if the home is appropriate for the needs of the child/youth.

C. When the child/youth is part of a sibling group and the sibling group is being placed out of the home, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children/youth in order to sustain family relationships. Such presumption may be rebutted by the county by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child/youth or of the children/youth. The county shall make thorough efforts to locate a joint placement for all of the children/youth in the sibling group unless:

1) It is not in the best interests of the children/youth to be placed as a group and

2) These efforts do not unreasonably delay permanency for any child.

These efforts depend upon the county's ability to locate an appropriate, capable, willing, and available joint placement for all of the children/youth in the sibling group. Efforts to place siblings as a group shall be documented in the child/youth's case record.

D. The county department shall share all available information about the child, including relevant social, medical and educational history, behavior problems, court involvement, parental visitation plans, and other specific characteristics of the child, with the provider before placement. It shall share additional information when obtained. The county department shall inform foster parents of court hearings involving children in care.

E. A child's foster care placement shall not be delayed in order to recruit a same race home when a foster family is available who is of other ethnic or racial identity than that of the child.

F. The county department shall document all pre-placement activities in the case file.

G. The county department shall execute the Provider Contract and Agreement with county department certified foster homes and county department sponsored group homes, and the agreement to purchase Child Placement Agency or Residential Child Care Facility services with Child Placement Agencies and Residential Child Care Facilities before placement. The Agreement to Purchase form is child specific and shall be completed for each child placed through a Child Placement Agency or with a Residential Child Care Facility.

1. Placement contracts shall specify the responsibilities of the provider and the county department in the services to be delivered to the child and family in conjunction with the Family Services Plan. The placement contracts shall also require twenty-four (24) hour out-of-home care facilities to have staff present and trained in how to make decisions using the reasonable and prudent parent standard when approving extracurricular, enrichment, cultural, and social activities; and,

2. County departments shall provide twenty-four (24) hour out-of-home care providers with a copy of the policy that identifies activities that providers trained in the reasonable and prudent parent standard may approve, and activities that require county department approval.

H. When a youth is participating in the Foster Youth in Transition Program:

1. With the participating youth's consent, the youth's housing may be in any placement approved by the county or the court for which the youth is otherwise eligible, including a supervised independent living arrangement as described in 7.305.2(D), and is the least restrictive option to meet the participating youth's needs; or

2. If the participating youth needs placement in a qualified residential treatment program, then the placement must follow all of the requirements required for the county to place a child/youth in a qualified residential treatment program.

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7.304.62 Placement Activities

The county department shall:

A. Give the provider a written record of the child's/youth's admission to the home at the time of placement.

B. Give the provider a written procedure or authorization for obtaining medical care for the child and assure that the provider receives the child's/youth's state identification number and Medicaid card for Medicaid eligible children in a timely manner.

C. Give the provider a copy of the Family Services Plan for the child/youth at the time of placement or when it is completed following placement.

D. Document the above placement activities in the case file.

E. Add the placement in the Department's automated reporting system prior to the next payroll.

F. Within four weeks of the initial placement, give the provider a complete medical history for the child. The medical history shall contain, to the maximum degree possible, the information listed in the Department of Human Services Health Passport.

G. Provide the child/youth with a full medical examination scheduled within fourteen (14) calendar days after placement and a full dental examination scheduled within eight (8) weeks after placement. The schedule of the appointments shall be documented in the case record. The county department shall maintain the medical and dental information in a record which is kept with the child/youth during placement and upon return home, emancipation, or adoption. The county department shall document that ongoing medical and dental care is provided in a timely manner as defined by the department and by the health care provider. If the child/youth received the required full medical examination at the time of the placement, then the regular schedule of appointments should be maintained in subsequent placements.

   If the governor or local government declares a disaster or emergency, and because of the declared disaster or emergency the medical and dental exams cannot be completed for the child/youth in the required time frame, the medical exam and dental exam must be completed as soon as possible, but no later than 45 calendar days after the declared conclusion of the disaster or emergency.

H. Document the exceptional circumstances which require an emergency or temporary placement to last longer than sixty (60) calendar days.

I. Except in emergency situations, make subsequent placements according to court order and shall notify all parties to the extent possible.

J. Not move a child from one short-term emergency placement to another unless all reasonable efforts to return the child to the child's home or to place the child in a more permanent setting have been exhausted and are documented in the Family Services Plan.

K. Not move a child more than twice unless such move results in a permanent placement or is determined to be in the best interests of the child and the reasons for the additional move are documented in the child's Family Services Plan.

L. Notify the guardian ad litem and/or the youth's counsel, parent(s) or legal guardian within one (1) business day upon a child/youth's placement into a foster care home. The Guardian Ad Litem's contact information shall be provided to the foster parents.

M. If it is in the best interest of each sibling, the county department shall notify the siblings of any child/youth in foster care or kinship care, of sibling placement and changes in sibling placement, catastrophic events, or other circumstances, including but not limited to significant life events, as

defined by the county department and in consultation with the family, youth and GAL when possible.

N. Provide notice of, and a right to be heard at, any Administrative Review to the child/youth (if age appropriate), foster parents, pre-adoptive parents, or relatives providing care to a child/youth and, upon written request, a written notice of the court hearing, which identifies the following:

1. The child/youth's current court case number;

2. The date and time of the next court hearing; and,

3. The name of the magistrate or judge and the court division to which the case was assigned.

O. Upon receipt of written notice by a foster parent, employees of State and county departments, or others with the need to know, are prohibited from releasing personally identifying information about a foster parent, other than the first name, to any adult member of the foster child/youth's family, unless the foster parent subsequently provides written consent for the release of information.

P. Provide at the time of initial placement and at least annually thereafter to the child(ren)/youth contact information for all siblings in foster care, which may include a telephone number, address, social media accounts, and e-mail address, unless a foster parent has requested the foster parent's identifying information not be disclosed, and to receive updated photos of siblings regularly by mail or e-mail, as appropriate.

Q. Refer to Section 7.406.1, F, for the applicable criteria when a child/youth will be absent from the designated out-of-home placement and the county elects to reimburse the provider using the seven (7) day or thirty (30) day policy.

R. Allow out-of-home care providers, who are trained in a reasonable and prudent parent standard, to authorize children and youth to participate in community-based activities without the need for a fingerprint-based criminal record background check for the adult(s) involved in the activities. A decision to allow participation shall be based on trained providers using a reasonable and prudent parent standard, as defined in Section 7.701.200, A (12 CCR 2509-1), and the procedures defined in Section 7.701.200 (12 CCR 2509-8).

S. Respond to issues related to human trafficking as outlined in Section 7.303.4.

T. If a disqualifying factor (refer to Section 7.000.2 (12 CCR 2509-1)) is identified following the placement of a child and/or youth in a non-certified kinship care home, the county department of human or social services shall evaluate the appropriateness of continuing the placement. A plan shall be developed to address the concerns as soon as possible, and the concerns shall be remedied no later than two weeks after the date of placement. The following shall be documented in the state automated case management system in the contact log in the resource section or in the record:

1. The circumstances of the placement;

2. The vulnerability of the child and/or youth, including age and development;

3. Safety issues impacting the child and/or youth;

4. Supports needed by the non-certified kinship caregiver(s);

5. Identify alternative solutions to removal of the child and/or youth from the placement and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

   a. Risk and safety;

   b. Level of functioning;

   c. Strengths;

   d. Specific concerns to be addressed;

   e. Services and supports needed; and,

   f. Changes that must occur to mitigate the concerns.

6. When the disqualifying factor cannot be mitigated, the alternative solution and plan does not resolve the concerns about appropriateness of the placement, or timeframes are not met, the county department shall remove the child /youth from the placement.

U. Assure that each child or youth in out –of –home care is accompanied to psychiatric appointments by an adult who has knowledge about the daily functioning and behavior of the child or youth, except for youth receiving services through the Foster Youth in Transition Program.

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7.304.64 Visitation and Supervision

A. Contact between the county department and the child/youth shall be documented in the child/youth's case record.

B. In all cases where counties have primary responsibility for a child/youth in out-of-home placement, an appropriate visitation plan shall be established and documented in the Comprehensive Child Welfare Information System (CCWIS). The visitation plan shall specify the frequency and type of contact by the parents (unless parental visitation is determined to be detrimental to the child/youth, siblings, and others with the child/youth, as appropriate. At a minimum, the visitation plan should provide methods to meet the following interests and needs of the child/youth:

   1. The growth and development of the child/youth;

   2. The child/youth's adjustment to the placement;

   3. The ability of the provider to meet the child/youth's needs;

   4. The appropriateness of parent and child/youth visitation, including assessment of risk;

   5. The child/youth's contact with parents, siblings, and other family members;

   6. The child/youth's permanency plan.

C. Child(ren)/youth in foster care shall receive an age-appropriate and developmentally appropriate document from the county department detailing their rights regarding sibling contact:

   1. Within thirty days of the date of any placement or any change in placement;

2. On each occasion that a child/youth's case plan is modified;

3. At each placement where the child(ren)/youth resides; and

4. On at least an annual basis.

D. The county department shall include information regarding sibling contact in the visitation plan. In doing so the child(ren)/youth shall be consulted about their wishes as to sibling contact. In developing the visitation plan, if it is in the best interests of each sibling, the county department shall:

1. Promote frequent contact between siblings in foster care, which may include telephone calls, text messages, social media, video calls, and in-person visits;

2. Clarify that sibling contact should not be contingent upon parental contact;

3. Clarify that restriction of sibling contact should not be a consequence for behavioral problems.

4. Ensure that timely and regularly scheduled sibling visits are based on individual circumstances and needs of the child(ren)/youth.

E. Sibling contact should occur with sufficient frequency to promote continuity of the relationships unless:

1. The county department has determined that it is not in the best interests of one or both of the children/youth, or

2. It has been determined in consultation with the County/City Attorney and the District Attorney That a criminal action is pending in any jurisdiction where either sibling is a victim or witness, and that such sibling contact may have a detrimental effect upon prosecution of the pending criminal action, or

3. Contact is not permitted because it would violate a known existing protection order pending in any state.

If, in arranging sibling contact a county department determines that such contact would not be in the best interests of one or both of the siblings, the county department shall deny the request, document its reasons for making the determination in the Comprehensive Child Welfare Information System (CCWIS), and provide the siblings with an explanation for the denial, as permitted under state and federal law. As soon as practicable after making a decision affecting sibling contact, the county department shall notify the GAL(s) appointed to the case

F. Visitation between the child/youth and his/her family shall increase in frequency and duration as the goal of reuniting the family is approached. The caseworker shall document this increase in visitation in the CCWIS.

G. The county department will notify parents of any determination which affects their visitation rights. The caseworker shall keep a copy of this notification in the case record.

H. In cases where the goal is not to reunite the family, the caseworker shall discuss the issue of separation and help define the child(ren)/youth’s future relationship with the family. The caseworker shall document this discussion and planning in the (CCWIS).

I. Youth participating in the Foster Youth in Transition Program are not required to have a visitation plan with their parent(s).

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7.305.2 SPECIFIC PROCEDURES

A. The county department shall assess all youth in foster care who have reached the age of fourteen (14) for services to prepare for adulthood and shall complete the Roadmap to Success part of the Family Services Plan (FSP). This is required regardless of the specified permanency goal of the case plan.

B. The county department's assessment shall include documentation of:

1. The youth's capacity for self-sufficiency and self-support by reviewing daily living skills, in consideration of their age and appropriate developmental expectations/milestones.

2. An evaluation of individual, family, community, and financial support resources available to promote emancipation or semi-independent living.

C. Following assessment, the Roadmap to Success (RTS) shall be developed in consultation with the youth, caseworker, care provider(s), and, at the option of the youth, up to two (2) other significant persons chosen by the youth who are not the foster parent or caseworker for the youth and documented in the FSP in the state automated system. If the county department of human or social services has good cause to believe an individual selected by the youth will not act in his or her best interest, the planning team may designate another advocate for the youth.

1. The case plan and court report following a staffing or meeting shall describe the services to help the youth transition to successful adulthood including, but not limited to, participation in on-going opportunities to engage in age and developmentally appropriate activities, and, if the youth is pregnant and/or a parent, the parenting supports provided to the youth..

2. The case plan shall document the rights of the youth to education, health, visitation, court participation, the right to stay safe and avoid exploitation, and the right to receive a credit report annually. A signed acknowledgement that the youth was provided a copy of these rights and that they were explained in an age or developmentally appropriate way shall be included in the case plan.

D. The county department may utilize a Supervised Independent Living placement for:

1. Youth at least sixteen (16) years of age through the last day of the month of their twenty-first (21) birthday when:

A. The county has placement and care responsibility.

B. Approved supervised independent living placement settings may include an approved college dormitory, transitional living program, an apartment or other private housing, or another age or developmentally appropriate placement. Professional contact and ongoing support must meet section 7.202.1 requirements.

C. The use of a supervised independent living placement for youth ages sixteen (16) up to eighteen (18) may only be utilized after considering the youth's developmental needs and assets, supports that are available to the youth, and documentation in case notes that all other options have been exhausted.

D. For youth ages sixteen (16) up to eighteen (18) placement in a supervised independent living placement must follow a period in out-of-home care.

E. For counties to be reimbursed for this placement, the youth must be over age 18 and the placement must align with requirements set forth in 7.406.1,q

F. An update to the existing Roadmap to Success (RTS) must be completed, preferably within 30 days prior to, but no later than 30 days after, the start date of the supervised independent living placement.

G. The county department shall establish a written policy for the use of supervised independent living placement. The policy shall address the following:

I. Assessing each youth's readiness to be successful in a supervised independent living placement, the safety of the placement, the availability of supportive services and resources for youth transitioning into adulthood, any county-specific policies around caseworker contact with the youth, and the process for ongoing review.

II. Supervised independent living placement funds shall be provided to the youth and be sufficient to have their needs met as identified in 7.708.26, 7.708.31, 7.708.41, 7.708.42, and 7.708.43, as well as having access to a working telephone and internet.

III. Additional supervised independent living placement funds may be provided to the youth as incentive for progress towards and/or achievement of goals.

IV. Decisions to withhold supervised independent living placement funds provided to the youth per section (III) shall not reduce the amount provided per subsection (II) and must be according to defined guidelines found in the county policy.

V. Defined appeal process and notification procedures for youth whose supervised independent living placement funds under subsection (III) are withheld.

VI. Defined process for how and when a supervised independent living placement may be terminated. The policy must address potential termination reasons including, but not limited to, concerns for current or impending danger or court case closure.

H. A signed copy of the supervised independent living placement agreement and a signed expectations/acknowledgement that the youth was provided a copy of the county guidelines. These documents shall be explained in an age or developmentally appropriate way and shall be included in the case file.

E. Free Annual Credit Record Report for Youth Fourteen (14) Years of Age and Older in Foster Care

The following steps shall be taken:

1. The county department shall obtain free annual credit report information from the three credit reporting agencies designated by the Department for youth who are in foster care and are at least fourteen (14) years of age, and provide the information to the youth and Guardian ad Litem (GAL);

2. If the youth objects to obtaining the credit report, the county department shall inform the court and request that the court issue an order authorizing the county to obtain the credit report.

3. The county department shall maintain a copy of each credit report in the case record; and,

4. Should the annual report show evidence of any inaccuracies, the county department shall inform the court of the inaccuracies, refer the youth to a Colorado Department of Human Services approved governmental or non-profit entity to resolve the inaccuracies, and inform the GAL of the referral.

F. The youth, county department caseworker, provider(s), and other representatives of the youth as appropriate, shall jointly develop a detailed, formal emancipation transition plan no more than ninety (90) days prior to the emancipation date of the youth. The plan, signed by all parties, shall include, but need not be limited to, the following:

1. Assurance that the plan meets the specific self-sufficiency/cost of living standard in the county or state where the youth plans to reside.

2. a plan shall be developed with the youth based on the information from the assessment and the youth's goals.

3. Personalization at the direction of the youth to meet the individual emancipation needs in order to help prevent homelessness.

4. Copies of verifiable vital documents required in Section 7.305.5.

5. Specific options for:

    a. Housing,

    b. Health insurance and health care decision-making information,

    c. Education,

    d. Local opportunities for safe mentors,

    e. Continuing after-care support services, and

    f. Work force supports and employment services.

6. The plan shall be documented in the State Department's automated system in the Family Services Plan, and a copy given to the youth free of charge.

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Office of the Attorney General

Tracking number: 2021-00556

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

on 11/05/2021

12 CCR 2509-4

CHILD WELFARE SERVICES

The above-referenced rules were submitted to this office on 11/08/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 17:27:58

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-5

Rule title

12 CCR 2509-5 RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS 1 - eff 12/30/2021

Effective date

12/30/2021

OO. A child/youth is placed at the IDD facility, as defined in 7.424.13, with the approval of the State Department. The approved placement period is the duration of treatment, as stated in the most recent approval letter from the State Department, and thirty (30) days after the completion of treatment/ discharge date.

7.424 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES (IDD FACILTIES) AND ACUTE RESIDENTIAL FACILITIES

7.424.1 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES

The State Department shall contract with licensed Colorado residential facilities to provide short-term stabilization, treatment, and services to children/youth identified with intellectual and developmental disabilities, and who are experiencing acute and severe behaviors.

7.424.11 REFERRAL AND ELIGIBILITY

A. The county department of human/social services shall make the referral to the State Department using the state approved application.

B. The State Department shall determine whether referrals meet eligibility requirements for services in the IDD facility.

C. A primary indicator for placement in the IDD facility is an intellectual and/or developmental disability or an autism spectrum disorder. “Intellectual and developmental disability” means a disability that manifests before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected person, and that is attributable to developmental disability or related conditions, which include cerebral palsy, epilepsy, autism, or other neurological conditions when those conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with developmental disability.

D. Other indicators for placement may include but are not limited to:

1. The child/youth is currently experiencing acute and severe behaviors, which may include but are not limited to: high levels of aggression and/or self-harming behaviors, emotional distress, impulsive behaviors, and/or other emotional, behavioral, or psychological issues; and,

2. Previous placements have been unsuccessful or alternative placements, specifically within the state of Colorado, are not available for the child/youth.

E. Child/youth who meet criteria for a mental health hold or detainment by law enforcement are not appropriate for admission.

7.424.12 APPEALS PROCESS FOR DENIED ELIGIBILITY

A. A county department of human/social services may submit a request for an appeal of denied initial or continued eligibility to the Division of Child Welfare 24 Hour Appeal Panel within fifteen (15) business days of the denial.

B. Decisions on appeals shall be communicated to the county department of human/social services no later than seven (7) business days of receipt of the request.

C. If the county department of human/social services is aggrieved by the decision of the Child Welfare 24 Hour Appeal Panel, the county department of human/social services may request an administrative hearing pursuant to 7.701.13.d.4.a.

D. Decisions by the administrative law judge are considered final and are not subject to further judicial review.

E. While the continuing eligibility of a child/youth is under appeal, the child/youth may remain in placement at the IDD facility. If the appeal is denied, the county department of human/social services may be responsible for the costs incurred for continuing the placement of the child/youth after thirty (30) days beyond the discharge date.

7.424.13 ADMISSION TO THE IDD FACILITY

A. The State Department, in collaboration with the IDD facility, shall determine if and/or when a referred child/youth shall be admitted to the IDD facility.

B. Upon acceptance of the child/youth into the IDD facility, the State Department shall issue an approval letter to include the date of admission, which shall be determined in collaboration with the county department of human/social services and the IDD facility and shall be approved by the State Department.

C. In the event that there is a waitlist for admission to the IDD facility, the county department of human/social services shall place the eligible and approved child/youth on the agreed upon admission date or forfeit admission, which may result in the child/youth returning to the IDD facility waitlist.

D. Children/youth in the care or custody of county human/social services departments shall be prioritized for admission into the IDD facility.

E. Children/youth who have previously been discharged from the facility shall be prioritized for re-admission, according to the needs of the child/youth.

7.424.14 EMERGENCY ADMISSION

The State Department may hold open up to three (3) beds at the IDD facility to be used for emergency placements. Criteria for emergency admission may include but are not limited to:

A. The child/youth is on the waitlist and experiences an unexpected crisis; or,

B. The child/youth is determined, by the county department of human/social services, to be unsafe in their current setting; or,

C. The child/youth is to be discharged from a more restricted setting, including but not limited to a hospital or detention setting; or,

D. The child/youth experiences an imminent placement disruption unrelated to the child's/youth's status or situation; or,

E. The child/youth is unexpectedly discharged from current placement.

7.424.15 DISCHARGE

A. The duration of treatment at the IDD facility shall be determined at the time of admission by the State Department in collaboration with the IDD facility, county department of human/social services, child/youth, family of child/youth, and the child's/youth's permanency team.

B. Criteria for determining duration of treatment at the IDD facility may include but are not limited to the assessment of the child's/youth's needs, goals of the child/youth, goals of the family (when applicable), expected time to achieve stabilization, criteria for transition, transition needs, and plan for permanency.

C. Within fourteen (14) calendar days of admission, the State Department shall issue an approval letter to include the duration of the child's/youth's treatment and the expected date by which the child/youth will be discharged from the IDD facility.

D. The duration of treatment shall be reviewed by the State Department, the IDD facility, and the county department of human/social services, in collaboration with the child/youth, family of the child/youth (when applicable), and the child's/youth's permanency team, no more than every thirty (30) days after the date of admission and may be subject to change based upon the progress and needs of the child/youth.

E. In the event the State Department determines a change to the duration of treatment, a revised approval letter will be issued.

F. Criteria for discharge

1. The child/youth has met the goals and objectives in the individual child's/youth's plan, as determined by the IDD facility, in consultation with the State Department and the county department of human/social services; or,

2. The child's behavior has become such that significant safety issues for themselves and/or others at the facility and the treatment team at the facility can no longer effectively provide treatment for the child and the child can no longer be safely maintained in the facility without a higher level of intervention. The facility will consult with the State Department and the placing authority to develop an ongoing plan for the child; or,

3. A viable placement option in a lower level of care is identified and available; or,

4. The child's/youth's family is ready and able to care for the child/youth; and,

5. A transition plan is in place to include identified services to support the placement option or family in caring for the child/youth.

G. The county department of human/social services retains the right to remove the child/youth from the program any time prior to the discharge date specified in the most recent approval letter.

7.424.16 COUNTY DEPARTMENT OF HUMAN/SOCIAL SERVICES RESPONSIBILITIES

A. The county department of human/social services shall participate in initial and ongoing monthly staffings, treatment planning, and discharge planning for each child/youth placed at the IDD facility by the county department of human/social services.

B. Permanency planning shall occur in accordance with 7.301.2.

7.424.17 REIMBURSEMENT

When the child/youth is placed by a county department of human/ social services the State Department shall reimburse one hundred percent (100%) of the placement costs, up to thirty (30) days beyond the discharge date as defined in the most recent approval letter.

7.424.18 QUALITY ASSURANCE

The licensee that holds the IDD facility contract is subject to the rules and regulations found at 7.701, 7.705, 7.706, 7.714, and 7.719.

7.424.2 ACUTE RESIDENTIAL FACILITIES

The State Department shall contract with licensed providers for the delivery of services to children and youth whose behavioral or mental health needs require services and treatment in a residential facility.

7.424.21 REFERRAL AND ELIGIBILITY

A. The county department of human/social services shall make the referral to the State Department using the state approved application.

B. The State Department shall determine whether referrals meet eligibility requirements for services in the acute residential facilities.

C. The primary indicators for placement in an acute residential program are:

1. A serious emotional disturbance, includes, with respect to a child, any child who has a serious emotional disorder, a serious behavioral disorder, or a serious mental disorder.

2. An intellectual and/or developmental disability or an autism spectrum disorder. “Intellectual and developmental disability” means a disability that manifests before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected person, and that is attributable to an intellectual and developmental disability or related conditions, including Prader-Willi syndrome, cerebral palsy, epilepsy, autism, or other neurological conditions when the condition or conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability.

D. Other indicators for placement may include but are not limited to:

1. The child/youth is currently experiencing acute and severe behaviors, which may include but are not limited to: high levels of aggression and/or self-harming behaviors, emotional distress, impulsive behaviors, and/or other emotional, behavioral, or psychological issues; and,

2. The child/youth is exhibiting intensive behaviors that have not been manageable in lower-levels of care or existing facilities in Colorado or has met discharge criteria from hospitalization and alternative placements, specifically within the state of Colorado, are not available for the child/youth.

E. Children/youth who meet criteria for detainment by law enforcement are not appropriate for admission.

F. To be eligible for admission to a qualified residential treatment program (QRTP) the child must be determined to be appropriate for placement in a qrtp through the independent assesssment process by a qualified individual in accordance with 19-1-115(4)(e)(i), c.r.s.

G. To be eligible for admission to a psychiatric residential treatment facility (PRTF) the child must be certified to need PRTF level of care by an independent team in accordance with 10 ccr 2505-10 § 8.765.4.a.

7.424.22 APPEALS PROCESS FOR DENIED ELIGIBILITY

A. A county department of human/social services may submit a request for an appeal of denied initial or continued eligibility to the Division Of Child Welfare 24 Hour Appeal Panel within fifteen (15) business days of the denial.

B. Decisions on appeals shall be communicated to the county department of human/social services no later than seven (7) business days of receipt of the request.

C. If the county department of human/social services is aggrieved by the decision of the Child Welfare 24 Hour Appeal Panel, the county department of human/social services may request an administrative hearing pursuant to 7.701.13.d.4.a.

D. While the continuing eligibility of a child/youth is under appeal, the child/youth may remain in placement at the acute residential facility. If the appeal is denied, the county department of human/social services may be responsible for the costs incurred for continuing the placement of the child/youth after thirty (30) days beyond the discharge date.

7.424.23 ADMISSION TO AN ACUTE RESIDENTIAL FACILITY

A. The State Department, in consultation with the acute residential facilities, shall determine if and/or when a referred child/youth who has been deemed eligible for the program(s) shall be admitted to an acute residential facility. Admission of a child shall be in keeping with the stated purpose of the child care facility and shall be limited to those children for whom the facility is qualified by staff, program, equipment, and needs of children already in residence to provide care deemed necessary. Care must be provided in the least restrictive, most appropriate setting in order to meet the child's needs.

B. Upon acceptance of the child/youth into the acute residential facility, the State Department shall issue an approval letter to include the date of admission, which shall be determined in collaboration with the county department of human/social services and the acute residential facility, and shall be approved by the State Department.

C. In the event that there is a waitlist for admission to the acute residential facility, the county department of human/social services shall place the eligible and approved child/youth on the agreed upon admission date or forfeit admission, which may result in the child/youth returning to the acute residential facility waitlist.

7.424.24 DISCHARGE

A. The eligible period of placement at the acute residential facility shall be determined at the time of admission by the State Department in collaboration with the acute residential facility, county department of human/social services, child/youth, family of child/youth, and the child’s/youth’s permanency team.

B. Criteria for determining the eligibility period of placement at the acute residential facility may include but are not limited to the assessment of the child’s/youth’s needs, goals of the child/youth, goals of the family (when applicable), expected time to achieve stabilization, criteria for transition, transition needs, and plan for permanency.

C. Within fourteen (14) calendar days of admission, the State Department shall issue an approval letter to include the duration of the child’s/youth’s treatment and the expected date by which the child/youth will be discharged from the acute residential facility.

D. The duration of treatment shall be reviewed by the State Department, the acute residential facility, and the county department of human/social services, in collaboration with the child/youth, family of the child/youth (when applicable), and the child’s/youth’s permanency team, no more than every thirty (30) days after the date of admission and may be subject to change based upon the progress and needs of the child/youth.

E. In the event the State Department determines a change to the duration of treatment, a revised approval letter will be issued.

F. Criteria for discharge

1. The child/youth has met the goals and objectives in the individual child's/youth's plan, as determined by the acute residential facility, in consultation with the State Department and the county department of human/social services; or,

2. The child's behavior has become such that it presents significant safety issues for themselves and/or others at the facility, the treatment team at the facility can no longer effectively provide treatment for the child, and the child can no longer be safely maintained in the facility without a higher level of intervention. The facility will consult with the State Department and the placing authority to develop an ongoing plan for the child; or,

3. A viable placement option in a lower level of care is identified and available; or,

4. The child's/youth's family is ready and able to care for the child/youth; and,

5. A transition plan is in place to include identified services to support the placement option or family in caring for the child/youth.

G. The facility, county department of human/social services, child's permanency team, placement option, and acute residential program administrator shall participate in discharge planning to ensure continuity of care and appropriate transition planning.

H. The county department of human/social services retains the right to remove the child/youth from the program any time prior to the discharge date specified in the most recent approval letter.

7.424.25 COUNTY DEPARTMENT OF HUMAN/SOCIAL SERVICES RESPONSIBILITIES

A. The county department of human/social services shall participate in initial and ongoing monthly staffings, treatment planning, and discharge planning for each child/youth placed at the acute residential facility by the county department of human/social services.

B. Permanency planning shall occur in accordance with 7.301.2.

7.424.26 REIMBURSEMENT

When the child/youth is placed at the acute residential facility, the State Department shall reimburse the provider one hundred percent (100%) of the placement costs, up to thirty (30) days beyond the discharge date as defined in the most recent approval letter. The Department will not reimburse for costs incurred when a county department of human services continues the placement of a child or youth at the acute residential facility after the end of the approved placement period. County departments of human services must contract directly with the facility by completing an ss-23a.

7.424.27 QUALITY ASSURANCE

A licensee that holds an acute residential facility contract is subject to the rules and regulations found at 7.701, 7.705, 7.706, 7.714, and 7.719.

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Tracking number: 2021-00636

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

on 11/05/2021

12 CCR 2509-5

RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS

The above-referenced rules were submitted to this office on 11/10/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 17:29:15

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

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-5

Rule title

12 CCR 2509-5 RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS 1 - eff 12/30/2021

Effective date

12/30/2021

(12 CCR 2509-5)

7.402.1 PROVISION OF SERVICES

Subject to certain income and resource limitations, medical assistance through the Colorado Medicaid program must be provided to certain children and youth receiving child welfare services as follows:

A. Children and youth for whom the county department is assuming full or partial financial responsibility.

1. Children and youth in foster care, including those who are in supervised independent living placement situations subsequent to being in foster care;

2. Youth committed to the Department of Human Services, Division of Youth Services, who are placed in a non-secure community based residential facility or in supervised independent living placement situations;

3. Children and youth who have a current, signed subsidized adoption agreement;

4. Children and youth receiving Core services who otherwise would be in foster care;

5. Children and youth in subsidized adoption, including adoption placements out of state, who are IV-E eligible or where the state option is in effect until the receiving state can provide Medicaid;

6. Children and youth from Colorado placed in an out of state out-of-home placement by a Colorado county. IV-E eligible children receive Colorado Medicaid until the receiving state can provide Medicaid;

7. Children and youth eligible for Supplemental Security Income, even if they are not receiving cash benefits, who are placed in an out of state foster care setting until the receiving state can provide Medicaid.

8. Children and youth who are eligible for the Relative Guardianship Assistance Program, including relative guardianship assistance placements out of state who are Title IV-E eligible, until the receiving state can provide Medicaid.

B. Certain children and youth from other states who are placed in Colorado by that state.

1. Children and youth eligible for adoption assistance placed in Colorado by another state;

2. Children and youth placed in an out-of-home placement in Colorado by another state;

3. Children and youth who are eligible for Supplemental Security Income placed in an out-of-home placement in Colorado by another state.

4. Children and youth who are eligible for Relative Guardianship Assistance placed in Colorado by another state and who are Title IV-E eligible.

C. Children and youth who are receiving child welfare services, living in their own home or the home of a designated relative, and the county department is not assuming full or partial financial responsibility for their care, may be eligible for coverage under other Colorado Medicaid programs for families and children.

D. Adoption assistance youth who emancipated from foster care or adoption assistance at age eighteen (18) or after and are under age twenty-one (21), and for whom the state made foster care or adoption assistance payments in the month the youth turned eighteen (18) years of age.

E. A child who has an acceptable non-citizen status as defined in 10 CCR 2505-10 Section 8.100.3.G and is in the custody of DHS is eligible for Colorado Medicaid and no longer need to meet the five-year waiting period to be eligible for Medicaid.

F. Beginning January 1, 2014, former Colorado foster care youth, who were under the State's or Tribe's responsibility, when they emancipated from foster care at age eighteen (18) or after, and who were enrolled in Medicaid (IV-E or non-IV-E) under Colorado's Medicaid State Plan at the time of their emancipation, and are under age twenty-six (26); are eligible for Colorado's Former Foster Care Medicaid. Eligible placement types include the following:

- Kinship family foster care
- Non certified kinship care
- Foster home care
- Group home and group center care
- Children's Habilitation Residential Program (CHRP)
- Residential Child Care Facilities
- Supervised Independent Living Placement programs
- Youth committed to the Division of Youth Services, living in one of the above, non-secure placements.

G. Youth for whom the county had placement authority or custody on or after the youth's 18th birthday.

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7.404 FEES

A. Fees shall be determined and collected as applicable for the following services in each program area:

1. Child Welfare Child Care.
2. Foster care.
3. Adoptive studies.
4. Core Services Program services as defined in the state approved Core Services Program plan.
5. Medical care paid by the county that is not reimbursed by the state.
6. Other services, such as case services, or custody evaluations.

B. When both foster care and Core Services Program Services are simultaneously being provided or purchased, the foster care fee schedule shall be applied to the cost of both programs.

C. Categories excluded from fee collection:

1. Colorado Works categories, except for Supplemental Security Income eligible children in foster care and whose parents are not Colorado Works recipients.

2. Individuals whose income is deemed to a Colorado Works household.

3. Adoptive families who have an approved but inactive adoption assistance agreement and the child is in out-of-home placement.

4. Youth participating in the Foster Youth in Transition Program and their parents.

D. Once the amount of fee is determined, the full amount is to be paid up to the cost of services.

E. Fees shall be determined for adoptive families as follows:

1. Adoptive families who have an approved Colorado non-Title IV-E adoption assistance agreement, but are currently not receiving adoption assistance payments and the child is in out-of-home placement, are excluded from fee collection.

2. Adoptive families living out of Colorado who have an approved non-Title IV-E adoption assistance agreement whose child is in out-of-home care and the family is being charged a placement fee may request continuation of the adoption assistance payments to assist in the cost associated with the child's out-of-home placement. The plan for the child shall be reunification with the family.

3. Adoptive families who have an approved Colorado non-Title IV-E adoption assistance agreement and the child is in out-of-home placement shall be assessed a placement fee not to exceed the amount of the adoption assistance payment they are receiving under their adoption assistance agreement.

4. Adoptive families who have an approved Title IV-E adoption assistance agreement and the child is in out-of-home placement shall be assessed a fee not to exceed the amount of the adoption assistance payment they are receiving under their adoption assistance agreement.

F. If a family is receiving purchased services the fees shall be distributed in the following priority:

1. Medical costs for non-Medicaid eligible children

2. Foster care

3. Core Services Program Services

4. Child Welfare Child Care

5. Other services

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7.404.3 CHILD'S INCOME

A. For non-IV-E children, income and other funds, including fees and child support, received by or on behalf of the child, which are more than the amount needed to meet his/her monthly needs, shall be kept by the county treasurer in a special account or trust fund, or, with the concurrence of the county treasurer, a trust account may be established with the county director as the trustee.

See the Finance Manual (11 CCR 2508-1) Such excess funds may be used to meet the child's other needs, such as medical care.

B. For IV-E foster care children, the county department shall handle payment according to Volume V, Disbursement of Support Collections. All other income is handled the same as for non-IV-E children.

C. When a child in foster care has income earned from her/his employment, the county department shall consider the following:

1. Income is not a consideration in determining eligibility for foster care.

2. Full-time student - when a foster child is in school full-time, or would be, except for scheduled vacation. The child need not contribute toward the cost of her/his foster care.

3. Part-time student:

a. When a child in foster care is a part-time student and employed part-time (less than 30 hours per week), earned income is not considered.

b. When the child is employed full-time, the child's own income shall be considered in determining a foster care fee. The guidelines permit the court to consider the child's income in setting the award against the parents.

D. When a child is in a placement under IV-E Foster Care (Title IV-E) and has income, the county department shall refer the case to the Income Maintenance Division for determination of continuing eligibility for IV-E Foster Care. See the Income Maintenance manual Section on Eligibility for Temporary Assistance to Needy Families (9 CCR 2503-1).

E. When a youth is participating in the Foster Youth in Transition Program, the youth's housing is fully or partially funded through foster care maintenance payments, in addition to any other housing assistance the youth is eligible to receive. Any expectations for the youth to contribute to the youth's own expenses must be determined by requirements in 7.416.2.

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7.406.1 THE STATE REIMBURSES WHEN

A. The county's case record contains required program documentation. For out-of-home placement, documentation shall include the requirements listed under Section 7.304.51 (12 CCR 2509-4), Authority for Placement.

B. Care is provided after the case is open and before the case is closed.

C. The child is with a provider in possession of a valid certificate or license, when one is required.

D. Placement is with an in-state Residential Child Care Facility or Child Placement Agency on the state approved vendor list or with out of state placement providers as approved through the Interstate Compact on the Placement of Children.

E. A youth over eighteen (18) years of age is in placement only when the court had jurisdiction before the 18th birthday and the court orders out- of-home placement or the youth meets eligibility criteria for the Foster Youth in Transition Program and has an active voluntary services agreement.

F. A child is absent from an out-of-home placement and the county department elects to reimburse the provider during the absence period for the placement for one of the following reasons:

1. The absence does not exceed seven days per absence, with only one (1) seven-day total reimbursement within thirty (30) calendar days for the following reasons:

a. The child has run away,

b. Trial home visit,

c. Trial provider visit,

d. Child in detention; or,

e. The child has been kidnapped.

2. Thirty (30) calendar day absences are allowed for the following reasons:

a. Respite (unless care is being provided and it violates Section 7.708.31, D (12 CCR 2509-8) and causes a foster care home to be over capacity); or,

b. The absence occurs during the first thirty (30) days of a hospitalization.

3. For children enrolled in the Children's Habilitation Residential Program Waiver (CHRP), the county may continue payment of the equivalent of the maximum federal Supplemental Security Income benefit during all absences.

G. The out-of-home placement duration for a voluntary Title IV-E child/youth does not exceed 180 calendar days when the county department has filed for a petition to review the need for placement, or petition to open a foster youth in transition case by the 90th calendar day and the county has a correctly worded court order issued, based on the request of the petition to review the need for placement; see Court-Related Procedures, Section 7.304.53 (12 CCR 2509-4).

H. The county department reports an out-of-home or Core Services Program care placement in the Department's automated reporting system within ninety (90) calendar days of its beginning. The State reimburses for retroactive payments not greater than the current and two (2) preceding months.

I. The county department places children in out-of-home care within the provider's licensed or certified capacity or if the licensed/certified capacity is exceeded with the placement of a sibling group. The county shall document that there are no other appropriate placements available.

J. A child is in a Child Placement Agency or Residential Child Care Facility within Colorado for longer than ten (10) working days and an agreement to purchase Child Placement Agency or Residential Child Care Facility services is completed for the child.

K. A child is in a Child Placement Agency or Residential Child Care Facility within Colorado for less than ten (10) working days and the facility has an emergency shelter contract with a county department.

L. Out-of-home placement occurs in facilities holding current certificates or licenses, including kinship foster care placement.

M. Children are placed in Child Placement Agencies and Residential Child Care Facilities outside of Colorado according to the rules for out of state placement and Interstate Compact on the Placement of Children.

N. Respite care is paid to providers of foster care homes. This includes county department or child placement agency foster care homes, or adoptive homes receiving a foster care payment and kinship family foster care providers. It does not include foster homes that provide receiving home care.

O. The child enters care (first day) but not for the last day in care.

P. The child is placed and removed on the same day.

Q. The state reimburses for supervised independent living placements for youth eighteen (18) through the end of the month of the twenty first (21st) birthday, when the county has placement and care responsibility. The state does not reimburse for youth in a supervised independent living placement under the age of eighteen (18).

R. Child Welfare Child Care program criteria are met.

S. The Core Services Program is operated within applicable state rules and within the provisions of the county or multi-county state approved Core Services Plan and in accordance with the requirements governing the specific funding streams used.

T. Client travel costs for out-of-state placement and supervision activities are related to out-of-home placements approved through the Interstate Compact county liaison and the receiving state Interstate Compact on the Placement of Children office. Staff travel costs are reimbursed through county administration.

U. Payments for out-of-home care and rate adjustments are pro-rated using the foster care daily rate in the State Department's automated reporting system.

V. The developmental disability rate for children placed in foster care homes, kinship foster care homes, receiving home care, specialized group facilities, specialized foster care in county certified foster care homes, and homes in which a subsidized adoption maintenance payment is made.

W. The county department for expenditure for clothing purchased for a child in out-of-home care. The state reimburses retroactive clothing payments not greater than the current and two preceding months.

X. The child is in out-of-home care and the county department lists a child free for adoption with the Colorado Adoption Resource Registry within ninety (90) calendar days following:

1. The date of relinquishment or termination of the parent-child relationship, or

2. The date of placement into out-of-home care following an adoption dissolution.

Y. The child is in out-of-home care, the county department requests and the State approves an exclusion from Colorado Adoption Resource Registry listing for a child free for adoption within ninety (90) calendar days following:

1. The date of relinquishment or termination of the parent-child relationship; or,

2. The date of placement into foster care following an adoption dissolution.

Z. If the state approves a Colorado Adoption Resource Registry exclusion because the county finds an adoptive home, reimbursement for out-of-home care is limited to six months from the date the state department receives the request for exclusion.

AA. Costs are billed for the current and two (2) preceding months.

BB. The Early intervention and Prevention Program is operated within applicable state rules and within the provision of the county or multi- county state approved services plan.

CC. A child with development disabilities has been placed in a locked residential setting for treatment and the county has obtained a court order of legal imposition of disability pursuant to Section 27-10.5-110, C.R.S.

DD. A county department pays incentives to a consortium for meeting or exceeding agreed to outcomes.

EE. A county department may pay a consortium, if the consortium's outcome measures meet or exceed the agreed to standard.

FF. A county department purchases Transition Program services provided by an RCCF that is on the approved State RCCF vendor list. In no case shall the rate for transition services exceed the RCCF rate approved by the county department.

GG. Placement of a child in a provisionally certified foster care home that is fully certified within ninety (90) calendar days from the date of the application.

HH. If required by section 24-76.5-101, 102, OR 103 a county department shall document the lawful presence of children age eighteen (18) and over receiving services other than those excluded from the definition of a federal public benefit, state and local public benefits as those terms are defined at Section 24-76.5-102, C.R.S., or services excluded from this requirement as defined at section 24-76.5-103, C.R.S.

II. A county department pays a provider at or above the state-established base anchor rates. A county that negotiates provider rates shall use a request for proposal process, a draft of which shall be submitted to the, no later than March 1.of each calendar year. The Department shall approve or deny the draft proposal no later than April 1 of each calendar year. The request for proposal shall include the following:

1. The county department of human/social services' policy for:

    a. Determining the time frames for negotiation or re-negotiation of rates, services and outcomes; and,

    b. Actions to be taken if services are not delivered or outcomes are not met.

2. The Department shall evaluate request for proposals submitted by county departments of human/social services using the following criteria:

    a. Consideration of whether the county used an approved request for proposal process including, but not limited to, competitive bidding and negotiations;

    b. Consideration of performance outcomes and whether they are tied to financial incentives.

JJ. Reasonable travel is provided to the school where the child is enrolled prior to out-of-home placement.

KK. Reasonable costs are provided for liability insurance for a child.

LL. Adoption Assistance and Relative Guardianship Assistance Program payments are made in compliance with requirements.

MM. Case services in adoption assistance agreements and relative guardianship assistance agreements.

NN. Non-recurring expenses for adoption assistance and relative guardianship assistance agreements.

OO. A child/youth is placed at the IDD facility, as defined in 7.424.5, with the approval of the State Department. The approved placement period is the duration of treatment, as stated in the most recent approval letter from the State Department, and thirty (30) days after the completion of treatment/ discharge date.

PP. A county department makes foster care maintenance payments for children/youth placed with parents in a licensed residential family-based treatment facility for substance abuse in accordance with federal and state program and fiscal requirements. Reimbursement shall be eighty percent (80%) of the approved allowable cost, within the available allocation.

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7.410 CASE SERVICE PAYMENTS FOR CHILDREN PLACED IN OUT-OF-HOME CARE [Rev. eff. 4/1/12]

Case services are a type of purchased program services that support a case plan for children in out-of-home placement, adoption assistance, or a Relative Guardianship Assistance agreement.

A. The State reimburses for a one time physical, dental and psychological examination for individual eligible children in out-of-home care per Section 7.607.3, B, 2 (12 CCR 2509-7).

B. The State reimburses county departments for client transportation as a case service from out-of-home care funds when travel is necessary:

1. For children in out-of-home care to receive services specified in the Family Services Plan that are directly related to visitation and reunification.

2. To return runaways, who are in county department custody, to their Colorado home county.

3. To facilitate a permanent plan through the Interstate Compact on the Placement of Children.

C. The State does not reimburse for transportation when the:

Child is eligible for Medicaid and the transportation is to enable him/her to secure medical benefits.

D. The State reimburses county departments for case services provided to children placed by provider consortiums/networks when such services are not a part of either room and board or Medicaid treatment/case management services.

E. The State reimburses county departments for other case services provided to children in out-of-home placement when such services are not a part of either room and board or Medicaid treatment or case management services.

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7.416.2 REIMBURSEMENT FOR SUPERVISED INDEPENDENT LIVING PLACEMENT

This is paid according to the rate negotiated by the county department. The rate may be the State established child maintenance rate or may be the rate negotiated by the county department that ensures the youth has sufficient resources to meet their basic needs and any contribution the youth is required to make shall be based on:

A. The presumption that ability to pay aligns with standards established by the federal department of housing and urban development housing choice or similar voucher programs. Any variance shall be based on the needs of the youth and:

1. The need to gradually reduce payments in a manner that reduces potential negative impacts associated with a sudden reduction in public benefits; this reduction shall not begin more than 120 days prior to the projected end of payments.

2. The need to provide stable support to the youth should the youth's income change rapidly or unexpectedly.

3. Any variance and the reason for the variance shall be documented in the comprehensive child welfare information system.

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on 11/05/2021

12 CCR 2509-5

RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS

The above-referenced rules were submitted to this office on 11/08/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 17:28:34

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

Emergency 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 11/05/2021

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03/05/2022

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 21-E-15

CONCERNING SUSPENSION OF UTILIZATION REVIEW REQUIREMENTS FOR TRANSFERS OR DISCHARGES FROM HOSPITALS EXPERIENCING COVID-19-RELATED CLINICAL STAFFING SHORTAGES

Section 1 Authority

This regulation is being promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-3-1104(1)(h), 10-3-1104(1)(i), 10-3-1110(1), 10-16-109, and 10-16-113(10), C.R.S. Further, this emergency regulation is promulgated pursuant to the Governor's Executive Order D 2021 136.

Section 2 Scope and Purpose

The purpose of this regulation is to increase the number of available providers in hospitals that are experiencing clinical staffing shortages due to COVID-19 and other emergency hospitalizations and an associated decrease in intensive care unit capacity. It will increase the availability of providers for patient care by temporarily suspending utilization review requirements and streamlining the approval process for transfers and discharges from hospitals.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., and in accordance with Executive Order D 2021 136, that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare as ensuring hospitals have adequate resources and availability to treat patients is imperative to preserve the health of the citizens of Colorado. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Section 3 Applicability

This regulation applies to all individual and group health benefit plans issued or renewed by entities subject to Part 2, Part 3 and Part 4 of Article 16 of Title 10 of the Colorado Revised Statutes. Carriers who are third-party administrators for self-funded plans are strongly encouraged to follow the requirements of this regulation in order to create uniformity regarding utilization reviews for hospital transfers or discharges.

Section 4 Definitions

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

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

C. "In-network" shall have the same meaning as found at § 10-16-102(45), C.R.S.

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

E. "Medical necessity" shall have the same meaning as found at § 10-16-112.5(7)(c), C.R.S.

F. "Prior authorization" shall have the same meaning as found at § 10-16-112.5(7)(d), C.R.S., and includes preauthorization.

G. "Provider" shall have the same meaning as found at § 10-16-102(56), C.R.S.

H. "Utilization review" shall have the same meaning as found in Colorado Insurance Regulation 4-2-17, Section 4(AF).

Section 5 Rules

A. Carriers shall not require any prior authorization approval for transfers or discharges from a hospital; shall not make any determination that such transfer or discharge is medically unnecessary, inappropriate, ineffective, or inefficient; shall not require utilization review, including but not limited to retrospective review; and shall rely solely on the medical judgment of a provider regarding the transfer or discharge during the duration of this emergency regulation.

B. Carriers shall not make any determination that the transfer or discharge from a hospital is medically unnecessary, inappropriate, ineffective, or inefficient and shall rely solely on the medical judgment of a provider during the duration of this emergency regulation.

C. For any claims subject to Section 5(A) or (B), carriers shall not require the provider or the covered person to submit documentation relating to the medically necessity, appropriateness, effectiveness, or efficiency to the carrier.

D. For any claims subject to Section 5(A) or (B), carriers shall waive, or not enforce, any contractual provision specified in § 10-16-705(14)(a), C.R.S., to the extent it requires a provider to demonstrate medical necessity, appropriateness, effectiveness, or efficiency for in-network, inpatient treatment.

E. Nothing in this regulation prevents a carrier from denying coverage because the health care service is an excluded benefit or coverage has lapsed for the covered person.

F. For the pendency of this emergency regulation, the Division will not view a carriers' lack of utilization review under the specific circumstances of this emergency regulation as a violation of § 10-3-1104, C.R.S.

G. Nothing in this regulation shall be interpreted as eliminating the need to ensure timely transfer of relevant clinical information to another provider or the carrier.

H. If a covered person receiving care in a hospital or freestanding emergency department is transferred to another hospital or facility functioning as a hospital to preserve adequate capacity due to the COVID-19 situation, carriers shall continue to follow Division of Insurance Emergency Regulation 21-E-14.

I. To the extent reasonable and feasible, hospitals and providers are encouraged to ensure covered persons are transferred or discharged to in-network facilities.

Section 6 Severability

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

Section 7 Enforcement

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

Section 8 Effective Date

This emergency regulation shall be effective on November 5, 2021.

Section 9 History

Emergency regulation effective November 5, 2021.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., and in accordance with Executive Order D 2021 136, that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare as ensuring hospitals have adequate resources and availability to treat patients is imperative to preserve the health of the citizens of Colorado. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00731

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

Division of Insurance

on 11/05/2021

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 11/05/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 16, 2021 10:50:13

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Chiropractic Examiners

CCR number

3 CCR 707-1

Rule title

3 CCR 707-1 CHIROPRACTIC EXAMINERS RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

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.]

…

1.31 EXPANDED SCOPE OF PRACTICE FOR CHIROPRACTORS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Chiropractic Examiners ("Board") set forth in section 24-1-122(3)(h), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Chiropractors may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Chiropractors are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Chiropractors shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Chiropractors shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Chiropractors shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of statutory scope of practice regardless of delegation.

…

1.36 EXPANDED SCOPE OF PRACTICE FOR CHIROPRACTORS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Chiropractic Examiners ("Board") set forth in section 24-1-122(3)(h), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Chiropractors may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Chiropractors are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Chiropractors shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Chiropractors shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Chiropractors shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic.. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

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Office of the Attorney General

Tracking number: 2021-00715

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

Division of Professions and Occupations - Board of Chiropractic Examiners

on 11/02/2021

3 CCR 707-1

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:13:07

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Dental Board

CCR number

3 CCR 709-1

Rule title

3 CCR 709-1 DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Dental Board

DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS

3 CCR 709-1

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

…

1.27 EXPANDED SCOPE OF PRACTICE FOR DENTISTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Dental Board ("Board") set forth in section 24-1-122(3)(k), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Dentists may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Dentists are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Dentists shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Dentists shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Dentists shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of statutory scope of practice regardless of delegation.

1.28 EXPANDED SCOPE OF PRACTICE FOR DENTISTS AND DENTAL HYGIENISTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Dental Board ("Board") set forth in section 24-1-122(3)(k), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Dentists and dental hygienists may counsel patients and administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting.

    a. Dentists and dental hygienists are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Dentists and dental hygienists shall not administer the COVID-19 vaccination if the licensee does not possess the knowledge, skill or training to administer the vaccination or treat a reaction to the vaccination.

    c. This service shall not be delegated to another person or licensee by the licensee.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic.. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

_____

Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
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Office of the Attorney General

Tracking number: 2021-00714

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

Division of Professions and Occupations - Colorado Dental Board

on 11/02/2021

3 CCR 709-1

DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:12:10

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Dental Board

CCR number

3 CCR 709-1

Rule title

3 CCR 709-1 DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS 1 - eff 11/04/2021

Effective date

11/04/2021

Expiration date

03/04/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Dental Board

DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS

3 CCR 709-1

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

…

1.31 RULES REGARDING THE USE OF BENZODIAZEPINE

The authority for promulgation of these rules and regulations by the Colorado Dental Board is set forth in sections 12-20-204(1), 12-220-105(3), 12-220-106, and 12-30-109(6), C.R.S.

The purpose of these Rules and regulations is to implement rules required by section 12-30-109(6), C.R.S., related to requirements for prescribing benzodiazepines to patients for whom licensees have not previously prescribed benzodiazepines within the last twelve months.

A. Licensees must limit any prescription for a continuous benzodiazepine to a 30-day supply, for any patient to whom the licensee has not prescribed a benzodiazepine in the last 12 months.

B. Prior to prescribing the second fill of a benzodiazepine, a licensee must comply with the requirements of section 12-280-404(4), C.R.S. Failure to comply with section 12-280-404(4), C.R.S., constitutes unprofessional conduct or grounds for discipline under section 12-220-201(1), C.R.S.

C. The limitation stated in section (A) of this Rule does not apply to patients for whom licensees prescribe benzodiazepines for the following conditions:

    1. Epilepsy;

    2. A seizure, a seizure disorder, or a suspected seizure disorder;

    3. Spasticity;

    4. Alcohol withdrawal; or

    5. A neurological condition, including a post-traumatic brain injury or catatonia.

D. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of the practice of dentistry based on an individual patient's needs, in tapering benzodiazepine prescriptions.

(Promulgated as an Emergency Rule on November 4, 2021; Effective on November 1, 2021)

Editor's Notes

History

Rules XVII, XXVI eff. 07/01/2007.

Rules XXVI, XXIX, XXX eff. 12/31/2007.

Rule XXVI eff. 11/30/2008.

Rule III eff. 05/30/2009.

Rule III eff. 12/30/2009.

Rules III, XIV-XXX eff. 03/30/2010.

Rules I-IX, XI-XIII, XV-XXII eff. 12/30/2011.

Rules I-III, IX, XI-XIII, XXIII-XXIV eff. 03/30/2015. Rule XVI repealed eff. 03/30/2015.

Rules XIII, XIV, XXIV eff. 06/30/2015.

Rule XXIII eff. 03/16/2016.

Rules I, III, IV, V, IX, X, XIV, XV, XVI, XVIII, XX, XXI, XXIII, XXIV, XXV eff. 06/30/2016. Rules VI, VII, VIII, XIX, XXII repealed eff. 06/30/2016.

Rule XVII eff. 09/14/2016.

Rule XIII eff. 03/17/2018.

Rule XXIV eff. 07/03/2018.

Rule XXVI eff. 08/14/2018.

Rules III, XXVI eff. 07/01/2019.

Rule 1.3 J eff. 12/30/2019.

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.

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.

Rules 1.1-1.13, 1.15-1.18, 1.21, 1.22, 1.29, Appendix A eff. 12/30/2020. Rules 1.19, 1.22 repealed eff 12/30/2020.

Rule 1.31 emer. rule eff. 01/11/2021.

Rule 1.32 emer. rule eff. 03/02/2021; expired 06/30/2021.

Rules 1.27, 1.28 emer. rules eff. 04/27/2021.

Rule 1.31 emer. rule eff. 05/11/2021.

Rule 1.30 E-F eff. 06/30/2021.

Rules 1.27, 1.28 emer. rules eff. 07/12/2021.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for an EMERGENCY RULE

Colorado Dental Board

On June 28, 2021, Governor Jared Polis signed Colorado House Bill 21-1276 (*Concerning the prevention of substance use disorders*). This bill takes effect on November 1, 2021.

BASIS
The basis for this rule is to carry out the provisions of Colorado House Bill 21-1276, and the Dental Practice Act at section 12-220-101, *et seq.*, C.R.S.

PURPOSE
The attached rule is promulgated on an emergency basis to implement Colorado House Bill 21-1276, and comply with the bill's November 1, 2021, effective date.

JUSTIFICATION
Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The specific statutory authorities that authorize this emergency rulemaking is pursuant to sections 12-20-204(1), 12-30-109(6), 12-220-106(1)(a), and 24-4-103(6)(a), C.R.S. The adoption of this rule on an emergency basis is imperatively necessary to comply with the requirements and effective date of state law. This temporary/emergency rule takes effect on November 4, 2021, and will remain in effect for no more than 120 days after the date of adoption of this temporary/emergency rule.

Adopted by the Board on this 4th day of November, 2021.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00728

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

Division of Professions and Occupations - Colorado Dental Board

on 11/04/2021

3 CCR 709-1

DENTISTS & DENTAL HYGIENISTS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/04/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 23, 2021 11:39:34

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Podiatry Board

CCR number

3 CCR 712-17

Rule title

3 CCR 712-17 RULE 115 - PODIATRY SCOPE EXPANSION RULES 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Podiatry Board

RULE 115 – PODIATRY SCOPE EXPANSION RULES

3 CCR 712-17

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

17.1 STATEMENT OF BASIS AND PURPOSE

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Podiatry ("Board") set forth in section 24-1-122(m)(II), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

17.2 EXPANDED SCOPE OF PRACTICE FOR PODIATRISTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Podiatrists may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Podiatrists are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Podiatrists shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Podiatrists shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Podiatrists shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of statutory scope of practice regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic.. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
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Office of the Attorney General

Tracking number: 2021-00716

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

Division of Professions and Occupations - Colorado Podiatry Board

on 11/02/2021

3 CCR 712-17

RULE 115 - PODIATRY SCOPE EXPANSION RULES

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:13:53

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Podiatry Board

CCR number

3 CCR 712-20

Rule title

3 CCR 712-20 RULE 125 - PODIATRY SCOPE EXPANSION RULES ADMINISTRATION OF VACCINATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Podiatry Board

RULE 125 – PODIATRY SCOPE EXPANSION RULES – ADMINISTRATION OF VACCINATIONS

3 CCR 712-20

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

20.1 STATEMENT OF BASIS AND PURPOSE

A. Basis. Through Executive Order D 2021 122, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Podiatry Board ("Board") set forth in section 24-1-122(3)(m)(II), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 122 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 122 directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

20.2 EXPANDED SCOPE OF PRACTICE FOR PODIATRISTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 122

A. Podiatrists may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

1. Podiatrists are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

2. Podiatrists shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

3. Podiatrists shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

4. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

5. Podiatrists shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic.. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
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Office of the Attorney General

Tracking number: 2021-00717

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

Division of Professions and Occupations - Colorado Podiatry Board

on 11/02/2021

3 CCR 712-20

RULE 125 - PODIATRY SCOPE EXPANSION RULES ADMINISTRATION OF VACCINATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:14:38

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-45

Rule title

3 CCR 713-45 RULE 145 - EMERGENCY RULES AND REGULATIONS REGARDING TEMPORARY LICENSURE 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 145 – EMERGENCY RULES AND REGULATIONS REGARDING TEMPORARY LICENSURE

3 CCR 713-45

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

45.1 INTRODUCTION

A. Basis: Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Medical Board ("Board") set forth in section 24-1-122(3)(m)(I), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

45.2 TEMPORARY LICENSURE

A. The Board may issue a temporary license to practice medicine to a foreign medical graduate applicant who has completed a minimum of 1-year of postgraduate training or practice in a foreign country and who meets all qualifications for licensure as set forth in section 12-240-110, C.R.S., with the exception of successful completion of the required approved internship or at least one year of postgraduate training approved by the board, as set forth in section 12-240-110(2)(c), C.R.S.

1. Foreign medical graduates must submit an application for temporary licensure.

2. A temporary license issued on or after November 2, 2021 is effective from date of issuance through May 31, 2022.

    a. On June 1, 2022, if a full license to practice medicine in Colorado has not been issued, the temporary licensee shall cease practice immediately and until such time as full licensure to practice medicine in Colorado has been granted

3. A temporary license issued to a foreign medical graduate from April 27, 2021 to November 1, 2021 is effective from date of issuance through December 31, 2021.

    a. Foreign medical graduates issued a temporary license between April 27, 2021 and November 1, 2021 may apply for another temporary license.

    b. On January 1, 2022, if a full license to practice medicine in Colorado has not been issued, the temporary licensee shall cease practice immediately and until

such time as full licensure to practice medicine in Colorado has been granted or another temporary license has been issued pursuant to this Rule 45.

4. Foreign medical graduates who are granted this temporary licensure may perform delegated medical services, other than prescribing medications, under the personal and direct supervision of a Colorado licensed physician whose license is in good standing. This supervision is required during the entire term of the temporary licensure.

5. For the purpose of this emergency rule, “direct supervision” means the Colorado licensed physician must be on the premises with the temporary foreign medical graduate licensee and immediately available to respond to an emergency or provide assistance.

6. For the purpose of this emergency rule “premises” means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

7. This temporary license is not renewable and does not create a property interest for the holder of the temporary license.

8. The temporary licensee may be subject to discipline by the Board as defined in 12-240-101, C.R.S., *et seq*., and shall be subject to the professional liability insurance requirement as defined in section 13-64-301, C.R.S.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, , which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the Governor extended the temporary suspension of the emergency rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1-122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board) for matters consistent with this Executive Order and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Due to the COVID-19 pandemic, testing centers across the United States, including Colorado, indefinitely postponed examinations required for licensure for numerous healthcare professions and as the testing centers re-open, the number of seats available for each scheduled examination have been drastically reduced in order to comply with Social Distancing requirements, leaving thousands of otherwise qualified healthcare graduates unable to enter the workforce. Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions

and Occupations (Division Director), is addressing temporary licensure for new graduates in order to expand the available healthcare workforce while the graduates await examination.

Justification

As set forth in Executive Order D 2021 122 as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to immediately expand the available healthcare workforce. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules governing temporary licensure for new graduate applicants who meet the qualifications for licensures but for the required examination that is not immediately available due to the COVID-19 pandemic.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce is imperatively necessary for the preservation of the public health, safety and welfare.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines, Director Division of Professions and Occupations

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Office of the Attorney General

Tracking number: 2021-00725

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

Division of Professions and Occupations - Colorado Medical Board

on 11/02/2021

3 CCR 713-45

RULE 145 - EMERGENCY RULES AND REGULATIONS REGARDING TEMPORARY LICENSURE

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:21:07

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-46

Rule title

3 CCR 713-46 RULE 160 - EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 160 – EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT

3 CCR 713-46

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

46.1 INTRODUCTION

A. Basis: Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Medical Board ("Board") set forth in section 24-1-122(3)(m)(I), C.R.S,, and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

46.2 EXPANDED DELEGATION

A. In addition to any delegation authorized by the Medical Practice Act including, but not limited to, section 12-240-107(3)(l), C.R.S., or Colorado Medical Board Rule 800 3 CCR 713-30, physicians are authorized to delegate services in hospitals and inpatient settings as follows:

1. Physicians may delegate medical services within their scope of practice to the following Colorado Licensed Professionals working in a hospital or inpatient facility:

    a. Podiatrists

    b. Optometrists

    c. Chiropractors

    d. Veterinarians

    e. Dentists

    f. Physical Therapists

g. Physical Therapy Assistants

h. Occupational Therapists

i. Occupational Therapy Assistants

j. Speech-Language Pathologists

k. Surgical Assistants

l. Surgical Technologists

m. Volunteer Retired Nurses

n. Nurse Aides

o. Temporary IMG Licensees

2. Physicians may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

a. Volunteer Nursing Students

b. Medical Assistants

3. Physicians are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in this Rule, section 46.2(A)(1) and (2).

4. In order to delegate services pursuant to this Rule, section 46.2(A)(1) and (2).the physician shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The physician shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of a physician.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated pursuant to this Rule 160.

B. In addition to any delegation authorized by the Medical Practice Act and section 25-3.5-207, C.R.S., and notwithstanding any limitations set forth in Colorado Medical Board Rules 400 3 CCR 713-7 or 800 3 CCR 713-30, physician assistants are authorized to delegate services in hospitals and inpatient settings as follows:

1. Physician assistants may delegate services within their scope of practice to the following Colorado Licensed Professionals working in a hospital or inpatient facility:

a. Podiatrists

b. Optometrists

c. Chiropractors

d. Veterinarians

e. Dentists

f. Physical Therapists

g. Physical Therapy Assistants

h. Occupational Therapists

i. Occupational Therapy Assistants

j. Speech-Language Pathologists

k. Surgical Assistants

l. Surgical Technologists

m. Volunteer Retired Nurses

n. Nurse Aides

2. Physician assistants may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

a. Volunteer Nursing Students

b. Medical Assistants

3. Physician assistants are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in Rule 1.27(C)(1) and (2).

4. In order to delegate services pursuant to this Rule, section 46.2(B)(1) and (2), the physician assistant shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The physician assistant shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of a physician assistant..

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated pursuant to this Rule 160.

46.3 EXPANDED SCOPE OF PRACTICE

A. Physicians are authorized to engage in inpatient care to evaluate and treat COVID-19 patients regardless of American Board of Medical Specialties (ABMS) Board certifications, national certifications, national specialty certificates of added qualifications, or current scope of specialty or subspecialty practice, if appropriate based on the physicians' education, training, and experience.

B. Physician assistants are authorized to engage in inpatient care to evaluate and treat COVID-19 patients regardless of National Commission on Certification for Physician Assistants (NCCPA),

national certifications, national specialty certificates of added qualifications, or current scope of specialty or subspecialty practice, if appropriate based on the physician assistants' education, training, and experience.

C. Anesthesiologist Assistants may expand their scope of practice while working in a hospital or inpatient facility as needed to perform airway management outside of the operative setting.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122 as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

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Office of the Attorney General

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

Division of Professions and Occupations - Colorado Medical Board

on 11/02/2021

3 CCR 713-46

RULE 160 - EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:22:02

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Occupational Therapy Licensure

CCR number

3 CCR 715-1

Rule title

3 CCR 715-1 OCCUPATIONAL THERAPY RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

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Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Office of Occupational Therapy Licensure

OCCUPATIONAL THERAPY RULES AND REGULATIONS

3 CCR 715-1

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

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1.18 EXPANDED SCOPE OF PRACTICE FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, et. seq., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Director of the Division of Professions and Occupations (Director) to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Occupational therapists and occupational therapy assistants may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Occupational therapists and occupational therapy assistants are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Occupational therapists and occupational therapy assistants shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Occupational therapists and occupational therapy assistants shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Occupational therapists and occupational therapy assistants shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services regardless of delegation.

…

1.21 EXPANDED SCOPE OF PRACTICE FOR OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, et. seq., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Occupational therapists and occupational therapy assistants may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Occupational therapists and occupational therapy assistants are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Occupational therapists and occupational therapy assistants shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Occupational therapists and occupational therapy assistants shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Occupational therapists and occupational therapy assistants shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from the COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, Governor Jared Polis directed the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding scope of practice for physical therapists and physical therapist assistants in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division

Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, , as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

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Office of the Attorney General

Tracking number: 2021-00721

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

Division of Professions and Occupations - Office of Occupational Therapy Licensure

on 11/02/2021

3 CCR 715-1

OCCUPATIONAL THERAPY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:17:41

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Nursing

CCR number

3 CCR 716-1

Rule title

3 CCR 716-1 NURSING RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

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03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

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1.26 TEMPORARY LICENSURE OF PRACTICAL NURSES, PROFESSIONAL NURSES, ADVANCED PRACTICE NURSES, AND CERTIFIED NURSE ASSISTANTS AND TEMPORARY SUSPENSION OF CERTAIN NURSE AND NURSE AIDE EDUCATION REQUIREMENTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Nursing ("Board") set forth in section 24-1- 122(3)(gg), C.R.S, and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. TEMPORARY LICENSURE

1. The Board may issue a temporary licenses to a professional nurse or a practical nurse that holds an active, unrestricted professional or practical nurse license in good standing in a non-compact state.

    a. Professional or practical nurses holding an active, unrestricted license in good standing in a non-compact state must submit an application for temporary licensure.

        (1) The applicant must submit evidence of an active, unrestricted license, in good standing, to practice professional or practical nursing in a non-compact state.

    b. A temporary license issued, pursuant to this Section (C)(1) of this Rule, on or after November 2, 2021 is effective from the date of issuance through May 31, 2022.

(1) On June 1, 2022, if a full license to practice nursing in Colorado has not been issued, the temporary licensee shall cease practice immediately and until such time as full licensure to practice nursing in Colorado has been granted.

c. A temporary license issued from April 6, 2021 to November 1, 2021, is effective from date of issuance through December 31, 2021.

(1) Those applicants issued a temporary license between April 6, 2021 and November 1, 2021, may apply for a second temporary license to be effective from date of issuance through May 31, 2022.

(2) On January 1, 2021, if a full license to practice nursing in Colorado has not been issued or if another temporary license has not been issued pursuant to Section (C)(1)(c)(1) of this Rule, the temporary licensee shall cease practice immediately and until such time as full licensure to practice nursing in Colorado has been granted.

d. This temporary license is not renewable and does not create a property interest for the holder of the temporary license.

e. The temporary licensee may be subject to discipline by the Board as defined in section 12-255-101, *et seq.*, C.R.S.

D. TEMPORARY EMERGENCY NURSE AIDE CERTIFICATION

1. Due to a backlog in the administration of required skills examinations, the Board may issue a temporary emergency certification to an applicant that is a new graduate of an approved nurse aide training program who meets all qualifications for certification with the exception of successful completion of the required examinations as set forth in section 12-260-108, C.R.S.

a. Nurse aide new graduates must submit an application for temporary certification.

b. A temporary certificate issued to a new graduate on or after November 2, 2021, is effective from the date of issuance through May 31, 2022.

(1) On June 1, 2022, if a full certificate to practice as a certified nurse aide in Colorado has not been issued the temporary certificate holder shall cease practice immediately and until such time as full certification to practice as a nurse aide in Colorado has been granted.

c. A temporary certificate issued from April 6, 2021 and November 1, 2021, is effective from the date of issuance through December 31, 2021.

(1) New graduates issued a temporary certificate between April 6, 2021 and November 1, 2021, may apply for another temporary certificate to expire on May 31, 2022, subject to the following terms:

(a) The applicant shall submit documentation of passage of the written examination;

(b) The applicant shall attest that the applicant will register for the required skills examination within 60 days of availability in the applicant's regional area.

(1) For the purpose of this Rule, “regional area” means within 250 miles of the applicant’s residence.

(c) The applicant shall attest that the scheduled skills examination in Section (D)(1)(c)(1)(b) of this Rule is the applicants first attempt to successfully complete the skills examination.

(2) On January 1, 2022, if a full certificate to practice as a nurse aide in Colorado has not been issued, or another temporary certificated has not been issued pursuant to Section (D)(1)(c)(1) of this Rule, the temporary certificate holder shall cease practice immediately until such time as full certification to practice as a nurse aide in Colorado has been granted.

d. Nurse aide applicants granted this temporary emergency certification shall practice under the direct supervision of a Colorado licensed professional nurse in good standing during the entire term of the temporary emergency certification.

(1) For the purpose of this emergency Rule, “premises” means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

(2) For the purpose of this emergency Rule, “direct supervision” means the Colorado licensed professional nurse must be on the premises, in-person, with the temporary emergency certified nurse aide and immediately available to respond to an emergency or provide assistance with the following exception:

(a) For home-health or home-hospice settings, “direct supervision” of the temporary emergency certified nurse may include video telesupervision by a professional nurse, provided the nurse supervises the entire visit via video telesupervision and the professional nurse is within proximity of the home site to promptly respond to provide non-emergent assistance and immediately available to respond to an emergency by activating emergency medical services to respond to the home site.

e. Once the temporary emergency certificate holder successfully completes the statutorily required examinations, the temporary emergency certificate must immediately submit an application and the required fee for full certification.

f. This temporary emergency certificate is not renewable and does not create a property interest for the holder of the temporary emergency certificate.

g. The temporary emergency certificate holder may be subject to discipline by the Board as defined in section 12-255-101, *et seq.,* C.R.S.

2. The Board may issue a temporary emergency certification to a reinstatement applicant who meets all qualifications for certification with the exception of successful completion of the required skills examinations as set forth in Rule 1.10(F).

a. A temporary emergency certificate issued to a reinstatement applicant on or after November 2, 2021, is effective from the date of issuance through May 31, 2022.

(1) On June 1, 2022, if a full certificate to practice as a certified nurse aide in Colorado has not been issued the temporary certificate holder shall

cease practice immediately and until such time as full certification to practice as a nurse aide in Colorado has been granted.

b. A temporary emergency certificate issued to a reinstatement applicant between April 5, 2021 and November 1, 2021, is effective from the date of issuance through December 31, 2021.

(1) Reinstatement applicants issued a temporary certificate between April 5, 2021 and November 1, 2021, may apply for another temporary certificate to expire on May 31, 2022, subject to the following terms:

(a) The applicant shall attest that the applicant will register for the required skills examination within 60 days of availability in the applicant's regional area.

(1) For the purpose of this Rule, "regional area" means within 250 miles of the applicant's residence.

(b) The applicant shall attest that the scheduled skills examination in section (D)(2) of this Rule is the applicants first attempt to successfully complete the skills examination.

(2) On January 1, 2022, if a full certificate to practice as a nurse aide in Colorado has not been issued or another temporary emergency certificate has not been issued pursuant to section D(2)(b)(1) of this Rule the temporary certificate holder shall cease practice immediately and until such time as full certification to practice as a nurse aide in Colorado has been granted.

b. Nurse aide applicants granted this temporary emergency certification shall practice under the direct supervision of a Colorado licensed professional nurse in good standing during the entire term of the temporary emergency certification.

(1) For the purpose of this emergency Rule, "premises" means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

(2) For the purpose of this emergency Rule, "direct supervision" means the Colorado licensed professional nurse must be on the premises, in-person, with the temporary emergency certified nurse aide and immediately available to respond to an emergency or provide assistance with the following exception:

(a) For home-health or home-hospice settings, "direct supervision" of the temporary emergency certified nurse may include video telesupervision by a professional nurse, provided the nurse supervises the entire visit via video telesupervision and the professional nurse is within proximity of the home site to promptly respond to provide non-emergent assistance and immediately available to respond to an emergency by activating emergency medical services to respond to the home site.

c. Once the temporary emergency certificate holder successfully completes the statutorily required examinations, the temporary emergency certificate must immediately submit an application and the required fee for full certification.

d. This temporary emergency certificate is not renewable and does not create a property interest for the holder of the temporary emergency certificate.

e. The temporary emergency certificate holder may be subject to discipline by the Board as defined in section 12-255-101, *et seq.,* C.R.S.

E. TEMPORARY SUSPENSION OF CERTAIN NURSE AND NURSE AIDE EDUCATION REQUIREMENTS RELATED TO COVID-19

1. Pursuant to this emergency Rule, promulgated in compliance with Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, the following State Board of Nursing Rules are temporarily suspended effective Nonember 2, 2021, for a period of no longer than 120 days:

a. Rule 1.2(C)(11) (requiring concurrent clinical and theory experiences to allow clinical hours to be completed beyond six (6) months of relevant theory content);

b. Rule 1.2(E)(15)(c)(4)(a) (requiring a minimum of four hundred (400) clinical hours graduation from a practical nursing education program);

c. Rule 1.2(E)(15)(c)(4)(b) (requiring a minimum of seven hundred fifty (750) clinical hours for graduation from a professional nursing education program);

d. Rule 1.2(E)(15)(c)(4)(c) (requiring fifty percent of clinical hours in the Medical Surgical Nursing II, Community Health and Capstone (practicum) courses, pediatrics, obstetrics, psychiatric and medical surgical nursing, including those clinical hours required for nurse refresher courses, be completed in a clinical setting);

e. Rule 1.2(E)(15)(c)(13)(d) (requiring faculty supervision for healthcare related volunteer experiences);

f. Rule 1.10 (D)(12)(a) (requiring successful completion of a written and skills-based examination prior to certification); and,

g. Rule 1.11 (E)(2)(a) (requiring a minimum of sixteen (16) hours of clinical instruction be performed in a clinical setting).

1.27 EXPANDED DELEGATION FOR ADVANCED PRACTICE REGISTERED NURSES, CERTIFIED REGISTERED NURSE ANESTHETISTS, AND PROFESSIONAL NURSES AND EXPANDED SCOPE OF PRACTICE FOR CERTIFIED REGISTERED NURSE ANESTHETISTS, VOLUNTEER RETIRED NURSES, VOLUNTEER NURSING STUDENTS AND NURSE AIDES PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Nursing ("Board") set forth in section 24-1-122(3)(gg), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. EXPANDED DELEGATION OF SERVICES

1. In addition to any delegation authorized by the Nurse Practice Act, advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses are authorized to delegate services within their scope of practice to the following Colorado licensed professionals working in a hospital or inpatient facility:

    a. Podiatrists

    b. Optometrists

    c. Chiropractors

    d. Veterinarians

    e. Dentists

    f. Physical Therapists

    g. Physical Therapy Assistants

    h. Occupational Therapists

    i. Occupational Therapy Assistants

    j. Speech-Language Pathologists

    k. Surgical Assistants

    l. Surgical Technologists

    m. Volunteer Retired Nurses

    n. Nurse Aides

2. Advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

    a. Volunteer Nursing Students

    b. Medical Assistants

3. Advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in Rule 1.27(C)(1) and (2).

4. In order to delegate services pursuant to Rule 1.27(c)(1) and (2), the advanced practice registered nurse, including certified registered nurse anesthetists, and professional nurse shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The advanced practice registered nurse, including certified registered nurse anesthetists, and professional nurse shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of an advanced practice nurse, certified registered nurse anesthetist or professional nurse.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated.

D. EXPANDED SCOPE OF PRACTICE

1. Certified registered nurse anesthetists may expand their scope of practice while working in a hospital or inpatient facility as needed to perform airway management outside of the operative setting.

2. Notwithstanding section 12-255-111(2), C.R.S., and 3 CCR 716-1 Rules 1.14(C) and (D), which were suspended pursuant to Executive Order D 2021 080, advanced practice registered nurses are authorized to evaluate and treat COVID-19 patients regardless of national certification or designated population focus.

3. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

a. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

b. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not accept delegation of a service for which the licensee or student does not possess the knowledge, skill or training to perform.

3. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not perform a delegated service for which the licensee or student does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee

5. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services regardless of delegation.

1.28 EXPANDED SCOPE OF PRACTICE FOR CERTIFIED NURSE ASSISTANTS AND PRACTICAL NURSES IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Board of Nursing ("Board") set forth in section 24-1-122(3)(k), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Practical nurses and certified nurse assistants may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Practical nurses and certified nurse assistants are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Practical nurses and certified nurse assistants shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Practical nurses and certified nurse assistants shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Practical nurses and certified nurse assistants shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division

Director), is addressing temporary licensure for new graduates in order to expand the available healthcare workforce while the graduates await examination.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
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NATALIE HANLON LEH
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Office of the Attorney General

Tracking number: 2021-00727

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

Division of Professions and Occupations - Board of Nursing

on 11/02/2021

3 CCR 716-1

NURSING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/09/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:22:51

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Veterinary Medicine

CCR number

4 CCR 727-1

Rule title

4 CCR 727-1 VETERINARY MEDICINE RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

State Board of Veterinary Medicine

VETERINARY MEDICINE RULES AND REGULATIONS

4 CCR 727-1

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

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1.24 EXPANDED SCOPE OF PRACTICE FOR VETERINARIANS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Veterinary Medicine ("Board") set forth in section 24-1-122(3)(y), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Veterinarians may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Veterinarians are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Veterinarians shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Veterinarians shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Veterinarians shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of statutory scope of practice regardless of delegation.

1.25 EXPANDED SCOPE OF PRACTICE FOR VETERINARIANS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Veterinary Medicine ("Board") set forth in section 24-1-122(3)(y), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Veterinarians may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Veterinarians are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Veterinarians shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Veterinarians shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Veterinarians shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic.. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

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Office of the Attorney General

Tracking number: 2021-00719

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

Division of Professions and Occupations - Board of Veterinary Medicine

on 11/02/2021

4 CCR 727-1

VETERINARY MEDICINE RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:16:04

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - 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 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

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.]

…

1.27 EXPANDED SCOPE OF PRACTICE FOR OPTOMETRISTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Optometry ("Board") set forth in section 24-1-122(3)(p), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Optometrists may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses. certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Optometrists are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Optometrists shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Optometrists shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Optometrists shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of statutory scope of practice regardless of delegation.

1.28 EXPANDED SCOPE OF PRACTICE FOR OPTOMESTRISTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Optometry ("Board") set forth in section 24-1-122(3)(p), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Optometrists may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Optometrists are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Optometrists shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Optometrists shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Optometrists shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic.. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
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Office of the Attorney General

Tracking number: 2021-00718

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

Division of Professions and Occupations - State Board of Optometry

on 11/02/2021

4 CCR 728-1

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:15:20

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Physical Therapy Board

CCR number

4 CCR 732-1

Rule title

4 CCR 732-1 PHYSICAL THERAPY RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

State Physical Therapy Board

PHYSICAL THERAPY RULES AND REGULATIONS

4 CCR 732-1

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

…

1.4 EXPANDED SCOPE OF PRACTICE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Physical Therapy ("Board") set forth in section 12-285-105(1)(b), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Physical therapists and physical therapist assistants may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Physical therapists and physical therapist assistants are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Physical therapists and physical therapist assistants shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Physical therapists and physical therapist assistants shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Physical therapists and physical therapist assistants shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of statutory scope of practice regardless of delegation.

…

1.7 EXPANDED SCOPE OF PRACTICE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Physical Therapy ("Board") set forth in section 12-285-105(1)(b), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Physical therapists and physical therapist assistants may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

   a. Physical therapists and physical therapist assistants are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

   b. Physical therapists and physical therapist assistants shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

   c. Physical therapists and physical therapist assistants shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

   d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

   e. Physical therapists and physical therapist assistants shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic.. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136 the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to

immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

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Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00720

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

Division of Professions and Occupations - State Physical Therapy Board

on 11/02/2021

4 CCR 732-1

PHYSICAL THERAPY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:16:48

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Respiratory Therapy Licensure

CCR number

4 CCR 741-1

Rule title

4 CCR 741-1 RESPIRATORY THERAPY RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Office of Respiratory Therapy Licensure

RESPIRATORY THERAPY RULES AND REGULATIONS

4 CCR 741-1

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

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1.9 EXPANDED DELEGATION PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. These Emergency Rules are adopted by the Director of the Division of Professions and Occupations (Director) to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Delegation

1. In addition to any delegation authorized by section 12-300-112(1)(i), C.R.S., respiratory therapists may delegate services within their scope of practice to the following Colorado licensed professionals working in a hospital or inpatient facility:

   a. Podiatrists

   b. Optometrists

   c. Chiropractors

   d. Veterinarians

   e. Physical Therapists

   f. Physical Therapy Assistants

   g. Occupational Therapists

   h. Occupational Therapy Assistants

i. Speech-Language Pathologists

j. Surgical Assistants

k. Surgical Technologists

l. Volunteer Retired Nurses

m. Nurse Aides

2. Respiratory therapists may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

a. Volunteer Nursing Students

b. Medical Assistants

3. In addition to the provisions of section 12-300-112(1)(i), C.R.S., respiratory therapists are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in Rule 1.10(C)(1) and(2).

4. In order to delegate services pursuant to Rule 1.10(C)(1) and (2), the Respiratory Therapist shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The respiratory therapists shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of a respiratory therapist.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated.

1.10 EXPANDED SCOPE OF PRACTICE FOR RESPIRATORY THERAPISTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Respiratory therapists may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Respiratory therapists are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Respiratory therapists shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Respiratory therapists shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Respiratory therapists shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from the COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, Governor Jared Polis directed the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding scope of practice for physical therapists and physical therapist assistants in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division

Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, , as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

_____

Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00724

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

Division of Professions and Occupations - Office of Respiratory Therapy Licensure

on 11/02/2021

4 CCR 741-1

RESPIRATORY THERAPY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:20:19

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Surgical Assistant and Surgical Technologist Registration

CCR number

4 CCR 745-1

Rule title

4 CCR 745-1 SURGICAL ASSISTANT AND SURGICAL TECHNOLOGIST RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Surgical Assistant and Surgical Technologist Registration

SURGICAL ASSISTANT AND SURGICAL TECHNOLOGIST RULES AND REGULATIONS

4 CCR 745-1

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

…

1.7 EXPANDED SCOPE OF PRACTICE FOR SURGICAL TECHNOLOGISTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, et. seq., C.R.S.

B. These Emergency Rules are adopted by the Director of the Division of Professions and Occupations (Director) to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Surgical Assistants and Surgical Technologists may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Surgical Assistants and Surgical Technologists are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Surgical Assistants and Surgical Technologists shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Surgical Assistants and Surgical Technologists shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Surgical Assistants and Surgical Technologists shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of their statutory scope of practice regardless of delegation.

…

1.9 EXPANDED SCOPE OF PRACTICE FOR SURGICAL ASSISTANTS AND SURGICAL TECHNOLOGISTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, et. seq., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Surgical assistants and surgical technologists may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Surgical assistants and surgical technologists are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Surgical assistants and surgical technologists shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Surgical assistants and surgical technologists shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Surgical assistants and surgical technologists shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from the COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, Governor Jared Polis directed the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding scope of practice for physical therapists and physical therapist assistants in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division

Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, , as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

_____

Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00723

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

Division of Professions and Occupations - Office of Surgical Assistant and Surgical Technologist Registration

on 11/02/2021

4 CCR 745-1

SURGICAL ASSISTANT AND SURGICAL TECHNOLOGIST RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:19:32

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

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Speech-Language Pathology Certification

CCR number

4 CCR 748-1

Rule title

4 CCR 748-1 SPEECH-LANGUAGE PATHOLOGIST RULES AND REGULATIONS 1 - eff 11/02/2021

Effective date

11/02/2021

Expiration date

03/02/2022

DEPARTMENT OF REGULATORY AGENCIES

Office of Speech-Language Pathology Certification

SPEECH-LANGUAGE PATHOLOGIST RULES AND REGULATIONS

4 CCR 748-1

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

…

1.20 EXPANDED SCOPE OF PRACTICE FOR SPEECH-LANGUAGE PATHOLOGISTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.,* C.R.S.

B. These Emergency Rules are adopted by the Director of the Division of Professions and Occupations (Director) to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Speech-language pathologists may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Speech-language pathologists are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Speech-language pathologists shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Speech-language pathologists shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Speech-language pathologists shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services regardless of delegation.

…

1.24 EXPANDED SCOPE OF PRACTICE FOR SPEECH-LANGUAGE PATHOLOGISTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2021 136

A. Basis. Through Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, Governor Jared Polis directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2021 136 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2021 136, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, and D 2021 132, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Speech-language pathologists may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Speech-language pathologists are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Speech-language pathologists shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Speech-language pathologists shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Speech-language pathologists shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from the COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, Governor Jared Polis directed the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding scope of practice for physical therapists and physical therapist assistants in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division

Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, , as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, and D 2021 136, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect November 2, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 2nd day of November, 2021.

_____

Ronne Hines
Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00722

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

Division of Professions and Occupations - Office of Speech-Language Pathology Certification

on 11/02/2021

4 CCR 748-1

SPEECH-LANGUAGE PATHOLOGIST RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/02/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 22, 2021 15:18:42

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

Emergency Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-3

Rule title

10 CCR 2505-3 FINANCIAL MANAGEMENT OF THE CHILDREN'S BASIC HEALTH PLAN 1 - eff 11/12/2021

Effective date

11/12/2021

Expiration date

03/12/2022

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning Child Health Plan Plus program rule updates, Sections 110,140, 310 and 320
Rule Number: CHP 21-11-07-B
Division / Contact / Phone:Office of Medicaid Operations / Ana Bordallo / 3558

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: CHP 21-11-07-B, Revision to the Medical Assistance Rule concerning Child Health Plan Plus program rule updates, Sections 110,140, 310 and 320
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 110,140, 310 and 320, Colorado Department of Health Care Policy and Financing, Child Health Plan *Plus* (10 CCR 2505-3).
5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 12/07/2021
   Is rule to be made permanent? (If yes, please attach notice of hearing). No

PUBLICATION INSTRUCTIONS*

Replace the current text with the proposed text beginning at Section 50 through the end of Section 610. This rule is effective December 07, 2021.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning Child Health Plan Plus program rule updates, Sections 110,140, 310 and 320
Rule Number: CHP 21-11-07-B
Division / Contact / Phone:Office of Medicaid Operations / Ana Bordallo / 3558

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed rule change will amend 10 CCR 2505-3 sections 110,140,310 and 320 based on the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (FFCRA) and the Affordable Care Act(ACA), which includes the Maintenance of Effort (MOE) provision. All policy revisions will align with federal regulations for the state to be in compliance during this Coronavirus (COVID-19) Public Health Emergency. These changes will impact all Medical Assistance categories which includes the Child Health Plan Plus (CHP+) category. These policy changes will stay in place until the end of the Coronavirus (COVID-19) Public Health Emergency. The following policy changes are: Members who were evacuated from or unable to return to Colorado and are temporarily absent will maintain enrollment in the CHP+ program. Enrollment fees will be waived for members who are being redetermined and eligible for CHP+. required through the Federal CARES Act for the Maintenance of Effort(MOE), the Department will continue eligibility for all the CHP+ categories regardless of changes made for a redetermination or additional documentation for current CHP+ enrollee and allow them to continue eligibility through the end of the Public Health Emergency. At the end of emergency, the Department will process the redetermination and /or changes for all members whose eligibility was maintained during the emergency period.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

   Due to the Coronavirus (COVIS-19) public health emergency rules need to be updated for the state to be in compliance with federal regulations.

3. Federal authority for the Rule, if any:

   Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 and Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-

136. The Affordable Care Act(ACA), which includes the Maintenance of Effort (MOE) provision.

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2021);
25.5-8-107.(b)

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning Child Health Plan Plus program rule updates, Sections 110,140, 310 and 320
Rule Number: CHP 21-11-07-B
Division / Contact / Phone:Office of Medicaid Operations / Ana Bordallo / 3558

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The proposed rules will impact members enrolled in the CHP+ programs. The rule updates will benefit members enrolled in CHP+ by remaining eligible during this Coronavirus (COVIS-19) Public Health Emergency.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule will help to determine eligibility correctly by applying regulations appropriately to help members remain eligible for the CHP+ programs during this Coronavirus (COVID-19) Public Health Emergency.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
   The Department expects that eligibility could potentially increase as members who are outside the state for the duration of the emergency will not be disenrolled. This will lead to an increase in expenditure for the Department as the member will be included in the monthly capitation payment. The Department also assumes that the waiving of enrollment fees for the CHP+ program will reduce revenues to the Department which will result in the increase of expenditures to the CHP+ Trust fund, Healthcare Affordability and Sustainability Fee (HAS) Cash Fund, and federal funds in order to fill the gap in revenue lost from the premiums. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.
The Department expects that inaction to the proposal to allow CHP+ member to retain eligibility outside the state will result in lack of care to those

members who are outside the state during the emergency period who will need those services. The Department sees no benefit to inaction.

In addition, the Department expects that inaction to the proposal to waive enrollment fees will cause potential members to not qualify because they are unable to pay the premiums due to the severity of the economic shock. The Department also sees no benefit to inaction.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are currently no less costly measures to the Department that will allow the Department to service members more effectively during the emergency period.

6.Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There are no alternative methods for the proposed rule that were considered

50 DEFINITIONS

50.1 “Applicant” shall mean a person applying or re-applying for benefits on behalf of a child and/or themselves.

50.2 “CBMS” shall mean Colorado Benefits Management System is the computer system that determines an applicant’s eligibility for public assistance in the state of Colorado.

50.3 “Child” means a person who is less than nineteen years of age.

50.4 “Cost sharing” shall mean payments, such as copayments or enrollment fees that are due on behalf of the enrollee.

50.5 “Department” shall mean the Colorado Department of Health Care Policy and Financing which is responsible for administering the Colorado Medical Assistance Program and Children’s Basic Health Plan as well as other State-funded health care programs.

50.6 “Dependent child” shall mean a child who lives with a parent, legal guardian, caretaker relative or foster parent and is under the age of 18, or, is age 18 and a full-time student, and expected to graduate by age 19

50.7 “Effective Date” shall mean the first day of eligibility which is the date the application is received and date-stamped by the Eligibility site or the date the application was received and date-stamped by an Application Assistance site or Presumptive Eligibility site. In the absence of a date-stamp, the application date is the date that the application was signed by the client.

50.8 “Eligibility Site” shall mean a location outside of the Department that has been deemed by the Department as eligible to accept applications and determine eligibility for applicants.

50.9 “Enrollee” shall mean an eligible person who is enrolled in the Children’s Basic Health Plan.

50.10 “Essential Community Provider” means a healthcare provider that:

A. Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations who make up a significant portion of its patient population, or in the case of a sole community provider, serves medically indigent patients within its medical capability; and

B. Waives charges or charges for services on a sliding scale based on income and does not restrict access or services because of a client's financial limitations.

50.11 “Evidence of Coverage” or “EOC” shall mean any certificate, agreement, or contract issued to an enrollee from time-to-time by a Managed Care Organization (MCO) setting out the coverage to which the enrollee is or was entitled under the Children’s Basic Health Plan.

50.12 “Grievance Committee” shall mean a conference with the Department or its Designee in which a contested decision regarding an applicant or enrollee is reexamined.

50.13 “Household” shall be determined by relationships to the tax filer as declared on the Single Streamlined Application and as required in 10 CCR 2505-10-8.100.4.E.

50.14 “Income” shall be any compensation from participation in a business, including wages, salary, tips, commissions and bonuses. The Modified Adjusted Gross Income is a methodology used to determine eligibility as required in 10 CCR 2505-10-8.100.4.C.

50.15 “Managed Care Organization” or “MCO” shall mean:

A. A carrier which meets the definition in §10-16-102 (8), C.R.S. with which the Department contracts to provide health care or dental services covered by the Children’s Basic Health Plan; or,

B. Essential community providers and other health care and dental service providers with whom the Department contracted to provide health care services under the Children’s Basic Health Plan using a managed care model.

50.16 “Presumptive Eligibility” shall mean children and pregnant women who have applied and appear to be eligible for the Children’s Basic Health Plan shall be presumed eligible and may receive immediate temporary medical coverage.

50.17 “Unearned Income” shall be the gross amount received in cash or kind that is not earned from employment or self-employment.

50.18 “Woman” shall mean a female who is 19 years in age or older.

100 ELIGIBILITY

110 INDIVIDUALS ASSISTED UNDER THE PROGRAM

110.1 To be eligible for the Children’s Basic Health Plan, an eligible person shall:

A.

1. Be less than 19 years of age; or

2. Be a pregnant woman

B. Fall into one of the following categories:

1. Be a citizen or national of the United States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, or Swain's Island; or

2. Be a lawfully admitted non-citizen who entered the United States prior to August 22, 1996, or

3. Be a non-citizen who entered the United States on or after August 22, 1996 and is applying for Medical Assistance who falls into one of the following categories:

a. Lawfully admitted for permanent residence under the U.S. Immigration and Nationality Act (hereafter referred to as the “INA”); or

b. Paroled into the United States for at least one year under 8 U.S.C § 1182(d)(5); or

c. Granted conditional entry under Section 203(a)(7) of the INA, as in effect prior to April 1, 1980; or

d. determined by the Eligibility site, in accordance with guidelines issued by the U.S. Attorney General, to be a spouse, child, parent of a child, or child of a parent who, in circumstances specifically described in 8 U.S.C.

§1641(c), has been battered or subjected to extreme cruelty which necessitates the provision of Medical Assistance (Children's Basic Health Plan); or

4. Be a non-citizen who arrived in the United States on any date, who falls into one of the following categories:

   a. Lawfully residing in Colorado and is an honorably discharged military veteran; or

      1. A spouse of such military veteran; or

      2. An unremarried surviving spouse of such military veteran; or

      3. An unmarried dependent child of such military veteran.7

   b. Lawfully residing in Colorado and is on active duty in the United States Armed Forces, excluding military training; or

      1. A spouse of such individual; or

      2. An unremarried surviving spouse of such individual; or

      3. An unmarried dependent child of such individual.

   c. Granted asylum under Section 208 of the INA; or

   d. Refugee under Section 207 of the INA; or

   e. An individual with deportation withheld:

      1. Under Section 243(h) of the INA, as in effect prior to September 30, 1996; or

      2. Under Section 241(b)(3), as amended by P.L. 104-208 of the INA.

   f. A Cuban or Haitian entrant, as defined under Section 501(e) of the U.S. Refugee Education Assistance Act of 1980; or

   g. An individual who:

      1. Was born in Canada and possesses at least 50 percent American Indian blood; or

      2. Is a member of an Indian tribe, as defined in 25 U.S.C. Section 450(b)e.

   h. Admitted into the United States as an Amerasian immigrant under Section 584 of the U.S. Foreign Operations, Export Financing, and Related Programs Appropriation Act of 1988, as amended by P.L. 100-461; or

   i. A lawfully admitted, permanent resident, who is a Hmong or Highland Lao veteran of the Vietnam conflict; or

j. An alien who was admitted in the United States on or after December 26, 2007 who is an Iraqi Special Immigrant under section 101(a)(27) of the INA; or

k. An alien who was admitted in the United States on or after December 26,2007 who is an Afghan Special Immigrant under section 101(a)(27) of the INA; and

5. Be a lawfully admitted non-citizen in the United States who falls into one of the categories:

a. granted temporary resident status in accordance with section 8 U.S.C. 1160 or 1255a; or

b. granted Temporary Protected Status (TPS) in accordance with section 8 U.S.C 1254a and pending applicants for TPS granted employment authorization;

c. granted employment authorization under section 8 CFR 274a.12(c);or

d. Family Unity beneficiary in accordance with section 301 of Pub. L. 101-649, as amended.

e. Deferred Enforced Departure (DED), pursuant to a decision made by the President

f. Granted Deferred Action status (excluding Deferred Action for Childhood Arrivals (DACA)) as described in the Secretary of Homeland Security's June 15,2012 memorandum;

g. Granted an administrative stay of removal under section 8 CFR 241; or

h. Beneficiary of approved visa petition who has a pending application for adjustment of status.

i. Pending an application for asylum under section 8 U.S.C. 1158, or for withholding of removal under section 8 U.S.C. 1231, or under the Convention Against Torture who-

1. as been granted employment authorization; or

2. Is under the age of 14 and has had an application pending for at least 180 days.

j. Granted withholding of removal under the Convention Against Torture;

k. Citizens of Micronesia, the Marshall Islands, and Palau; or

l. Is lawfully present American Samoa under the immigration of laws of American Samoa.

m. A non-citizen in a valid nonimmigrant status, as defined in section 8 U.S.C. 1101(a)(15) or under section 8 U.S.C. 1101(a)(17); or

n. A non-citizen who has been paroled into the United States for less than one year under section U.S.C. 1182(d)(5), except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings; or

o. A child who has a pending application for Special Immigrant Juvenile status under 8 U.S.C 1101(a)(27)(J).

C. For determinations of eligibility for the Children's Basic Health Plan, legal immigration status must be verified. This requirement applies to a non-citizen individual who meets the criteria of any category defined at 110.1.B and has declared that he or she has a legal immigration status.

1. The Verify Lawful Presence (VLP) interface will be used to verify immigration status as required in 10 CCR 2505-10-8.100.3.G.2

2. If the state cannot verify immigration status the individual will receive a Reasonable Opportunity Period as required in 10 CCR 2505-10-8.100.3.H.9

D. Be a resident of Colorado; and residence shall be retained until abandoned. A person temporarily absent from the state, inside or outside the United States, retains Colorado residence. Temporarily absent means that at the time he/she leaves, the person intends to return.

E. Have a household income greater than 133% but not exceeding 250% of the Federal Poverty Level (MAGI-equivalent), adjusted for household size for children under the age of 19; or

F. Have a household income greater than 185% but not exceeding 250% of the Federal Poverty Level (MAGI-equivalent), adjusted for household size for pregnant women.

G. Failure to complete an application or to provide required documentation in Section 130 will result in the denial of the incomplete application or individual applicant (s).

120 INSUFFICIENT ACCESS TO OTHER HEALTH COVERAGE

120.1 To be eligible for the Children's Basic Health Plan, an eligible person shall not:

A. Be covered under a group health plan or under health insurance coverage excluding Consolidated Omnibus Budget Reconciliation Act (COBRA); or

B. Be eligible to receive assistance under Title XIX of the Social Security Act; or

C. Be an inmate of a public institution or a patient in an institution for mental diseases.

120.2 The Department shall not require that applicants be uninsured for any period of time prior to becoming eligible for the Children's Basic Health Plan.

130 VERIFICATION REQUIREMENTS

130.1 To be eligible for the Children's Basic Health Plan, an applicant shall provide minimal verification as required in 10 CCR 2505-10-8.100.4.B.

140 REDETERMINATION

140.1 A redetermination of eligibility shall mean a case review and necessary verification to determine whether the client continues to be eligible to receive Medical Assistance. Eligibility shall be redetermined twelve (12) months since the last eligibility determination. An Eligibility site may redetermine eligibility through telephone, mail, or electronic means. The use of telephone or electronic redeterminations should be noted in the case record and in CBMS case comments.

A. A redetermination form is not required to be sent to the client if all current eligibility requirements can be verified by reviewing information from another assistance program or if this information can be verified through an electronic data source. When applicable, the eligibility site shall redetermine eligibility based solely on information already available. If verification or information is available for any of the three months prior to redetermination month, no request shall be made of the client and a notice of the outcome will go to the client. If not all verification or information is available, the eligibility site shall only request the additional minimum verification from the client. This procedure is referenced as Ex Parte Review.

B. A redetermination form, approved by the Department, shall be mailed to the client at least 30 days prior to the first of the month in which completion of eligibility redetermination is due. The redetermination form shall be used to inform the client of the redetermination and verification needed. The client shall not be required to return the form to the eligibility site. The only verification that may be required at redetermination is the minimum verification needed to complete a redetermination of eligibility.

The redetermination form shall direct clients to review current information and to take no action if there are no changes to report in the household. Eligibility sites and CBMS shall view the absence of reported changes from the client at this redetermination period as confirmation that there have been no changes in the household. This procedure is referenced as automatic reenrollment.

C. Due to the Coronavirus COVID-19 Public Health Emergency, required through the Federal CARES Act for the Maintenance of Effort (MOE), the Department will continue eligibility for all Medical Assistance categories regardless of changes made for a redetermination or additional documentation for current CHP+ enrollee and allow them to continue eligibility through the emergency declaration. Once the emergency declaration has concluded, the Department will process the redetermination and /or changes for all members whose eligibility was maintained during the emergency declaration.

150 CALCULATION OF HOUSEHOLD INCOME

150.1 Calculation of income for the Children's Basic Health Plan shall be determined as required in 10 CCR 2505-10-8.100.4.C

150.2 Income disregards for the Children's Basic Health Plan shall be determined as required in 10 CCR 2505-10-8.100.4.D

160 [Repealed eff. 12/30/2012]

170 PRESUMPTIVE ELIGIBILITY

170.1 A pregnant applicant or a child under the age of 19 may apply for presumptive eligibility for immediate temporary medical services through designated presumptive eligibility sites.

A. To qualify for presumptive eligibility, a child under the age of 19 shall have a declared household income that shall be greater than 133% but not exceed 250% of Federal Poverty Level (MAGI-equivalent); or

B. To qualify for presumptive eligibility, a pregnant women shall have an attested pregnancy, declare that her household's income shall be greater than 185% but not exceed 250% of the Federal Poverty Level (MAGI-equivalent); and

C. He/she shall be a United States citizen or a documented immigrant as defined in Section 110.

170.2 Presumptive eligibility sites shall be certified by the Department of Health Care Policy and Financing to make presumptive eligibility determinations. Sites shall be re-certified by the Department of Health Care Policy and Financing every 2 years to remain approved presumptive eligibility sites.

A. The presumptive eligibility site shall forward the application to the county within five business days of the received date.

170.3 The presumptive eligibility period begins on the date the applicant is determined eligible and ends with the earlier of:

A. The day an eligibility determination for Medical Assistance is made for the applicant(s); or

B. The last day of the month following the month in which a determination for presumptive eligibility was made.

170.4 The county or Medical Assistance site shall make an eligibility determination within 45 days from the date of application.

A. Presumptively eligible clients may appeal the county or Medical Assistance site's failure to act on an application within 45 days from date of application or the denial of an application. Appeal procedures are outlined in Section 600.

B. A presumptively eligible client may not appeal the end of a presumptive eligibility period.

180 Express Lane Eligibility

Express Lane Eligibility shall allow for automatic initiation of Medical Assistance enrollment by using available data and findings from other programs as listed below.

180.1 Free/Reduced Lunch Program

A. Recipients of the Free/Reduced Lunch Program who have submitted a Free/Reduced Lunch application at a participating school district

1. Families will be given the option to opt into Medical Assistance coverage for their potentially eligible child.

2. Children who meet all necessary eligibility requirements as outlined in this volume will be automatically enrolled.

3. Children who meet all necessary eligibility requirements except verification of U.S. citizenship and identity will receive 90 days of eligibility while awaiting this verification.

4. Any additionally required verification will be requested from the client through CBMS prior to being automatically enrolled.

5. Eligibility is based on income declared on the Free/Reduced Lunch application as well as eligibility requirements outlined in section 150.

6. If it would be found that a child does not satisfy an eligibility requirement for Medical Assistance, the child's eligibility will be evaluated using the application for Medical Assistance.

B. Recipients of the Free/Reduced Lunch Program who were not required to submit a Free/Reduced Lunch application at a participating school district

1. Families who are automatically enrolled Free/Reduced Lunch recipient children will not be forwarded to the Department for Express Lane Eligibility in compliance USDA confidentiality guidelines.

2. These families must apply for Medical Assistance in order to give consent for request of benefits.

180.2 Direct Certification

A. When an application for Food Stamps or Colorado Works has been submitted, families will be given the option to opt into Medical Assistance coverage for their potentially eligible children.

1. Children who meet all necessary eligibility requirements as outlined throughout sections 100 through 180 will be automatically enrolled,

2. Children who are only missing verification of U.S. citizenship and identity will receive 90 days of coverage while waiting for this verification.

3. Any additionally required verification will be requested from the client through CBMS prior to being automatically enrolled.

4. Eligibility is determined based on income declared on the Food Stamp or Colorado Works application as well as eligibility requirements outlined throughout this volume.

5. If it would be found that a child does not satisfy an eligibility requirement for Medical Assistance, the child's eligibility will be evaluated using the Single Streamlined application for Medical Assistance.

6. Individuals whose eligibility is not determined through Express Lane Eligibility may also submit a separate Single Streamlined Application for Medical Assistance to determine eligibility.

200 BENEFITS PACKAGE

210 The following are covered benefits including any applicable limitations:

A. Emergency Care and Urgent/After Hours Care;

B. Emergency Transport/Ambulance Services;

C. Hospital/Other Facility Services Including:

1. Inpatient;

2. Physician;

3. Outpatient/Ambulatory;

D. Medical Office Visits Including:

1. Physician;

2. Mid-Level Practitioner;

3. Specialist;

E. Diagnostic Services;

F. Preventative, Routine and Family Planning Services Including:

1. Immunizations;

2. Well-child visits;

3. Health maintenance visits;

G. Maternity Care Including:

1. Prenatal;

2. Delivery and inpatient well-baby care;

3. Postpartum care

H. Mental Illness Treatments such as:

1. Neurobiologically-based mental illness including:

a. Schizophrenia;

b. Schizoaffective disorder;

c. Bipolar affective disorder;

d. Major depressive disorder;

e. Specific obsessive compulsive disorder;

f. Panic disorder;

2. Mental disorders including:

a. Post traumatic stress disorder

b. Drug and alcohol disorders

c. Dysthymia

d. Cyclothymia

e. Social phobia

f. Agoraphobia with panic disorder

g. General anxiety

h. Anorexia Nervosa exclusive of residential treatment

i. Bulimia exclusive of residential treatment

3. All other mental illness;

a. Inpatient coverage;

b. Outpatient coverage;

I. Physical Therapy, Speech Therapy and Occupational Therapy shall be limited to 30 visits per diagnosis per year. Effective November 1, 2007, Physical, Speech and Occupational Therapy services shall be unlimited for children from birth up to the child's third birthday.

J. Durable Medical Equipment shall be limited to the lesser of the purchase price or rental price for medically necessary durable medical equipment that shall not exceed two thousand dollars per year.

K. Transplants must be medically necessary and are limited to:

1. Liver;

2. Heart;

3. Heart/lung;

4. Cornea;

5. Kidney;

6. Bone marrow which shall be limited to the following conditions:

a. Aplastic anemia;

b. Leukemia;

c. Immunodeficiency disease;

d. Neuroblastoma;

e. Lymphoma;

f. High risk stage ii and iii breast cancer;

g. Wiskott aldrich syndrome;

7. Peripheral stem cell support which shall be limited to the following conditions:

a. Aplastic anemia;

b. Leukemia;

c. Immunodeficiency disease;

d. Neuroblastoma;

e. Lymphoma;

f. High risk stage II and III breast cancer;

g. Wiskott aldrich syndrome;

L. Home health care;

M. Hospice care;

N. Prescription medication;

O. Kidney dialysis shall be excluded only if the member is also eligible for Medicare;

P. Skilled nursing facility care must be provided only when there is a reasonable expectation of measurable improvement in the members' health status.

Q. Vision services shall be limited to:

1. Vision screenings for age appropriate preventative care;

2. Referral required for refraction services;

3. Minimum fifty dollar benefit for eyeglasses;

R. Audiology services shall be limited to:

1. Hearing screenings for age appropriate preventative care;

2. Hearing aids without financial limitation for enrollees age 18 and under no more than once every five years unless medically necessary including:

a. A new hearing aid when alterations to the existing hearing aid cannot adequately meet the needs of the child

b. Services and supplies including, but not limited to, the initial assessment, fitting, adjustments, and auditory training that is provided according to accepted professional standards.

S. Intractable pain;

T. Autism;

U. Case management is covered only when medically necessary;

V. Dietary counseling/nutritional services shall be limited to:

1. Formula for metabolic disorders;

2. Total parenteral nutrition;

3. Enterals and nutrition products;

4. Formulas for gastrostomy tubes;

W. Dental services are limited to:

1. Those dental services described in the Children's Basic Health Plan dental Evidence of Coverage booklet provided to enrollees, who are less than nineteen years of age. Beginning October 1, 2019, the dental services listed below are covered benefits for enrolled pregnant women of any age, excepting Limited Orthodontic services under Section 210.W.1.h for pregnant women age nineteen and above. Children's Basic Health Plan dental services are provided by the dental MCO (or its designee) with which the Department has contracted for the applicable plan year to provide the following dental services;

   a. Diagnostic

   b. Preventive

   c. Restorative

   d. Endodontic

   e. Periodontic

   f. Prosthodontic

   g. Oral and Maxillofacial Surgery

   h. Limited Orthodontic, excepting pregnant women age nineteen and above.

   i. Adjunctive General Services

2. Orthodontic and prosthodontic treatment for cleft lip or cleft palate in newborns (covered as a medical service in accordance with section 10-16-104, C.R.S.); and

3. Treatment of teeth or periodontium required due to accidental injury to naturally sound teeth (covered as a medical service in accordance with section 10-16-104, C.R.S.). A physician or legally licensed dentist must perform treatment within 72 hours of the accident.

X. Therapies covered shall include:

1. Chemotherapy;

2. Radiation;

Y. The following are not covered benefits:

1. Acupuncture;

2. Artificial conception;

3. Biofeedback;

4. Storage Costs for umbilical blood;

5. Chiropractic care;

6. Convalescent care or rest cures;

7. Cosmetic surgery;

8. Custodial care;

9. Domiciliary care;

10. Duplicate coverage;

11. Government institution or facility services;

12. Hair loss treatments;

13. Hypnosis;

14. Infertility services;

15. Maintenance therapy;

16. Nutritional therapy unless specified otherwise;

17. Elective termination of pregnancy, unless the elective termination is to save the life of the mother or if the pregnancy is the result of an act of rape or incest;

18. Personal comfort items;

19. Physical exams for employment or insurance;

20. Private duty nursing services;

21. Routine foot care;

22. Sex change operations;

23. Sexual disorder treatments;

24. Taxes;

25. Temporomandibular joint (TMJ) treatment, unless it has a medical basis;

26. Other therapies and treatments which are not medically necessary;

27. Vision services unless specified otherwise;

28. Vision therapy;

29. War-related conditions;

30. Weight-loss programs;

31. Work-related conditions;

300 ENROLLMENT FEES AND COPAYMENTS

310 ANNUAL ENROLLMENT FEES AND DUE DATE

310.1 For eligible children, the following annual enrollment fees shall be due prior to enrollment in the Children's Basic Health Plan:

A. For families with income, at the time of eligibility determination, less than 151% of the Federal Poverty Level, the annual enrollment fee shall be waived.

B. For families with income, at the time of eligibility determination, between 151% and 205% of the Federal Poverty Level (MAGI-equivalent), the annual enrollment fee shall be:

1. $25.00 for a single eligible child; and

2. $35.00 for two or more eligible children.

3. Waived for families who include an eligible pregnant woman.

C. For families with income, at the time of eligibility determination, greater than 205% and up to 250% of the Federal Poverty Level, the annual enrollment fee shall be:

1. $75.00 for a single eligible child; and

2. $105.00 for two or more eligible children.

3. Waived for families who include an eligible pregnant woman

310.2 If the required enrollment fee is not received with the application for the Children's Basic Health Plan, the Department or its designee shall notify the applicant:

A. That applicable enrollment fees are a requirement for enrollment;

B. That fees shall be due within thirty (30) days of the date of notification;

C. Of effective date of enrollment if payment is received; and

D. That the application shall be denied if payment is not received by the due date indicated.

310.3 The application shall be denied if payment is not received by the due date indicated on the notification.

310.5 Once enrollment has occurred, the annual enrollment fee is non-refundable.

310.6 Due to the Coronavirus COVID-19 Public Health Emergency, an eligible applicant will be charged an enrollment fee. Existing members who are being re-enrolled will not be charged enrollment fees until after the Public Health Emergency has ended.

320 COPAYMENTS

320.1 The following copayments shall be due for enrollees at the time of service:

A. For families with income, at the time of eligibility determination, less than 101% of the Federal Poverty Level (MAGI-equivalent), all copayments shall be waived, except for emergency and care, which shall be $3.00 per use and urgent/after hours care, which shall be $1.00 per use.

B. For families with income, at the time of eligibility determination, between 101% and 150% of the Federal Poverty Level (MAGI-equivalent), the copayment shall be:

1. Effective until June 30, 2012:

a. $2.00 per office visit;

b. $2.00 per outpatient mental health or substance abuse visit;

c. $1.00 per generic or brand name prescription;

d. $2.00 per physical therapy, occupational therapy or speech therapy visit;

e. $2.00 per vision visit;

f. $3.00 per use of emergency care and urgent/after hours care;

2. Effective July 1, 2012:

a. $2.00 per office visit;

b. $2.00 per outpatient mental health or substance abuse visit;

c. $1.00 per generic or brand name prescription;

d. $2.00 per physical therapy, occupational therapy or speech therapy visit;

e. $2.00 per vision visit;

f. $3.00 per use of emergency care (co-payment is waived if client is admitted to the hospital);

g. $1.00 per use of urgent/after hours care;

h. $2.00 per trip for emergency transport/ambulance services;

i. $2.00 per inpatient hospital visit;

j. $2.00 per inpatient hospital visit for physician services in the hospital;

k. $2.00 per outpatient hospital or ambulatory surgery center visit.

C. For families with income, at the time of eligibility determination, between 151% and 200% of Federal Poverty Level (MAGI-equivalent), the copayment shall be:

1. Effective until June 30, 2012:

a. $5.00 per office visit;

b. $5.00 per outpatient mental health or substance abuse visit;

c. $3.00 per generic prescription;

d. $5.00 per brand name prescription;

e. $5.00 per physical therapy, occupational therapy or speech therapy visit;

f. $5.00 per vision visit;

g. $15.00 per use of emergency care and urgent/after hours care

2. Effective July 1, 2012:

a. $5.00 per office visit;

b. $5.00 per outpatient mental health or substance abuse visit;

c. $3.00 per generic prescription;

d. $10.00 per brand name prescription;

e. $5.00 per physical therapy, occupational therapy or speech therapy visit;

f. $5.00 per vision visit;

g. $30.00 per use of emergency care ((co-payment is waived if client is admitted to the hospital)

h. $20.00 per use of urgent/after hours care;

i. $5.00 per date of service for laboratory and radiology/imaging services

j. $15.00 per trip for emergency transport/ambulance services;

k. $20.00 per inpatient hospital visit;

l. $5.00 per inpatient hospital visit for physician services;

m. $5.00 per outpatient hospital or ambulatory surgery center visit.

3. Due to the Coronavirus COVID-19 Public Health Emergency, members who are eligible for Children's Basic Health Plan will have waived laboratory copayments, specifically as it relates to laboratory copayments associated with COVID-19 testing.

D. For families with income, at the time of eligibility determination, between 201% and 250% of Federal Poverty Level (MAGI-equivalent), the copayment shall be:

1. Effective until June 30, 2012:

a. $10.00 per office visit;

b. $10.00 per outpatient mental health or substance abuse visit;

c. $5.00 per generic prescription;

d. $10.00 per brand name prescription;

e. $10.00 per physical therapy, occupational therapy or speech therapy visit;

f. $10.00 per vision visit;

g. $20.00 per use of emergency care and urgent/after hours care.

2. Effective July 1, 2012:

a. $10.00 per office visit;

b. $10.00 per outpatient mental health or substance abuse visit;

c. $5.00 per generic prescription;

d. $15.00 per brand name prescription;

e. $10.00 per physical therapy, occupational therapy or speech therapy visit;

f. $10.00 per vision visit;

g. $50.00 per use of emergency care (co-payment is waived if client is admitted to the hospital);

h. $30.00 per use of urgent/after hours care;

i. $10.00 per date of service for laboratory and radiology/imaging services

j. $25.00 per trip for emergency transport/ambulance services;

k. $50.00 per inpatient hospital visit;

l. $10.00 per inpatient hospital visit for physician services;

m. $10.00 per outpatient hospital or ambulatory surgery center visit.

3, Due to the Coronavirus COVID-19 Public Health Emergency, members who are eligible for Children's Basic Health Plan will have waived laboratory copayments, specifically as it relates to laboratory copayments associated with COVID-19 testing.330 COST SHARING LIMITATIONS

330.1 American Indians and Alaskan Natives shall be exempt from cost sharing requirements. American Indian shall mean a member of a federally recognized Indian tribe, band, or group, or a descendant in the first or second degree of any such member. Alaskan Native shall mean an Eskimo or Aleut or other Alaska Native enrolled by the Secretary of the Interior.

330.2 The maximum yearly cost sharing requirements for families of enrollees shall be 5% of income.

330.3 No copayments shall apply to preventive services. For the purpose of this section, preventive services shall mean:

A. All healthy newborn and newborn inpatient visits, including routine screening whether provided on an inpatient or outpatient basis;

B. Routine examinations;

C. Immunizations and related office visits; and

D. Routine preventive and diagnostic dental services.

330.4 Prenatal Care Program clients shall be exempt from cost sharing requirements.

400 ENROLLMENT

400.1 An applicant found eligible for Children's Basic Health Plan can elect to be enrolled the Children's Basic Health Plan.

410 SELECTION OF A MANAGED CARE ORGANIZATION

410.1

A. Once eligibility has been determined, an eligible person shall have the opportunity to select a participating MCO in the county of the eligible person's residence. If there is only one participating MCO available in the county of the eligible person's residence, the eligible person shall be enrolled in that MCO.

B. In the event the Department contracts with an MCO to provide dental services to Children's Basic Health Plan enrollees, an enrollee automatically will be enrolled with such MCO. No separate MCO election will be required.

410.2 MCO SELECTION

A. Upon determination of eligibility for the Children's Basic Health Plan program, if the eligible person has notified the Department or its designee of his/her chosen MCO prior to the last business day of the month in which eligibility was determined, the Department or its designee shall enroll the eligible person in that MCO.

B. Upon determination of eligibility for the Children's Basic Health Plan program, if the eligible person has not chosen an MCO, the Department or its designee shall enroll the eligible person in an MCO selected by the Department or its designee. In areas of the state where there is only one participating MCO available, the Department or its designee shall select that MCO and enroll the eligible person.

C. The Department or its designee shall notify the enrollee of the MCO selected. If the enrollee wants to change MCOs, the enrollee shall contact the Department or its designee within 90 days from the effective date of the MCO enrollment. An enrollee may also change a pending MCO enrollment before the effective date.

D. For renewal applications, the Department or its designee shall reassign the eligible person to the participating MCO the applicant approved for the previous enrollment period. If the eligible person wishes to change MCO enrollment, he/she shall notify the Department or its designee within his/her re-enrollment period.

410.3 In counties in which a participating MCO as defined in section 50.14.A is not available, the eligible person shall be enrolled in an MCO as defined in section 50.14.B.

410.4 Once an enrollee has selected an MCO or upon expiration of the timeframe to change, the enrollee shall remain enrolled in that MCO for the remainder of his/her eligibility period, unless the eligible person meets any of the disenrollment criteria set forth in section 440.

410.5 An eligible person shall have an opportunity to change to a different MCO serving the eligible person's geographic region, if one is available, during the applicant's annual redetermination period.

420 ENROLLMENT OF ALL ELIGIBLE PERSONS IN A FAMILY

420.1 If one eligible child from a family is enrolled in the Children's Basic Health Plan, all eligible children in that family must be enrolled in the Children's Basic Health Plan.

420.2 All eligible children in a family must be enrolled in the same MCO.

430 ENROLLMENT DATE

430.1 Eligibility for the Children's Basic Health Plan shall be effective on the latter of:

A. The first day of the month of application for Medical Assistance; or

B. The first day of the month the person becomes eligible for the Children's Basic Health Plan program.

430.2 Upon being enrolled in the Children's Basic Health Plan, continuous eligibility applies to children under the age of 19, who through an eligibility determination, reassessment or redetermination are found eligible for the Children's Basic Health Plan program. The continuous eligibility period may last for up to 12 months and will begin on the month of application or from the authorization date.

A. The continuous eligibility period applies without regard to changes in income or other factors that would otherwise cause the child to be ineligible.

i) A 14-day no fault period shall begin on the date the child is determined eligible for Medical Assistance. During the 14-day period, updates or corrections may be made to the child's case. Any changes to the child's case made during the 14-day no fault period may impact his or her eligibility for Medical Assistance.

B. A child's continuous eligibility period will end effective the earliest possible month, if any of the following occur:

i) Child is deceased

ii) Becomes an inmate of a public institutio

iii) The child states that she/he has moved out of the household permanently

iv) Is no longer a Colorado resident

v) Is unable to be located based on evidence or reasonable assumption

vi) Requests to be withdrawn from continuous eligibility

vii) Fails to provide documentation during a reasonable opportunity period as specified in section 8.100.3.H.9

viii) Fails to provide a reasonable explanation or paper documentation when self-attested income is not reasonably compatible with income information from an electronic data source, by the end of the 90-day reasonable opportunity period. This exception only applies the first-time income is verified following an initial eligibility determination or an annual redetermination.

ix) An eligible person shall not be enrolled in other health insurance coverage

430.3. If determined eligible, the enrollment date of a pregnant woman shall be effective as of the first of the month of the date of application or the first day of the month the pregnant woman becomes eligible. The enrollment span shall end at the end of the month following 60 days after the birth of the child or termination of the pregnancy. Once eligibility has been approved, coverage must be provided regardless of changes in the woman's financial circumstances, once the income verification requirements are met.

A. A pregnant women's eligibility period will end effective the earliest possible month, if any of the following occur:

i) Fails to provide a reasonable explanation or paper documentation when self-attested income is not reasonably compatible with income information from an electronic data source, by the end of the 90-day reasonable opportunity period. This exception only applies the first-time income is verified following an initial eligibility determination or an annual redetermination.

430.4 An eligible person's enrollment date in the selected MCO shall be no later than:

A. The first of the month following eligibility determination and MCO selection if eligibility is determined before the 17th of the month.

B. The first of the second month following eligibility determination and MCO selection if eligibility is determined on or after the 17th of the month.

430.5 A child born to a mother who is enrolled in the Children's Basic Health Plan at the time of the child's birth is guaranteed coverage for one year.

A. To receive Medical Assistance under the Children's Basic Health Plan, the birth must be reported verbally or in writing to the County Department of Human Services or Eligibility site. Information provided shall include the baby's name, date of birth, and mother's name or Medical Assistance number. A newborn can be reported at any time by any person. Once reported, a newborn meeting the above criteria shall be added to the mother's Medical Assistance case, or his or her own case if the newborn does not reside with the mother, according to timelines defined by the Department. If adopted, the newborn's agent does not need to file an application or provide a Social Security Number or proof of application for a Social Security Number for the newborn.

440 DISENROLLMENT

440.1 An enrollee shall be disenrolled from an MCO for the following reasons:

A. Administrative error on the part of the Department, the Department's designee, or the MCO, including but not limited to enrollment of a person who does not reside in the MCO's service area; or,

B. A change in the enrollee's residence to an area not in the MCO's service area; or,

C. When an enrollee's coverage is terminated as described in section 440.1A.

440.2 If an enrollee is disenrolled from an MCO for any of the reasons stated in section440.1 and there is another participating MCO available in the enrollee's county of residence, the enrollee shall be allowed to select a new MCO.

440.3 If the enrollee is enrolled in a MCO as defined in section 50.15B and a MCO as defined in section 50.15A becomes available in the child's county of residence, the enrollee will be disenrolled from the MCO as defined in section 50.15 B and enrolled in the MCO as defined in section 50.15A.

440.4 An enrollee may be disenrolled from both an MCO and/or the Children's Basic Health Plan for the following reasons:

A. Fraud or intentional misconduct, including but not limited to knowing misuse of covered services, knowing misrepresentation of membership status; or,

B. An enrollee's receipt of other health care coverage; or,

C. The admission of an enrollee into any federal, state, or county institution for the treatment of mental illness, narcoticism, or alcoholism, or into any correctional facility; or,

D. Ineligibility for the program, based on the guidelines set forth in the Children's Basic Health Plan eligibility rules; or,

E. Failure to comply with cost sharing requirements (annual enrollment fees and copayments) set forth in the Children's Basic Health Plan cost sharing rules; or,

F. There is not another participating MCO as defined in section 50.14 available in the enrollee's county of residence.

440.5 If an eligible person or an eligible person's family displays an ongoing pattern of behavior that is abusive to provider(s), staff or other patients; or, disruptive to the extent that the provider's ability to furnish services to the child or other patients is impaired, the eligible person may be disenrolled from his/her managed care organization. If there is another participating MCO available in the eligible person's county of residence, the Department may allow the eligible person to select a new MCO. If there is not another MCO available in the eligible person's county, the eligible person may be disenrolled from the Children's Basic Health Plan.

500 FINANCIAL MANAGEMENT

The Children's Basic Health Plan, being a non-entitlement program, must manage to its legislative appropriation. The Department shall track expenditures, caseload, and other financial information to make informed decisions on spending its appropriation. Expenditures may exceed State appropriations with approval of the Governor, but any General Fund over expenditure shall be limited to $250,000.

510 The Department shall make quarterly assessments of projected expenditures. If it appears the program may overspend its appropriation due to changes in enrollment, health care costs, funding, legislation, or other factors, the Department shall consider if adjustments to the program are necessary. The program may use, but is not limited to, any of the following financial management tools: waiting lists, adjustments of eligibility criteria and/or levels, instituting open enrollment periods, or temporary closure of the program.

600 APPEALS PROCESS

600.1 Applicants shall be notified of any action regarding the eligibility and enrollment status and cost sharing requirements for the enrollees' participation in the Children's Basic Health Plan and appeal rights regarding those actions by the Department or its designee.

600.2 The Department or its designee shall notify the applicant within ten (10) business days of a decision regarding eligibility, enrollment and cost sharing. The notice shall:

A. Be in writing;

B. Be in his/her primary language, to the extent practicable;

C. Describe to the applicant the reasons for the decision;

D. Document the authority for the decision (e.g. rule citation); and

E. Inform the applicant of his/her rights and responsibilities regarding the decision.

600.3 An applicant who disagrees with a denial regarding eligibility, enrollment, or cost sharing requirements may appeal in writing to the Children's Basic Health Plan Eligibility Vendor within thirty (30) calendar days of the date of the notification of denial of eligibility, enrollment, or cost sharing. The appeal shall be reviewed and processed within thirty (30) calendar days of receipt and the results of the appeal shall be communicated to the applicant within ten (10) business days of the review. The following guidelines shall apply to the appeal process:

A. The Children's Basic Health Plan Eligibility Vendor will coordinate the appeals process with the county or Eligibility site that determined the initial eligibility, enrollment, or cost sharing decision within ten (10) business days after receipt of the appeal.

B. The county or Eligibility site that determined the initial eligibility, enrollment, or cost sharing decision shall:

1. Review the data entry of the application in the Department's eligibility system for accuracy and completeness within ten (10) business days after receipt of the appeal from the Children's Basic Health Plan Eligibility Vendor;

2. Correct or complete information in the Department's eligibility system if it is found to be incomplete or incorrect and re-run eligibility;

3. Maintain the original denial, if the information in the Department's eligibility system is complete and correct; and

4. Notify the applicant and the Children's Basic Health Plan Eligibility Vendor in writing once the review is complete with the results of the data entry review and the option of forwarding the appeal to the Grievance Committee.

600.4 If the applicant disagrees with the results of the appeal, the applicant may have their appeal reviewed by the Grievance Committee. The Grievance Committee's decision shall be final.

A. The Grievance Committee shall be conducted by an independent panel appointed by the Executive Director of the Department. The panel shall include at least three people from the Department or its designee not previously involved with the grievance. A person previously involved with the grievance may be present at the conference and appear before the panel to present information and answer questions, but shall not have a vote. The Department shall ensure that those appointed to the panel have sufficient experience to make an informed decision regarding the grievance under review.

B. The applicant may attend the Grievance Committee in person or by telephone.

C. The applicant may be represented by the person of the applicant's choice (i.e. legal counsel, friend, family member, etc.) during the Grievance Committee.

D. The applicant may have access to documents that were used by the Department or its designee in making the decision under appeal.

600.5 An enrollee who disagrees with a denial of benefits shall submit an appeal to the MCO he/she is enrolled in and shall follow the MCO's appeal process.

610 [Repealed eff.12/30/2012]

Editor's Notes

History

Entire rule eff. 07/30/2007.

Rule 210 emer. rule eff. 11/01/2007.

Rule 210 eff. 12/30/2007.

Rules 50.17-50.21, 100-110.1E, 150.3-150.3E, 170-170.2 emer. rules eff. 01/01/2008.

Rules 50.17-50.21; 100-110.1E; 150.3-150.3E; 170-170.2 eff. 03/30/2008.

Rules 500-510 eff. 11/30/2008.

Rule 210 eff. 12/30/2008.

Rule 110 eff. 03/30/2009.

Rule 150 emer. rule eff. 04/10/2009.

Rule 150 eff. 06/30/2009.

Rules 110.1 B 4-5, 150.1 Q-R eff. 11/30/2009.

Rule 130.1 B emer. rule eff. 01/01/2010; expired 03/11/2010.

Rule 130.1 B eff. 03/30/2010.

Rules 110.1 D, 150.3, 170.1, 310.1 B, 320.1 D emer. rules eff. 05/01/2010. Rule 110.1 D expired 08/07/2010.

Rule 140.1 emer. rule eff. 06/11/2010.

Rules 150.3, 170.1, 310.1 B, 320.1 D eff. 06/30/2010.

Rules 110.1 D, 140.1 eff. 08/30/2010.

Rules 110.1 B 4-5 eff. 10/30/2010.

Rules 130.1 A, 150.2 eff. 12/30/2010.

Rule 140.1 B emer. rule eff. 09/09/2011.

Rule 180 emer. rule eff. 10/14/2011.

Rule 140 1B eff. 11/30/2011.

Rules 180, 430 eff. 12/30/2011.

Rules 300-330 eff. 01/01/2012.

Rules 430.1-430.2 emer. rules eff. 01/13/2012.

Rules 170, 430 eff. 04/01/2012.

Rules 410.1 A, 410.2-410.4 eff. 11/30/2012.

Rules 50.9, 50.15-50.16, 120, 150.1 O-Q, 400.1 eff. 12/30/2012. Rules 160, 220, 340, 450, 610 repealed eff. 12/30/2012.

Rules 170.5, 330.4 eff. 01/30/2013.

Rules 180.1 A.1, 180.1 A.6, 180.2 eff. 04/30/2013.
Rule 120 emer. rule eff. 05/10/2013.
Rule 120 eff. 07/30/2013.
Rules 50, 110.1.D-110.1.F, 130, 150, 170.1, 430 eff. 10/01/2013.
Rules 430.2-430.5 eff. 04/30/2014.
Rules 110.1 B.2, 170.1 C eff. 07/01/2015.
Rules 50-600.5 eff. 03/02/2017.
Rule 110 eff. 09/30/2017.
Rule 430.4 eff. 10/30/2017.
Rules 430.2-430.3 eff. 10/30/2018.
Rule 210 W emer. rule eff. 10/01/2019.
Rule 210 W eff. 12/30/2019.

Annotations

Rule 170.5 (adopted 12/14/2012) was repealed by Senate Bill 13-079 effective 05/15/2013.

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOVEMBER 2021 EMERGENCY JUSTIFICATION FOR MEDICAL ASSISTANCE RULES ADOPTED AT THE NOVEMBER 12, 2021 MEDICAL SERVICES BOARD MEETING

CHP 21-11-07-B - Revision to the Medical Assistance Rule concerning Child Health Plan Plus program rule updates, Sections 110,140, 310 and 320

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. Due to the Coronavirus (COVIS-19) public health emergency this rule needs to be updated for the State to be in compliance with federal regulations and is imperatively necessary for the preservation of public health, safety, and welfare.

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Office of the Attorney General

Tracking number: 2021-00740

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

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 11/12/2021

10 CCR 2505-3

FINANCIAL MANAGEMENT OF THE CHILDREN'S BASIC HEALTH PLAN

The above-referenced rules were submitted to this office on 11/12/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:52:47

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

Emergency Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 - eff 11/12/2021

Effective date

11/12/2021

Expiration date

03/12/2022

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Novel Coronavirus Disease (COVID-19) Rules, Section 8.6000
Rule Number: MSB 20-11-03-A
Division / Contact / Phone:Office of Community Living / Colin Laughlin / 303-866-2549

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB 21-11-03-A, Novel Coronavirus Disease (COVID-19) Rules
3. This action is an adoption of:	new rules

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.6000, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)?	Yes
If yes, state effective date:	December 07, 2021
Is rule to be made permanent? (If yes, please attach notice of hearing).	No

PUBLICATION INSTRUCTIONS*

Insert the newly proposed text at 8.6000. This rule is effective December 07, 2021.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Novel Coronavirus Disease (COVID-19) Rules, Section 8.6000
Rule Number: MSB 21-11-03-A
Division / Contact / Phone:Office of Community Living / Colin Laughlin / 303-866-2549

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The purpose of this emergency rule is to temporarily change regulatory requirements for Department of Health Care Policy and Financing rules to provide enhanced flexibility, reduction to programmatic limitations, and alignment with existing federal guidance related to processes under the COVID-19 pandemic

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☒ for the preservation of public health, safety and welfare.

   Explain:

   The temporary changes to regulatory requirements in order to provide enhanced flexibility, reduction to programmatic limitations, and alignment with existing federal guidance related to processes under the COVID-19 pandemic is imperatively necessary fo the preservation of public health safety, and welfare.

3. Federal authority for the Rule, if any:

   Social Security Act Section 1135, Social Security Act 1115 (Pending), and Social Security Act 1915(c), Appendix K.

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2021); 25.5 Article 6, C.R.S.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Novel Coronavirus Disease (COVID-19) Rules, Section 8.6000
Rule Number: MSB 21-11-03-A
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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Individual's receiving services in community-based settings, provider-owned community-based residential settings, provider-owned facility settings, and case management will all be benefitting from an increase in available funding to respond to the COVID-19 crisis.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Those rendering services in facilities, the community, or even remotely from their office or home may receive additional payment to do so during this critical time. Those receiving services are likely to continue with more likely to experience uninterrupted services as direct care workers/direct support professionals will be incentivized to continue to provide these services.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   Many of the changes the Department is asking for are cost neutral. Additionally, the Department has sought, and in some cases, received approval from the Centers for Medicare and Medicaid to increase payments or rates. However, the Department also must work with its partners at the Office for State Planning and Budget as well as prioritize the many different areas of Medicaid that are impacted by COVID-19. Accordingly, the Department continues to estimate potential costs.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The comparison between direct cost and cost of inaction is hard to quantify. However, it is highly likely that the cost of doing nothing could

be higher costs associated with more costly forms of care, significant impact to member's quality of life, and, in some cases – the loss of life or limb.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   At this time, the Department is also pursuing additional alternatives to ensure health, safety, and welfare but a key component of this effort is to ensure providers, agencies, and direct support professionals have the money they need to continue to go out in a time of crisis and provide services.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   As mentioned above, the Department is also partnering with community organizations, non-profits, advocacy organizations, other executive agencies, and the governor's office to work towards prioritizing Colorado's most vulnerable citizens receiving long-term care health, safety, and welfare.

MEDICAL ASSISTANCE – SECTION 8.6000 Novel Coronavirus Disease (COVID-19) Rules

10 CCR 2505-10 8.6000

8.6000 COVID-19 EMERGENCY RULES

PURPOSE: To temporarily change regulatory requirements for Department of Health Care Policy and Financing rules to provide enhanced flexibility, reduced programmatic limitations, and alignment with existing federal guidance related to the COVID-19 pandemic.

8.6001 REGULATORY CHANGES

The following regulations require, as applicable, that funds be made available for payment, federal approval is received, and any conflicting state statutory requirements are suspended by Executive Order. Each regulation below is effective once the applicable prerequisites are satisfied and shall continue to be in effect as long as those prerequisites continue to be satisfied.

8.6001.1 Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

Section 8.420

> Temporarily waive the requirement that payments for ICF-IID are only allowed for facilities licensed by the Colorado Department of Public Health and Environment (CDPHE) to allow for potential inclusion of existing HCBS Group Homes.

Sections 8.404.3; 8.404.1; 8.405.2.22; 8.405.2.23; 8.405.2.24; 8.405.2.25.

> Temporarily allow emergency placement of eligible individuals into an ICF-IID. Individual would still need to be fully eligible in meeting placement requirements but would allow for Department to expedite process through existing layers of review.

Sections 8.443.16.A; 8.443.1.C-D.

> Temporarily allow payment beyond current limitation not to exceed COVID-19 emergency supplement payments.

8.6001.2 Nursing Facilities

Sections 8.443.10.B; 8.443.10.a; 8.443.11.A

> Temporarily allow Nursing Facilities to receive a supplemental payment for COVID-19 related activities, provided the Nursing Facility organization follows Departmental guidance and benchmarks for the assurance of the member's health, safety, and welfare and adherence to published guidelines for safety.

Section 8.443.12.B – Inclusion of the Following Language:

> COVID-19 Mitigation Emergency Supplemental Payment
>
> > Subject to available non-provider fee funding and Upper Payment Limit restrictions, the Department shall pay an additional supplemental payment to nursing facilities increasing measures to protect residents during the COVID-19 public health emergency.
> >
> > 1. In order to be eligible for this payment facilities must be:

a. Compliant with all emergency related reported measures required by CMS, HCPF, CDPHE or the State Emergency Operations Center.

b. Implementing enhanced operational guidelines required by CMS, HCPF, CDPHE or the State Emergency Operations Center.

c. Cooperative with State or National efforts to mitigate the emergency

2. The Department will use historical Medicaid patient data to calculate and issue supplemental payments.

3. All payments issued as an emergency supplemental payment due to COVID-19 must be reported as a revenue in the cost reporting period in which it is received.

Section 8.443.1.B Addition of the Following Language

In addition to the MMIS claims reimbursement and provider fee funded supplemental payments, the Department may issue additional supplemental payments necessary to protect the health, safety and welfare of nursing facility residents when additional state or federal funding is available.

Establishment of Section 8.430.6 – Temporary Medicaid Nursing Facility Expansion

1. 8.430.6.A The Department may issue temporary enrollments for the purposes of increasing bed capacity during a public health emergency.

2. Facilities seeking temporary enrollments must submit plans to discharge residents within 60 days of the emergency end date.

3. Facilities with temporary Medicaid beds will be reimbursed statewide average rate for nursing facilities.

4. The enrollment will be effective until 60 days after the COVID-19 emergency is lifted.

5. After the 60 days has expired, the facility will receive no further reimbursement.

8.6001.3 Case Management

Sections 8.763.C; 8.761.46

Authorize providers of targeted case management services to increase, supplement, exceed, or provide additional authorization of units and correlating payments to all long-term care case management entities including transitional services for individuals needing community-placement due to COVID-19.

8.6001.4 Level of Care Assessment

Sections 8.393.2.c.5.a; 8.393.2.D.3.a; 8.393.3.A.1.c.i.3; 8.401.183.B; 8.497; 8.401; 8.491.2.B.2; 8.500.1; 8.500.90; 8.503; 8.504.1; 8.504.5.D; 8.506.3; 8.506.4.e.ii; 8.508.20; 8.515.5.B.1; 8.517.5.A.2; 8.519.1;

Remove the Professional Medical Information Page (PMIP) from the level of care determination for HCBS waivers, Long-Term Care-Home Health, PACE, NF, and ICF/IID programs to enable additional capacity and expedite enrollment.

Sections 8.390.3.A.2; 8.393.1.M.1.C; 8.393.2.C.5.; 8.393.2.D.1-3; 8.401.11 through 8.401.15; 8.485.61.B; 8.485.71.C; 8.486.201; 8.603.5.D; 8.500.18.B.3; 8.500.108.B.1; 8.503.70.3; 8.503.80.A; 8.506.3;

8.506.4.B; 8.509.14; 8.508.121; 8.503.70.A.1; 8.503.80.A.4; 8.506.4.B; 8.506.12.F; 8.508.20; 8.509.14; 8.509.31.A; 8.515.6.A.3; 8.517.7.A.3; 8.603.5.D; 8.503.30.A; 8.503.30.A.8; 8.508.121.A

Modify the requirements for initial and continued stay review assessments. For initial assessments, the level of care assessment will be limited to the Activities of Daily living which determines the functional eligibility/LOC for the member. Members pursuing a Home and Community Based Services (HCBS) waiver enrollment will be issued a start date based on the date of referral to the Case Management Agency, with the Level of Care to be completed with the member thereafter via telephonic or virtual modality. Changes to transfers from nursing facility to nursing facility by not requiring an entirely new assessment be conducted. For yearly re-assessments, the members existing eligibility will continue through the duration of 1135. Then the yearly re-assessment set to occur within six (6) months following the conclusion of the Section 1135 Waiver.

8.6001.5 Termination from Waiver Eligibility - Adverse Action

Sections 8.393.3.A.1.a through 8.393.A.1.d; 8.485.61.A through 8.485.61.D.3.b; 8.500.16.A.1 through 8.500.16.A.4; 8.500.16.E.1 and E.2; 8.503.160.A.1 through 8.500.160.A.4; 8.503.160.E.1 through 8.503.160.E.9; 8.508.190.A.1-4; 8.508.190.E.1 and E.2 ; 8.508.190.H.1-4; 8.508.190.I.3 and I.4; 8.509.15.A.1 through 8.509.15.A.4.c.1; 8.555.5.D.2

Remove requirement to involuntarily terminate a member from their selected HCBS waiver program

8.6001.6 Preadmission Screening and Resident Review (PASRR)

Section 8.401.18.181.A

PASRR Level I Screening and Level II Evaluations will be suspended for 30 days in accordance with Section 1919(e)(7) for new admissions.

8.6001.7 Personal Care

Sections 8.485.61.D.2-3; 8.489.10.11; 8.510.4.A

Temporarily waive the restriction of personal care services provided in Hospital, Nursing Facility, or other acute-like setting.

Sections 8.510.18; 8.552.1.B

Temporarily allow legally responsible person to provide services using participant directed models (Consumer Directed Attendant Support Services (CDASS) and In-Home Support Services (IHSS)).

8.6001.8 Guidelines for Institutions for Mental Diseases (IMDs)

Section 8.401.4

Temporarily waive the IMD requirements for nursing facilities that exceed 50% of patient-census with a primary diagnosis of major mental illness.

8.6001.9 Retainer Payments

Sections 8.515.80.F; 8.500.14.B.3

Temporarily allow specified Brain Injury waiver providers to bill retainer payments for services not rendered.

MEDICAL ASSISTANCE – SECTION 8.6000 Novel Coronavirus Disease (COVID-19) Rules

10 CCR 2505-10 8.6000

8.6000 COVID-19 EMERGENCY RULES

PURPOSE: To temporarily change regulatory requirements for Department of Health Care Policy and Financing rules to provide enhanced flexibility, reduced programmatic limitations, and alignment with existing federal guidance related to the COVID-19 pandemic.

8.6001 REGULATORY CHANGES

The following regulations require, as applicable, that funds be made available for payment, federal approval is received, and any conflicting state statutory requirements are suspended by Executive Order. Each regulation below is effective once the applicable prerequisites are satisfied and shall continue to be in effect as long as those prerequisites continue to be satisfied.

8.6001.1 Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

Section 8.420

> Temporarily waive the requirement that payments for ICF-IID are only allowed for facilities licensed by the Colorado Department of Public Health and Environment (CDPHE) to allow for potential inclusion of existing HCBS Group Homes.

Sections 8.404.3; 8.404.1; 8.405.2.22; 8.405.2.23; 8.405.2.24; 8.405.2.25.

> Temporarily allow emergency placement of eligible individuals into an ICF-IID. Individual would still need to be fully eligible in meeting placement requirements but would allow for Department to expedite process through existing layers of review.

Sections 8.443.16.A; 8.443.1.C-D.

> Temporarily allow payment beyond current limitation not to exceed COVID-19 emergency supplement payments.

8.6001.2 Nursing Facilities

Sections 8.443.10.B; 8.443.10.a; 8.443.11.A

> Temporarily allow Nursing Facilities to receive a supplemental payment for COVID-19 related activities, provided the Nursing Facility organization follows Departmental guidance and benchmarks for the assurance of the member's health, safety, and welfare and adherence to published guidelines for safety.

Section 8.443.12.B – Inclusion of the Following Language:

> COVID-19 Mitigation Emergency Supplemental Payment
>
> > Subject to available non-provider fee funding and Upper Payment Limit restrictions, the Department shall pay an additional supplemental payment to nursing facilities increasing measures to protect residents during the COVID-19 public health emergency.
> >
> > 4. In order to be eligible for this payment facilities must be:

d. Compliant with all emergency related reported measures required by CMS, HCPF, CDPHE or the State Emergency Operations Center.

e. Implementing enhanced operational guidelines required by CMS, HCPF, CDPHE or the State Emergency Operations Center.

f. Cooperative with State or National efforts to mitigate the emergency

5. The Department will use historical Medicaid patient data to calculate and issue supplemental payments.

6. All payments issued as an emergency supplemental payment due to COVID-19 must be reported as a revenue in the cost reporting period in which it is received.

Section 8.443.1.B Addition of the Following Language

In addition to the MMIS claims reimbursement and provider fee funded supplemental payments, the Department may issue additional supplemental payments necessary to protect the health, safety and welfare of nursing facility residents when additional state or federal funding is available.

Establishment of Section 8.430.6 – Temporary Medicaid Nursing Facility Expansion

6. 8.430.6.A The Department may issue temporary enrollments for the purposes of increasing bed capacity during a public health emergency.

7. Facilities seeking temporary enrollments must submit plans to discharge residents within 60 days of the emergency end date.

8. Facilities with temporary Medicaid beds will be reimbursed statewide average rate for nursing facilities.

9. The enrollment will be effective until 60 days after the COVID-19 emergency is lifted.

10. After the 60 days has expired, the facility will receive no further reimbursement.

8.6001.3 Case Management

Sections 8.763.C; 8.761.46

Authorize providers of targeted case management services to increase, supplement, exceed, or provide additional authorization of units and correlating payments to all long-term care case management entities including transitional services for individuals needing community-placement due to COVID-19.

8.6001.4 Level of Care Assessment

Sections 8.393.2.c.5.a; 8.393.2.D.3.a; 8.393.3.A.1.c.i.3; 8.401.183.B; 8.497; 8.401; 8.491.2.B.2; 8.500.1; 8.500.90; 8.503; 8.504.1; 8.504.5.D; 8.506.3; 8.506.4.e.ii; 8.508.20; 8.515.5.B.1; 8.517.5.A.2; 8.519.1;

Remove the Professional Medical Information Page (PMIP) from the level of care determination for HCBS waivers, Long-Term Care-Home Health, PACE, NF, and ICF/IID programs to enable additional capacity and expedite enrollment.

Sections 8.390.3.A.2; 8.393.1.M.1.C; 8.393.2.C.5.; 8.393.2.D.1-3; 8.401.11 through 8.401.15; 8.485.61.B; 8.485.71.C; 8.486.201; 8.603.5.D; 8.500.18.B.3; 8.500.108.B.1; 8.503.70.3; 8.503.80.A; 8.506.3;

8.506.4.B; 8.509.14; 8.508.121; 8.503.70.A.1; 8.503.80.A.4; 8.506.4.B; 8.506.12.F; 8.508.20; 8.509.14; 8.509.31.A; 8.515.6.A.3; 8.517.7.A.3; 8.603.5.D; 8.503.30.A; 8.503.30.A.8; 8.508.121.A

Modify the requirements for initial and continued stay review assessments. For initial assessments, the level of care assessment will be limited to the Activities of Daily living which determines the functional eligibility/LOC for the member. Members pursuing a Home and Community Based Services (HCBS) waiver enrollment will be issued a start date based on the date of referral to the Case Management Agency, with the Level of Care to be completed with the member thereafter via telephonic or virtual modality. Changes to transfers from nursing facility to nursing facility by not requiring an entirely new assessment be conducted. For yearly re-assessments, the members existing eligibility will continue through the duration of 1135. Then the yearly re-assessment set to occur within six (6) months following the conclusion of the Section 1135 Waiver.

8.6001.5 Termination from Waiver Eligibility - Adverse Action

Sections 8.393.3.A.1.a through 8.393.A.1.d; 8.485.61.A through 8.485.61.D.3.b; 8.500.16.A.1 through 8.500.16.A.4; 8.500.16.E.1 and E.2; 8.503.160.A.1 through 8.500.160.A.4; 8.503.160.E.1 through 8.503.160.E.9; 8.508.190.A.1-4; 8.508.190.E.1 and E.2 ; 8.508.190.H.1-4; 8.508.190.I.3 and I.4; 8.509.15.A.1 through 8.509.15.A.4.c.1; 8.555.5.D.2

Remove requirement to involuntarily terminate a member from their selected HCBS waiver program

8.6001.6 Preadmission Screening and Resident Review (PASRR)

Section 8.401.18.181.A

PASRR Level I Screening and Level II Evaluations will be suspended for 30 days in accordance with Section 1919(e)(7) for new admissions.

8.6001.7 Personal Care

Sections 8.485.61.D.2-3; 8.489.10.11; 8.510.4.A

Temporarily waive the restriction of personal care services provided in Hospital, Nursing Facility, or other acute-like setting.

Sections 8.510.18; 8.552.1.B

Temporarily allow legally responsible person to provide services using participant directed models (Consumer Directed Attendant Support Services (CDASS) and In-Home Support Services (IHSS)).

8.6001.8 Guidelines for Institutions for Mental Diseases (IMDs)

Section 8.401.4

Temporarily waive the IMD requirements for nursing facilities that exceed 50% of patient-census with a primary diagnosis of major mental illness.

8.6001.9 Retainer Payments

Sections 8.515.80.F; 8.500.14.B.3

Temporarily allow specified Brain Injury waiver providers to bill retainer payments for services not rendered.

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Title of Rule: Revision to the Medical Assistance Act Rule concerning Emergency Medical Transportation, Sections 8.018.1.F. and 8.018.4.D.1
Rule Number: MSB 21-11-04-A
Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-11-04-A, Revision to the Medical Assistance Act Rule concerning Emergency Medical Transportation, Sections 8.018.1.F. and 8.018.4.D.1

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.018.1.F and 8.018.4.D.1, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 12/07/2021

   Is rule to be made permanent? (If yes, please attach notice of hearing). No

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.018 with the proposed text beginning at 8.018.1 through the end of 8.018.4. This rule is effective December 7, 2021.

*to be completed by MSB Board Coordinator

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Title of Rule: Revision to the Medical Assistance Act Rule concerning Emergency Medical Transportation, Sections 8.018.1.F. and 8.018.4.D.1
Rule Number: MSB 21-11-04-A
Division / Contact / Phone:Health Programs Office / Ryan Dwyer / 303-866-6163

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This rule revision expands the definition of Facility in the existing EMT rule. The expanded definition will allow for ambulance transports to a wider range of care locations during the COVID-19 public health emergency, including alternative hospital sites and temporary facilities. The rule also allows for transports between facilities without requiring basic or advanced life support services.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☒ for the preservation of public health, safety and welfare.

   Explain:

   Under the Department's current rule, ambulance trips may only be taken to a limited set of medical facilities, the "closest, most appropriate Facility." CMS recently issued an expanded list of allowable destinations for ambulance trips that qualify for Medicare reimbursement during the COVID-19 public health emergency. This rule will align the Department with that new CMS Medicare guidance by expanding our definition of Facility. The goal is to allow EMT providers to take members to a wider range of medical facilities that are appropriate to the member's condition but that are not necessarily hospitals. This will help prevent hospital overcrowding while also getting members the most appropriate medical care, and will allow utilization of temporary and alternative care sites.

   The second change relates to interfacility transportation, which is ambulance transportation from one facility to another, provided the member requires basic or advanced life support en route. This revision suspends the life support requirement. This will allow for members to be moved from one facility to another if they need continued COVID-19-related care, but do not require life support en route.

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3. Federal authority for the Rule, if any:
4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   Title of Rule: Revision to the Medical Assistance Act Rule concerning Emergency Medical Transportation, Sections 8.018.1.F. and 8.018.4.D.1
   Rule Number: MSB 21-11-04-A
   Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Members utilizing or eligible for EMT services (nearly all members are eligible), EMT providers, and facilities treating COVID-19 patients will all benefit from the proposed revisions.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Affected members will benefit from increased access to care, and transportation providers will benefit from greater flexibility in their ability to transport patients. Medical providers and facilities will benefit from an increased ability to transport patients to prevent any one facility from becoming overloaded.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There are no costs to the Department or to any other agency to implement and enforce the proposed rule.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The probable benefits of implementation are greater flexibility for EMT providers and the avoidance of overcrowding at hospitals. The benefit to members is that they can receive care in the most appropriate setting. The potential costs are an increase in EMT trips, however EMT trips occur as they are needed. The costs of inaction are potential overcrowding at hospitals and a reduction in willing EMT providers.

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5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods for achieving the purpose for the proposed rule.

8.018 EMERGENCY MEDICAL TRANSPORTATION

8.018.1. DEFINITIONS

8.018.1.A. Air Ambulance means a Fixed-Wing or Rotor-Wing Air Ambulance equipped with medically necessary supplies to provide Emergency Medical Transportation.

8.018.1.B. Client means a person enrolled in the Medical Assistance Program.

8.018.1.C. Emergency Medical Services (EMS) Provider means an individual who has a current and valid emergency medical service provider certificate issued by the Department of Public Health and Environment (CDPHE) and includes Emergency Medical Technician (EMT), Advanced Emergency Medical Technician (AEMT), Emergency Medical Technician Intermediate (EMT-I), and Paramedic, in accordance with the Rules Pertaining to EMS Practice and Medical Director Oversight at 6 CCR 1015-3, Chapter Two.

8.018.1.D. Emergency Medical Technician (EMT) means an individual who has a current and valid EMT certificate issued by CDPHE and who is authorized to provide basic emergency medical care in accordance with the Rules Pertaining to EMS Practice and Medical Director Oversight at 6 CCR 1015-3, Chapter Two.

8.018.1.E. Emergency Medical Transportation means Ground Ambulance or Air Ambulance transportation during which Clients who are ill, injured, or otherwise mentally or physically incapacitated receive needed emergency medical services en route.

8.018.1.F. Facility means a general hospital, hospital unit, psychiatric hospital, rehabilitation hospital, Acute Treatment Unit (ATU), or Crisis Stabilization Unit (CSU), as well as any location that is an alternative site determined to be part of a hospital, Critical Access Hospital (CAH) or Skilled Nursing Facility (SNF), community mental health centers, federally qualified health centers (FQHCs), physician's offices, urgent care facilities, ambulatory surgery centers (ASCs), any other location furnishing dialysis services outside of the End Stage Renal Disease (ESRD) facility, and the beneficiary's home..

8.018.1.G. Fixed-Wing Air Ambulance means a fixed-wing aircraft that is certified as a Fixed-Wing Air Ambulance by the Federal Aviation Administration.

8.018.1.H. Ground Ambulance means a ground vehicle, including a water ambulance, equipped with medically necessary supplies to provide Emergency Medical Transportation.

8.018.1.I. Interfacility Transportation means transportation of a Client from one Facility to another Facility.

8.018.1.J. Life-Sustaining Supplies means oxygen and oxygen supplies required for life-sustaining treatment during transport via ambulance.

8.018.1.K. Mileage means the number of miles the Client is transported in the ambulance.

8.018.1.L. Non-Emergent Medical Transportation (NEMT) means transportation to or from medically necessary non-emergency treatment that is covered by the Colorado Medical Assistance Program under Section 8.014. Non-emergency care may be scheduled or unscheduled. This may include urgent care transportation and hospital discharge transportation.

8.018.1.M. Paramedic means an individual who has a current and valid Paramedic certificate issued by CDPHE and who is authorized to provide acts of advanced emergency medical care in

accordance with the Rules Pertaining to EMS Practice and Medical Director Oversight at 6 CCR 1015-3, Chapter Two. For the purposes of these rules, Paramedic includes the historic Emergency Medical Service Provider level of EMT-Paramedic (EMT-P).

8.018.1.N. Paramedic with Critical Care Endorsement means an individual who has a current and valid Paramedic certificate issued by CDPHE and who has met the requirements in CDPHE rule to obtain a critical care endorsement from CDPHE and is authorized to provide acts in accordance with the Rules Pertaining to EMS Practice and Medical Director Oversight relating to critical care, as set forth in C.R.S. § 25-3.5-206.

8.018.1.O. Rotor-Wing Air Ambulance means a helicopter that is certified as an ambulance by the Federal Aviation Administration.

8.018.1.P. Specialty Care Transport (SCT) means interfacility Ground Ambulance transportation of a critically injured or ill Client from a stabilizing hospital to a hospital with full capabilities to treat the Client's case. SCT is necessary when a Client's condition requires ongoing care during transport at a level of service beyond the scope of the EMT, that must be furnished by one or more health professionals in an appropriate specialty area including, but not limited to, nursing, emergency medicine, respiratory care, cardiovascular care, or a Paramedic with Critical Care Endorsement.

8.018.2. CLIENT ELIGIBILITY

8.018.2.A. Emergency Medical Transportation is a benefit for all Colorado Medical Assistance Program Clients who are ill, injured, or otherwise mentally or physically incapacitated and in need of immediate medical attention to prevent permanent injury or loss of life.

8.018.3. PROVIDER ELIGIBILITY

8.018.3.A. Providers must enroll with the Colorado Medical Assistance Program as an Emergency Medical Transportation provider to be eligible for reimbursement. Enrolled Emergency Medical Transportation providers must:

1. Meet all provider screening requirements in Section 8.125.

2. Comply with commercial liability insurance requirements.

3. Maintain and comply with the appropriate licensure:

    a. Ground Ambulance license as required by CDPHE statute at C.R.S. § 25-3.5-301 and 6 CCR 1015-3, Chapter Four.

    b. Air Ambulance license as required by CDPHE statute at C.R.S. § 25-3.5-307 and 6 CCR 1015-3, Chapter Five.

4. License, operate, and equip Ground and Air Ambulances in accordance with federal and state regulations.

8.018.4. COVERED SERVICES

8.018.4.A. Emergency Medical Transportation is a covered service when medically necessary, as defined in Section 8.076.1.8., and in accordance with this Section 8.018.4.

8.018.4.B. Ground Ambulance

1. The following Ground Ambulance Emergency Medical Transportation services are covered:

    a. Transportation to the closest, most appropriate Facility.

    b. Basic life support (BLS) or advanced life support (ALS) required to maintain life during transport from the Client's pickup point to the treating Facility.

        i. BLS includes:

            1. Cardiopulmonary resuscitation, without cardiac/hemodynamic monitoring or other invasive techniques;

            2. Suctioning en route (not deep suctioning); and

            3. Airway control/positioning.

        ii. ALS includes ALS Levels 1 and 2 in accordance with 42 CFR § 414.605 (2019), which is hereby incorporated by reference. This incorporation by reference excludes later amendments to, or editions of, the referenced materials. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours, at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

            1. ALS Level 1 includes the provision of at least one ALS intervention required to be furnished by ALS personnel.

            2. ALS Level 2 includes:

                a. Administration of at least three medications by intravenous push/bolus or by continuous infusion, excluding crystalloid, hypotonic, isotonic, and hypertonic solutions (Dextrose, Normal Saline, Ringer's Lactate); or

                b. The provision of at least one of the following ALS procedures:

                i. Manual defibrillation/cardioversion.

                ii. Endotracheal intubation.

                iii. Central venous line.

                iv. Cardiac pacing.

                v. Chest decompression.

                vi. Surgical airway.

                vii. Intraosseous line.

c. Specialty Care Transport when medically necessary to reach the closest, most appropriate Facility.

d. Department-approved supplies used during Emergency Medical Transportation, including Life-Sustaining Supplies, are separately reimbursable when medically necessary.

8.018.4.C. Air Ambulance

1. Air Ambulance Emergency Medical Transportation services are covered when:

a. They meet the criteria at Section 8.018.4.B.1.a.-b.; and

b. The point of pick up is inaccessible by a Ground Ambulance, or great distances or other obstacles prohibit transporting the Client by land to the nearest appropriate medical Facility.

8.018.4.D. Interfacility Transportation

1. Interfacility Transportation is covered when:

a. The Client requires a transfer from one Facility to another.

2. Interfacility Transportation can be provided via Ground or Air Ambulance.

8.018.5. NON-COVERED SERVICES AND GENERAL LIMITATIONS

8.018.5.A. The following services are not covered or reimbursable to Emergency Medical Transportation providers as part of an Emergency Medical Transportation service:

1. Waiting time and cancellations.

2. Transportation of additional passengers.

3. Response calls when determined no transportation is needed or approved.

4. Charges when the Client is not in the vehicle.

5. Non-benefit services (e.g., first aid) provided at the scene when transportation is not necessary.

6. Transportation which is covered by another entity.

7. Transportation to local treatment programs not enrolled in Colorado Medical Assistance Program.

8. Transportation of a Client who is deceased prior to transport.

9. Pick up or delivery of prescriptions or supplies.

10. Transportation arranged for a Client’s convenience when there is no reasonable risk of permanent injury or loss of life.

11. Transportation to non-emergency medical appointments or services. See Section 8.014 for NEMT services.

8.018.6. PRIOR AUTHORIZATION

8.018.6.A. Prior Authorization is not required for Emergency Medical Transportation.

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Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3
Rule Number: MSB 21-11-04-B
Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 12/07/2021

   Is rule to be made permanent? (If yes, please attach notice of hearing). No

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.014 with the proposed text beginning at 8.014 through the end of 8.014.8. This rule is effective December 07, 2021.

*to be completed by MSB Board Coordinator

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Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3
Rule Number: MSB 21-11-04-B
Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This rule revision permits NEMT services for covered Medicaid services to locations that are not enrolled with the Colorado Medical Assistance Program. The purpose of this rule is to expand the list of allowable NEMT destinations to include alternative care sites (e.g., the Colorado Convention Center) that are not covered places of service. By temporarily waiving the covered place of service requirement, members can receive treatment for COVID-19 at a wider range of locations. This will potentially increase hospital capacity by shifting patients to sites that are not enrolled with the Colorado Medical Assistance Program.

   In addition, the revision suspends the ability for NEMT providers to transport more than one member at a time, unless the additional passenger is an approved Escort.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☒ for the preservation of public health, safety and welfare.

   Explain:

   Permitting NEMT trips to non-covered places of service will prevent hospital overcrowding while ensuring that members receive treatment for COVID-19. The change allows flexibility and takes advantage of newly established alternative care sites that may be temporary in nature and thus not enrolled in the Colorado Medical Assistance Program. If members with COVID-19 can only receive care at covered places of service, those sites may become overcrowded and may see a shortage of available beds.

   Suspending multi-loading will ensure compliance with social distancing guidelines by limiting a vehicle's occupants.

3. Federal authority for the Rule, if any:

   42 CFR 440.170 (2020)

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4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   25.5-5-324, C.R.S. (2019)

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Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3
Rule Number: MSB 21-11-04-B
Division / Contact / Phone:Health Programs Office / Ryan Dwyer / 303-866-6163

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Members utilizing or eligible for NEMT services (nearly all members with State Plan/Title XIX are eligible), NEMT providers, and facilities treating COVID-19 patients will all benefit from the proposed revisions.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Affected members will benefit from increased access to care, and transportation providers will benefit from a slight uptick in utilization when trip volumes have fallen. Medical providers and facilities will benefit from an increased ability to transport patients to prevent any one facility from becoming overloaded.

   For the multi-loading revision, members and drivers will benefit from a reduction in potential exposure to COVID-19. Drivers will not see a reduction in trip volume because the Department previously issued guidance that suspended multi-loading during the public health emergency. This rule simply formalizes that guidance.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There are no costs to the Department or to any other agency to implement and enforce the proposed rule.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   For the covered place of service requirement, the probable cost of the proposed rule is a potential minimal increase in utilization, which is more

than offset by the reduction in NEMT utilization during the stay at home order. The benefits of the proposed rule are increased access to care and the ability to move members to different sites as they recover, which frees up hospital beds.

The cost of inaction is that members in a hospital for COVID-19 will continue to tie up beds if they cannot be moved to an alternate location as they recover. This will potentially strain hospital resources.

For multi-loading, the cost of the revision is a small increase in claims. One driver will have to take one patient at a time rather than multiple patients on the same route. As a result, the Department will need to dispatch more drivers. The cost will be offset by the substantial reduction in NEMT utilization for March and April. The benefit to implementation is that drivers and passengers will maintain social distancing standards and reduce the spread of COVID-19.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods for achieving the purpose for the proposed rule.

8.014 NON-EMERGENT MEDICAL TRANSPORTATION

8.014.1. DEFINITIONS

8.014.1.A. Access means the ability to make use of.

8.014.1.B. Air Ambulance means a Fixed-Wing or Rotor-Wing Air Ambulance equipped with medically necessary supplies to provide Emergency Medical Transportation.

8.014.1.C. Ambulatory Vehicle means a passenger-carrying vehicle available for those clients able to walk and who do not rely on wheelchairs or other mobility devices, during boarding or transportation, which would necessitate a vehicle with a lift or other accommodations.

8.014.1.D. Ancillary Services mean services incurred indirectly when a client authorized to receive NEMT also requires the assistance of an Escort or financial assistance for meals or lodging.

8.014.1.E. At-Risk Adult means an adult who is unable to make personal or medical determinations, provide necessary self-care, or travel independently.

8.014.1.F. Child means a minor under the age of 18.

8.014.1.G. Day Treatment means facility-based services designed for Children with complex medical needs. Services include educational or day care services when the school or day care system is unable to provide skilled care in a school setting, or when the Child's medical needs put them at risk when around other Children.

8.014.1.H. Emergency Medical Transportation means Ground Ambulance or Air Ambulance transportation under Section 8.018 during which clients who are ill, injured, or otherwise mentally or physically incapacitated receive needed emergency medical services en route

8.014.1.I. Escort means a person who accompanies an At-Risk Adult or minor client.

8.014.1.J. Fixed-Wing Air Ambulance means a fixed wing aircraft that is certified as a Fixed-Wing Air Ambulance by the Federal Aviation Administration.

8.014.1.K. Ground Ambulance means a ground vehicle, including a water ambulance, equipped with medically necessary supplies to provide Emergency Medical Transportation.

8.014.1.L. Medicaid Client Transport (MCT) Permit means a permit issued by the Colorado Department of Regulatory Agencies Public Utilities Commission (PUC) in accordance with the PUC statute at Section 40-10.1-302, C.R.S.

8.014.1.M. Mode means the method of transportation.

8.014.1.N. Non-Emergent Medical Transportation (NEMT) means transportation to or from medically necessary non-emergency treatment. Non-emergency care may be scheduled or unscheduled. This may include Urgent Care transportation and hospital discharge transportation.

8.014.1.O. Program of All Inclusive Care for the Elderly (PACE) is a capitated rate benefit which provides all-inclusive long-term care to certain individuals as defined in Section 8.497.

8.014.1.P. Rotor-Wing Air Ambulance means a helicopter that is certified as an ambulance by the Federal Aviation Administration.

8.014.1.Q. State Designated Entity (SDE) means the organization responsible for administering NEMT. For the purposes of this rule, the responsible SDE is determined by the client's county of residence.

8.014.1.R. Stretcher Van means a vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route. This may be by stretcher, board, gurney, or another appropriate device.

8.014.1.S. Taxicab means a motor vehicle operating in Taxicab Service, as defined in 4 CCR 723-6, § 6001(yyy) (2019), which is hereby incorporated by reference.

8.014.1.T. Taxicab Service has the same meaning as defined in 4 CCR 723-6, § 6001(yyy) (2019), which is hereby incorporated by reference.

8.014.1.U. Trip means one-way transportation from the point of origin to the point of destination.

8.014.1.V. Urgent Care means an appointment for a covered medical service with verification from an attending physician or facility that the client must be seen or picked up from a discharged appointment within 48 hours.

8.014.1.W. Wheelchair Vehicle means a motor vehicle designed and used for the non-emergent transportation of individuals with disabilities who use a wheelchair. These vehicles include vans modified for wheelchair Access or wheelchair accessible minivans.

8.014.2. CLIENT ELIGIBILITY AND RESPONSIBILITIES

8.014.2.A. All Colorado Medical Assistance Program clients are eligible for NEMT services unless the client falls within the following eligibility groups on the date of the Trip:

1. Qualified Medicaid Beneficiary (QMB) Only

2. Special Low Income Medicare Beneficiary (SLMB) Only

3. Medicare Qualifying Individual-1 (QI-1) Only

4. Old Age Pension- State Only (OAP-state only)

8.014.2.B. Child Health Plan Plus clients are not eligible for NEMT.

8.014.2.C. PACE clients receive transportation provided by their PACE organization and are not eligible for NEMT.

8.014.2.D. NEMT services may be denied if clients do not observe the following responsibilities:

1. Comply with applicable state, local, and federal laws during transport.

2. Comply with the rules, procedures and policies of the SDE.

3. Obtain authorization from their SDE.

4. Clients must not engage in violent or illegal conduct while utilizing NEMT services.

5. Clients must not pose a direct threat to the health or safety of themselves or others, including drivers.

6. Clients must cancel their previously scheduled NEMT Trip if the ride is no longer needed, except in emergency situations or when the client is otherwise unable to cancel.

8.014.3. PROVIDER ELIGIBILITY AND RESPONSIBILITIES

8.014.3.A. Providers must enroll with the Colorado Medical Assistance Program as an NEMT provider.

8.014.3.B. Enrolled NEMT providers must:

1. Meet all provider screening requirements in Section 8.125;

2. Comply with commercial liability insurance requirements and, if applicable, PUC financial responsibility requirements established in the PUC statute at C.R.S. § 40-10.1-107;

3. Refrain from attempting to solicit clients known to have already established NEMT service with another provider;

4. Maintain and comply with the following appropriate licensure, or exemption from licensure, requirements:

   a. PUC common carrier certificate as a Taxicab;

   b. PUC MCT Permit as required by the PUC statute at C.R.S. § 40-10.1-302;

   c. Ground Ambulance license as required by Department of Public Health and Environment (CDPHE) rule at 6 CCR 1015-3, Chapter Four;

   d. Air Ambulance license as required by CDPHE rule at 6 CCR 1015-3, Chapter Five; or

   e. Exemption from licensure requirements in accordance with PUC statute at C.R.S. § 40-10.1-105.

5. Only provide NEMT services appropriate to their current licensure(s) and within the geographic limitations applicable to the licensure; and

6. Ensure that all vehicles and auxiliary equipment used to transport clients meet federal, state, and local safety inspection and maintenance requirements.

PUC statute at C.R.S. §§ 40-10.1-105, 40-10.1-107 and 40-10.1-302 (2019) and CDPHE rule at 6 CCR 1015-3, Chapters Four and Five (2019), are hereby incorporated by reference.

8.014.3.C. NEMT transportation providers must maintain a Trip report for each NEMT Trip provided and must, at a minimum, include:

1. The pick-up address;

2. The destination address;

3. Date and time of the Trip;

4. Client’s name or identifier;

5. Confirmation that the driver verified the client’s identity;

6. Confirmation by the client, Escort, or medical facility that the Trip occurred;

7. The actual pick-up and drop off time;

8. The driver's name; and

9. Identification of the vehicle in which the Trip was provided.

8.014.3.D. Multiple Loading

1. NEMT providers may not transport more than one client at the same time, unless the additional passenger is an Escort.

8.014.3.E. The Section 8.014.3 requirements do not apply to client reimbursement or bus or rail systems.

8.014.4. COVERED PLACES OF SERVICE

8.014.4.A. NEMT must be provided to the closest provider available qualified to provide the service the client is traveling to receive. The closest provider is defined as a provider within a 25-mile radius of the client's residence, or the nearest provider if one is not practicing within a 25-mile radius of the client's residence. Exceptions may be made by the SDE in the following circumstances:

1. If the closest provider is not willing to accept the client, the client may use NEMT to access the next closest qualified provider.

2. If the client has complex medical conditions that restrict the closest medical provider from accepting the patient, the SDE may authorize NEMT to be used to travel to the next closest qualified provider. The treating medical provider must send the SDE written documentation indicating why the client cannot be treated by the closest provider.

3. If a client has moved within the three (3) months preceding an NEMT transport, the client may use NEMT to their established medical provider seen in their previous locale. During these three (3) months, the client and medical provider must transfer care to the closest provider as defined at Section 8.014.4.B. or determine transportation options other than NEMT.

8.014.5. COVERED SERVICES

8.014.5.A. Transportation Modes

1. Covered Modes of transportation include:

a. Bus and public rail systems

i. Transit passes may be issued by the SDE when the cumulative cost of bus tickets exceeds the cost of a pass.

b. Personal vehicle mileage reimbursement

c. Ambulatory Vehicles

d. Wheelchair Vehicles

e. Taxicab Service

f. Stretcher Van

g. Ground Ambulance

h. Air Ambulance

i. Commercial plane

j. Train

8.014.5.B. NEMT Services

1. NEMT is a covered service when:

a. The client does not have Access to other means of transportation, including free transportation;

b. Transportation is required to obtain a non-emergency service(s) that is medically necessary, as defined in Section 8.076.1.8.; and

c. The client is receiving a service covered by the Colorado Medical Assistance Program.

2. NEMT services may be covered for clients even if the medical procedure is paid for by an entity other than the Colorado Medical Assistance Program.

3. Non-emergent ambulance service (Ground and Air Ambulance), from the client's pickup point to the treating facility, is covered when:

a. Transportation by any other means would endanger the client's life; or

b. The client requires basic life support (BLS) or advanced life support (ALS) to maintain life and to be transported safely.

i. BLS includes:

1. Cardiopulmonary resuscitation, without cardiac/hemodynamic monitoring or other invasive techniques;

2. Suctioning en route (not deep suctioning); and

3. Airway control/positioning.

ii. ALS includes ALS Levels 1 and 2 in accordance with 42 CFR § 414.605 (2019), which is hereby incorporated by reference.

1. ALS Level 1 includes the provision of at least one ALS intervention required to be furnished by ALS personnel.

2. ALS Level 2 includes:

a. Administration of at least three medications by intravenous push/bolus or by continuous infusion,

excluding crystalloid, hypotonic, isotonic, and hypertonic solutions (Dextrose, Normal Saline, Ringer's Lactate); or

b. The provision of at least one of the following ALS procedures:

i. Manual defibrillation/cardioversion.

ii. Endotracheal intubation.

iii. Central venous line.

iv. Cardiac pacing.

v. Chest decompression.

vi. Surgical airway.

vii. Intraosseous line.

4. NEMT may be provided to an Urgent Care appointment under the following circumstances:

a. A provider is available;

b. The appointment is for a covered medical service with verification from an attending physician that the client must be seen within 48 hours; and

c. The client is transported to an Urgent Care facility, which may include a trauma center if it is the nearest and most appropriate facility.

8.014.5.C. Personal Vehicle Mileage Reimbursement

1. Personal vehicle mileage reimbursement is covered for a privately owned, non-commercial vehicle when used to provide NEMT services in accordance with Section 8.014.5.B and owned by:

a. A client, a client’s relative, or an acquaintance; or

b. A volunteer or organization with no vested interest in the client.

2. Personal vehicle mileage reimbursement will only be made for the shortest Trip length in miles as determined by an internet-based map, Trip planner, or other Global Positioning System (GPS).

a. Exceptions can be made by the SDE if the shortest distance is impassable due to:

i. Severe weather;

ii. Road closure; or

iii. Other unforeseen circumstances outside of the client’s control that severely limit using the shortest route.

b. If an exception is made under Section 8.014.5.C.2.a., the SDE must document the reason and pay mileage for the actual route traveled.

3. To be reimbursed for personal vehicle mileage, the client must provide the following information to the SDE within forty-five (45) calendar days of the final leg of the Trip:

a. Name and address of vehicle owner and driver (if different from owner);

b. Name of the insurance company and policy number for the vehicle; and

c. Driver's license number and expiration date.

8.014.5.D. Ancillary Services

1. Escort

a. The Colorado Medical Assistance Program may cover the cost of transporting one Escort when the client is:

i. A Child.

1. An Escort is required to accompany a client if the client is under thirteen (13) years old, unless the Child:

a. Is traveling to a Day Treatment program (Children are not eligible for NEMT travel to and from school-funded day treatment programs);

b. The parent or guardian signs a written release;

c. An adult will be present to receive the Child at the destination and return location; and

d. The Day Treatment program and the parents approve of the NEMT provider used.

2. Clients who are at least thirteen (13) years old, but younger than eighteen (18) years old, may travel without an Escort if:

a. The parent or guardian signs a written release; andAn adult will be present to receive the Child at the destination and return location.

ii. An At-Risk Adult unable to make personal or medical determinations, or to provide necessary self-care, as certified in writing by the client's attending Colorado Medical Assistance Program enrolled NEMT provider.

b. The Escort must be physically and cognitively capable of providing the needed services for the client.

i. If a client's primary caregiver has a disability that precludes the caregiver from providing all of the client's needs during transport or extended stay, a second Escort may be covered under Section 8.014.5.D.1.c.ii.

c. The Colorado Medical Assistance Program may cover the cost of transporting a second Escort for the client, if prior authorized under Section 8.014.7. A second Escort will only be approved if:

i. The client has a behavioral or medical condition which may cause the client to be a threat to self or to others if only one Escort is provided; or

ii. The client's primary caregiver Escort has a disability that precludes the caregiver from providing all of the client's needs during transport or extended stay.

2. Meals and Lodging

a. Meals and lodging for in-state treatment may be reimbursed when:

i. Travel cannot be completed in one calendar day; or

ii. The client requires ongoing, continuous treatment and:

1. The cost of meals and lodging is less than or equal to the cost of traveling to and from the treatment facility and the client's residence; or

2. The client's treating medical professional determines that traveling to and from the client's residence would put the client's health at risk.

b. Meals and lodging may be covered for the Escort(s) when the client is a Child or an At-Risk Adult who requires the Escort's continued stay under Section 8.014.5.D.1.

c. Reimbursement will only be made for meals and lodging for which clients and Escorts are actually charged, up to the per diem rate established by the Colorado Medical Assistance Program.

d. Meals and lodging will not be paid or reimbursed when those services are included as part of an inpatient stay.

8.014.6. NON-COVERED NEMT SERVICES AND GENERAL LIMITATIONS

8.014.6.A. The following services are not covered or reimbursable to NEMT providers as part of a NEMT service:

1. Services provided only as a convenience to the client.

2. Charges incurred while client is not in the vehicle, except for lodging and meals in accordance with Section 8.014.5.D.2.

3. Transportation to or from non-covered medical services, including services that do not qualify due to coverage limitations..

4. Waiting time.

5. Cancellations.

6. Transportation which is covered by another entity.

7. Metered taxi services.

8. Charges for additional passengers, including siblings or Children, not receiving a medical service, except when acting as an Escort under Section 8.014.5.D.1.

9. Transportation for nursing facility or group home residents to medical or rehabilitative services required in the facility's program, unless the facility does not have an available vehicle.

10. Transportation to emergency departments to receive emergency services. See Section 8.018 for Emergency Medical Transportation services.

11. Providing Escorts or the Escort's wages.

12. Trips to receive Home and Community Based Services

a. Non-medical transportation should be utilized if other transportation options are not available to the client.

8.014.6.B. General Limitations

1. The SDE is responsible for ensuring that the client utilizes the least costly Mode of transportation available that is suitable to the client's condition.

8.014.7. AUTHORIZATION

8.014.7.A. All NEMT services must be authorized as required by the SDE.

1. Authorization requests submitted more than three months after an NEMT service is rendered will be denied.

2. NEMT services may be denied if proper documentation is not provided to the SDE.

8.014.7.B. If a client requests transportation via Wheelchair Vehicle, Stretcher Van, or ambulance, the SDE must verify the service is medically necessary with the client's medical provider

1. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

8.014.7.C. Out-of-State NEMT

1. NEMT to receive out of state treatment is permissible only if treatment is not available in the state of Colorado.

2. The following border towns are not considered out of state for the purposes of NEMT prior authorization:

a. Arizona: Flagstaff and Teec Nos Pos.

b. Kansas: Elkhart, Goodland, Johnson, Sharon Springs, St. Francis, Syracuse, Tribune.

c. Nebraska: Benkelman, Cambridge, Chappell, Grant, Imperial, Kimball, Ogallala, and Sidney.

d. New Mexico: Aztec, Chama, Farmington, Raton, and Shiprock.

e. Oklahoma: Boise City.

f. Utah: Monticello and Vernal.

g. Wyoming: Cheyenne and Laramie.

8.014.7.D. Prior Authorization

1. The following services require prior authorization by Colorado Medical Assistance Program:

a. Out-of-state travel, except to the border towns identified at section 8.014.7.C.2.

b. Air travel, both commercial air and Air Ambulance.

c. Train travel via commercial railway.

d. Second Escort.

2. Prior authorization requests require the following information:

a. NEMT prior authorization request form completed by SDE and member's physician and submitted to Colorado Medical Assistance Program according to form instructions.

i. The Colorado Medical Assistance Program will return requests completed by non-physicians and incomplete requests to the SDE.

ii. The Colorado Medical Assistance Program's determination will be communicated to the SDE. If additional information is requested, the SDE must obtain the information and submit to the Colorado Medical Assistance Program. If the request is denied, the SDE must send the client a denial notice.

8.014.8. INCORPORATIONS BY REFERENCE

The incorporation by reference of materials throughout section 8.014 excludes later amendments to, or editions of, the referenced materials. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours, at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Preferred Drug List (PDL) and New Drug Determinations, Section 8.800.16.B
Rule Number: MSB 21-10-28-A
Division / Contact / Phone: Pharmacy Office / Kristina Gould / 303-866-6715

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-10-28-A, Revision to the Medical Assistance Act Rule Concerning Preferred Drug List (PDL) and New Drug Determinations, Section 8.800.16.B

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.800.16.B, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 11/12/2021

   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.800.16.B with the proposed text beginning at 8.800.16.B through the end of 8.800.16.B. This rule is effective November 12, 2021.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Preferred Drug List (PDL) and New Drug Determinations, Section 8.800.16.B
Rule Number: MSB 21-10-28-A
Division / Contact / Phone: Pharmacy Office / Kristina Gould / 303-866-6715

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This proposed rule change will clarify that when a new drug becomes available and falls into a Drug Class that is already on the PDL, that the Department will determine whether it's Preferred or Non-preferred within a specified timeframe.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☒ for the preservation of public health, safety and welfare.

   Explain:

   Ensure that members will receive medications that are new to the market in a timely manner.

3. Federal authority for the Rule, if any:

   N/A

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   Section 25.5-1-108, C.R.S. (2021)

Initial Review — Final Adoption
Proposed Effective Date **11/12/21** — Emergency Adoption
11/12/21

DOCUMENT #17

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Preferred Drug List (PDL) and New Drug Determinations, Section 8.800.16.B
Rule Number: MSB 21-10-28-A
Division / Contact / Phone: Pharmacy Office / Kristina Gould / 303-866-6715

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Members will benefit from the proposed rule by ensuring that they receive drugs that are new to the market in a timely manner. There are no costs of the proposed rule.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Quantitatively, drugs that are new to the market will be designated as Preferred or Non-preferred within a specified timeframe, which in some cases may increase the speed at which new drugs are available to members. Qualitatively, the Department will ensure that members receive drugs that are new to market in a timely manner.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There are no probable costs of the proposed rule.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   There are no probable costs of the proposed rule and there are no benefits of inaction. The benefit of action is that the Department will ensure that members receive drugs that are new to the market in a timely manner.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   Not applicable.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   Not applicable.

8.800 PHARMACEUTICALS

8.800.16 PREFERRED DRUG LIST

8.800.16.A. ESTABLISHING THE PREFERRED DRUG LIST

1. To develop and maintain the PDL, the Department shall take the following steps:

    a. Determine which drugs and Drug Classes shall be reviewed for inclusion on the PDL.

    b. Refer selected drugs and Drug Classes to the P&T Committee for clinical reviews performed without consideration of drug cost-effectiveness. The P&T Committee shall make recommendations pursuant to 10 C.C.R. 2505-10, Section 8.800.17.C.

    c. Make recommendations to the Medical Director based on evaluations of relevant criteria, including but not limited to:

        i) Drug safety;

        ii) Drug efficacy;

        iii) The recommendations of the P&T Committee;

        iv) Public comments received by the Department before a drug or Drug Class is reviewed at the relevant P&T Committee meeting;

        v) Cost-effectiveness; and

        vi) Scientific evidence, standards of practice and other relevant drug information for such evaluation.

2. After the P&T Committee meets, the Medical Director shall review the recommendations of the P&T Committee and the Department and determine whether a reviewed drug is designated a Preferred Drug or a Non-preferred Drug.

3. After the Medical Director has designated a reviewed drug as Preferred or Non-preferred, the Department shall refer that drug to the DUR Board for recommendations on prior authorization criteria.

4. After the DUR Board meets, the Medical Director shall review the recommendations of the P&T Committee, the DUR Board and the Department and determine the efficacy, safety and appropriate prior authorization criteria for Preferred and Non-preferred Drugs to ensure the health and safety of members.

5. The Department shall provide public notice of PDL updates at least ten days before such changes take effect.

6. Drug Classes included on the PDL shall be reviewed at least annually.

8.800.16.B. NEW DRUGS

1. Notwithstanding any other provision of this section, a new drug entity, including new generic drugs and new drug product dosage forms of existing drug entities, in a Drug Class already included on the PDL:

   a. Shall be subject to a preliminary evaluation by the Department within 30 days from when the drug is available on the market; and

   b. The Department shall designate the new drug as Preferred or Non-preferred upon completion of the preliminary evaluation.

2. The Preferred or Non-preferred designation for a new drug shall continue until the relevant Drug Class is reviewed and the designation is changed pursuant to Section 8.800.16.A.

3. New drug prior authorization information is addressed in Section 8.800.7.D.

8.800.16.C. EXCLUSION OF DRUGS, DRUG CLASSES OR INDIVIDUALS FROM THE PDL

1. The following exclusions are intended to promote good health outcomes and clinically appropriate drug utilization and to protect the most vulnerable Medical Assistance Program members.

2. After reviewing the recommendations of the P&T Committee and the Department, the Medical Director may, notwithstanding any other provision of this section and to the extent allowed by federal and state law:

   a. Exclude drugs or Drug Classes from consideration for inclusion on the PDL.

   b. Determine continuity of care protocols that exempt Medical Assistance Program members stabilized on specified Non-preferred Drugs from prior authorization requirements.

   c. Exclude specific Medical Assistance Program populations from prior authorization requirements for all Non-preferred Drugs.

3. Individual Medical Assistance Program members shall be exempted, on an annual basis, from prior authorization requirements for all Non-preferred Drugs if:

   a. A member meets clinical criteria recommended by the Department and P&T Committee and approved by the Medical Director; and

   b. A member’s physician submits a request for exemption and meets the criteria for approval.

8.800.16.D. AUTHORITY OF THE EXECUTIVE DIRECTOR

1. The decisions of the Medical Director, made under the authority of this section, shall be implemented by the Department at the sole discretion of the Executive Director.

2. If the Medical Director position is unfilled, the duties and obligations of that position, as described in this section, shall be performed by the Executive Director.

8.800.16.E. SUPPLEMENTAL REBATES

1. The Department may enter into supplemental rebate agreements with drug manufacturers for Preferred Drugs. The Department may contract with a vendor and/or join a purchasing pool to obtain and manage the supplemental rebates.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules concerning General and Citizenship Eligibility Requirements, Section 8.100.3.G
Rule Number: MSB 21-10-22-A
Division / Contact / Phone: Eligibility Policy / Jennifer VanCleave / 303-866-6204

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-10-22-A Revision to the Medical Assistance Eligibility Rules at Section 8.100.3.G Concerning General and Citizenship Eligibility Requirements

3. This action is an adoption of: <Select One>

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) OP Pages, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? <Select One>

   If yes, state effective date: 11/12/2021

   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.3.G.1.g.vii with the proposed text beginning at 8.100.3.G.1.g.vii through the end of 8.100.3.G.1.g.vii. This rule is effective November 12, 2021.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules concerning General and Citizenship Eligibility Requirements, Section 8.100.3.G
Rule Number: MSB 21-10-22-A
Division / Contact / Phone: Eligibility Policy / Jennifer VanCleave / 303-866-6204

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   On September 30, 2021, Congress singed the Extending Government Funding and Delivering Emergency Assistance Act (HR 5305) into law. Section 2502 of HR 5305 expanded eligibility to entitlement programs such as Medicaid, to include Afghan evacuees as qualified non-citizens not subject to the five-year bar. The resolution states that a citizen or national of Afghanistan who is paroled into the United States between July 31, 2021 and September 30, 2022; or is paroled into the United States after September 30, 2022 and is either a spouse or child (defined under section 101(b) of the Immigration and Nationality Act 8 U.S.C. 4 1101(b); or is the parent or legal guardian of an individual arriving from Afghanistan in the prescribed date range who was determined to be an unaccompanied child (under 6 U.S.C. 279(g)(2), will considered a qualified non-citizen not subject to the 5 year bar. The population is referred to as Afghan humanitarian parolees.

   Currently, these statuses are already considered qualified non-citizens not subject to the five-year bar for children under the age of 19 and pregnant women. HR 5305 states that all humanitarian parolees arriving from Afghanistan during the specified date ranges should be considered qualified non-citizens not subject to the five-year bar, as long as their parole has not been terminated by the Department of Homeland Security. Individuals with these statuses are not automatically entitled for Medical Assistance, they will still need to apply and meet all categorical requirements to be approved. Their status will also be verified electronically through the Verify Lawful Presence (VLP) interface with the Systematic Alien Verification for Entitlements (SAVE) program per current state and federal rule.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☒ for the preservation of public health, safety and welfare.

   Explain:

Initial Review — Final Adoption
Proposed Effective Date **11/12/21** — Emergency Adoption
11/12/21

DOCUMENT #18

The Extending Government Funding and Delivering Emergency Assistance Act (HR 5305) was signed into law on September 30, 2021, and changes are required to align state rules with the continuing resolution. Additionally, several hundred individuals that would potentially be categorized and covered based on their Afghan Humanitarian Parolee status have already arrived in Colorado and need access to health coverage for urgent health needs.

3. Federal authority for the Rule, if any:

   HR 5305, Section 2502

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   Section 25.5-4-205, C.R.S. (2021)
   Section 24.4-4-103(6)(a), C.R.S. (2021)

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Eligibility Rules concerning General and Citizenship Eligibility Requirements, Section 8.100.3.G
Rule Number: MSB 21-10-22-A
Division / Contact / Phone: Eligibility Policy / Jennifer VanCleave / 303-866-6204

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The Governor's Office and the Department of Human Services Office of Refugee Resettlement estimates 1,000 – 2,000 total Afghan evacuees arriving in Colorado, with an estimate of up to half of the total population (approximately 1,000) entering Colorado under the newly established eligible immigration status.

   With the proposed rule change, Afghan humanitarian parolees who arrived during the specified date ranges, will be considered qualified non-citizens not subject to the five-year bar until March 31, 2023, or through the extent of their parole timeframe, whichever is later. They will be eligible for full benefits, rather than only those services necessary to treat an emergency medical condition. Many Afghan refugees will arrive in Colorado with immigration statuses that are already considered qualified non-citizens not subject to the five-year bar for Medical Assistance, and their eligibility will be unaffected by the proposed rule change.

   The Department will also benefit from the proposed change as the rule will align with federal requirements. The Department will also bear the cost of the proposed rule change, as there will be an increase in the number of individuals who will be eligible for Medical Assistance.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed change will update rule to comply with the requirements put forth in Extending Government Funding and Delivering Emergency Assistance Act (HR 5305), Section 2502. The Department will benefit from compliance with federal regulations. This will ensure that Medical Assistance eligibility will be accurately determined for Afghan evacuees. The proposed change will also expand eligibility for full Medical Assistance benefits to Afghan humanitarian parolees who were previously only

eligible for the coverage of services necessary to treat an emergency medical condition.

The Department, stakeholders, applicants, and providers will benefit from a description of the expanded population eligible for benefits, as well as the date ranges during which the newly expanded population will be considered qualified non-citizens for Medical Assistance.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Department estimates that this policy would increase the Medicaid caseload by up to 1,000 members. The Department anticipates that the total impact of coverage of Medicaid programs for these members will be $4,425,970 in Fiscal Year 2021-2022.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The probable costs of this policy include potentially paying up to $4.4 million for Medicaid services attributable to new members.

   The probable benefits to the policy include staying in compliance with federal laws, as well as providing medical care to individuals in need.

   The probable costs of inaction will be that the Department will be out of compliance with federal laws. This could cause the Department to pay a disallowance to CMS or forfeit the Federal Match the Department receives from the Federal Government.

   There are no benefits to inaction.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   The Department does not have any less costly method of enrolled the 1,000 newly eligible members.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The Department considered no alternative methods for achieving the purpose of the proposed rule, as it is required to come into compliance with federal law.

8.100 MEDICAL ASSISTANCE ELIGIBILITY

8.100.3. Medical Assistance General Eligibility Requirements

8.100.3.G. General and Citizenship Eligibility Requirements

1. To be eligible to receive Medical Assistance, an eligible person shall:

    a. Be a resident of Colorado;

    b. Meet the following requirements while being an inmate, in-patient or resident of a public institution:

        i). The following individuals, if eligible, may be enrolled for Medical Assistance

            1. Patients in a public medical institution

            2. Residents of a Long-Term Care Institution

            3. Prior inmates who have been paroled

            4. Resident of a publicly operated community residence which serves no more than 16 residents

            5. Individuals participating in community corrections programs or residents in community corrections facilities (“halfway houses”) who have freedom of movement and association which includes individuals who:

                a) are not precluded from working outside the facility in employment available to individuals who are not under justice system supervision;

                b) can use community resources (e.g., libraries, grocery stores, recreation, and education) at will;

                c) can seek health care treatment in the broader community to the same or similar extent as other Medicaid enrollees in the state; and/or

                d) are residing at their home, such as house arrest, or another location

ii). Inmates who are incarcerated in a correctional institution such as a city, county, state or federal prison may be enrolled, if eligible, with benefits limited to an in-patient stay of 24 hours or longer in a medical institution.

c. Not be a patient in an institution for tuberculosis or mental disease, unless the person is under 21 years of age or has attained 65 years of age and is eligible for the Medical Assistance Program and is receiving active treatment as an inpatient in a psychiatric facility eligible for Medical Assistance reimbursement. See section 8.100.4.H for special provisions extending Medical Assistance coverage for certain patients who attain age 21 while receiving such inpatient psychiatric services;

d. Meet all financial eligibility requirements of the Medical Assistance Program for which application is being made;

e. Meet the definition of disability or blindness, when applicable. Those definitions appear in this volume at 8.100.1 under Definitions;

f. Meet all other requirements of the Medical Assistance Program for which application is being made; and

g. Fall into one of the following categories:

i) Be a citizen or national of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa or Swain's Island; or

ii) Be a lawfully admitted non-citizen who entered the United States prior to August 22, 1996, or

iii) Be a non-citizen who entered the United States on or after August 22, 1996 and is applying for Medical Assistance benefits to begin no earlier than five years after the non-citizen's date of entry into the United States who falls into one of the following categories:

1) lawfully admitted for permanent residence under the Immigration and Nationality Act (hereafter referred to as the "INA");

2) paroled into the United States for at least one year under 8 U.S.C. § 1182(d)(5); or

3) granted conditional entry under section 203(a)(7) of the INA, as in effect prior to April 1, 1980; or

4) determined by the eligibility site, in accordance with guidelines issued by the U.S. Attorney General, to be a spouse, child, parent of a child, or child of a parent who, in circumstances specifically described in 8 U.S.C. §1641(c), has been battered or subjected to extreme cruelty which necessitates the provision of Medical Assistance (Medicaid); or

iv) Be a non-citizen who arrived in the United States on any date, who falls into one of the following categories:

1) lawfully residing in Colorado and is an honorably discharged military veteran (also includes spouse, unremarried surviving spouse and unmarried, dependent children), or

2) lawfully residing in Colorado and is on active duty (excluding training) in the U.S. Armed Forces (also includes spouse, unremarried surviving spouse and unmarried, dependent children), or

3) granted asylum under section 208 of the INA, or

4) refugee under section 207 of the INA, or

5) deportation withheld under section 243(h) (as in effect prior to September 30, 1996) or section 241(b)(3) (as amended by P.L. 104-208) of the INA, or

6) Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, or

7) an individual who (1) was born in Canada and possesses at least 50 percent American Indian blood, or is a member of an Indian tribe as defined in 25 U.S.C. sec. 5304(e)(2016), or

8) admitted to the U.S. as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. 100-461), or

9) lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam conflict, or

10) a victim of a severe form of trafficking in persons, as defined in section 103 of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L.106-386, as amended (22 U.S.C. § 7105(b) (2016)), or

11) An alien who arrived in the United States on or after December 26, 2007 who is an Iraqi special immigrant under section 101(a)(27) of the INA, or

12) An alien who arrived in the United States on or after December 26, 2007 who is an Afghan Special Immigrant under section 101(a)(27) of the INA, or

13) Compact of Free Association (COFA) migrants, including citizens of Micronesia, the Marshall Islands, and Palau, pursuant to section 208 of the Consolidated Appropriations Act of 2021 (in effect December 27, 2020).

v) The statutes listed at sections 8.100.3.G.1.g.iii.1-5 and at 8.100.3.G.1.g.iv.3-11 are incorporated herein by reference. No amendments or later editions are incorporated. These regulations are available for public inspection at the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Pursuant to C.R.S. 24-4-103(12.5)(b)(2016), 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.

vi) Be a lawfully admitted non-citizen who is a pregnant women or a child under the age of 19 years in the United States who falls into one of the categories listed in 8.100.3.G.1.g.iii or into one of the following categories listed below. These individuals are exempt from the 5-year waiting period:

1) granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a,or

2) granted Temporary Protected Status (TPS) in accordance with 8 U.S.C 1254a and pending applicants for TPS granted employment authorization,

3) granted employment authorization under 8 CFR 274a.12(c),or

4) Family Unity beneficiary in accordance with section 301 of Pub. L. 101-649, as amended.

5) Deferred Enforced Departure (DED), pursuant to a decision made by the President,

6) granted Deferred Action status (excluding Deferred Action for Childhood Arrivals (DACA)) as described in the Secretary of Homeland Security's June 15,2012 memorandum,

7) granted an administrative stay of removal under 8 CFR 241.6(2016), or

8) Beneficiary of approved visa petition who has a pending application for adjustment of status.

9) Pending an application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who-

a) as been granted employment authorization; or

b) Is under the age of 14 and has had an application pending for at least 180 days.

10) granted withholding of removal under the Convention Against Torture,

11) A child who has a pending application for Special Immigrant Juvenile status under 8 U.S.C. 1101(a)(27)(J), or

12) Citizens of Micronesia, the Marshall Islands, and Palau, or

13) is lawfully present American Samoa under the immigration of laws of American Samoa.

14) A non-citizen in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or under 8 U.S.C. 1101(a)(17), or

15) A non-citizen who has been paroled into the United States for less than one year under 8 U.S.C. § 1182(d)(5), except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings.

vii) Be an Afghan Humanitarian Parolee who falls into one of the following categories listed below, as defined in Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021 (HR 5305). These individuals are exempt from the 5-year waiting period until March 31, 2023, or through the termination of their parole period, whichever is later:

1) paroled into the United States between July 31, 2021 – September 30, 2022; or

2) paroled into the United States after September 30, 2022, and a) is the spouse or child of an individual in subparagraph 1 as defined under section 101(b) of the Immigration and Nationality Act (8 U.S.C. 4 1101(b)); or

b) is the parent or legal guardian of an individual in subparagraph 1 who is determined to be an unaccompanied child under 6 U.S.C.279(g)(2).

viii) Exception: The exception to these requirements is that persons who apply for and meet the criteria for one of the categorical Medical Assistance programs, but who are not citizens, and are not eligible non-citizens, according to the criteria set forth in 8.100.3.G.1.g, shall receive Medical Assistance benefits for emergency medical care only. The rules on confidentiality prevent the Department or eligibility site from reporting to the United States Citizenship and Immigration Services persons who have applied for or are receiving assistance. These persons need not select a primary care physician as they are eligible only for emergency medical services.

For non-qualified aliens receiving Medical Assistance emergency only benefits, the following medical conditions will be covered:

An emergency medical condition (including labor and delivery) which manifests itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

1) placing the patient's health in serious jeopardy;

2) serious impairment of bodily function; or

3) serious dysfunction of any bodily organ or part.

A physician shall make a written statement certifying the presence of an emergency medical condition when services are provided and shall indicate that services were for a medical emergency on the claim form. Coverage is limited to care and services that are necessary to treat immediate emergency medical conditions. Coverage does not include prenatal care or follow-up care.

2. For determinations of eligibility for Medical Assistance, legal immigration status must be verified. This requirement applies to a non-citizen individual who meets the criteria of any category defined at 8.100.3.G(1)(g)(ii) (iii) (iv)(vi) or (vii) and has declared that he or she has a legal immigration status.

a. The Verify Lawful Presence (VLP) interface will be used to verify immigration status. The VLP interface connects to the Systematic Alien Verification for Entitlements (SAVE) Program to verify legal immigration status.

i) If an automated response from VLP confirms that the information submitted is consistent with VLP data for immigration status verification requirements, no further action is required for the individual and no additional documentation of immigration status is required.

ii) If the VLP cannot automatically confirm the information submitted, the individual will be contacted with a request for additional documents and/or information needed to verify their legal immigration status through the VLP interface. If a response from the VLP interface confirms that the additional documents and/or information received from the individual verifies their legal immigration status, no further action is required for the individual and no additional documentation of immigration status is required.

3. Reasonable Opportunity Period

a. If the verification through the electronic interface is unsuccessful then the applicant will be provided a reasonable opportunity period, of 90 days, to submit documents indicating a legal immigration status, as listed in 8.100.3.G.1.g. The reasonable opportunity period will begin as of the date of the Notice of Action. The required documentation must be received within the reasonable opportunity period.

b If the applicant does not provide the necessary documents within the reasonable opportunity period, then the applicant's Medical Assistance application shall be terminated.

c. The reasonable opportunity period applies to MAGI, Adult and Buy-In Programs.

i) For the purpose of this section only, MAGI Programs for persons covered pursuant to 8.100.4.G or 8.100.4.I. include the following:

Commonly Used Program Name	Rule Citation
Children's Medical Assistance	8.100.4.G.2
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Adult Medical Assistance	8.100.4.G.4
Pregnant Women Medical Assistance	8.100.4.G.5
Legal Immigrant Prenatal Medical Assistance	8.100.4.G.6
Transitional Medical Assistance	8.100.4.I.1-5

ii) For the purpose of this section only, Adult and Buy-In Programs for persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715. include the following:

Commonly Used Program Name	Rule Citation
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c
Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P

Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q
Breast and Cervical Cancer Program (BCCP)	8.715

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning Provider Enrollment, Sections 8.125.11, 8.125.12, 8.125.13 and 8.126.1
Rule Number: MSB 20-11-03-B
Division / Contact / Phone: Medicaid Operations Office / Clint Eatmon / 720-819-6409

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-11-03-B, Revision to the Medical Assistance Rule concerning Provider Enrollment, Sections 8.125.11, 8.125.12, 8.125.13 and 8.126.1

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.125.11, 8.125.12, 8.125.13 and 8.126.1, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 12/07/2021

   Is rule to be made permanent? (If yes, please attach notice of hearing). No

PUBLICATION INSTRUCTIONS*

Remove the current text beginning at 8.125.11 through the end of 8.125.13. Replace the current text at 8.126.1 with the proposed text beginning at 8.126.1 through the end of 8.126.1. This rule is effective December 7, 2021.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning Provider Enrollment, Sections 8.125.11, 8.125.12, 8.125.13 and 8.126.1
Rule Number: MSB 21-11-03-B
Division / Contact / Phone: Medicaid Operations Office / Clint Eatmon / 720-819-6409

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This rule revision will temporarily remove current requirements for providers to comply with: Fingerprint Criminal Background Checks (10 CCR 2505-10 8.125.12), Site-Visits (10 CCR 2505-10 8.125.11) and payment of Application Fee's (10 CCR 2505-10 8.125.13), during the provider enrollment process. Alleviating these requirements will expedite the processing of provider-enrollment applications.

   These proposed changes bring Colorado regulations into alignment with the approved 1135 waiver which was granted by CMS, temporarily waiving these requirements at the Federal Level. If passed, the rule will become effective on the date the board adopts it and it will expire after 120 days. However, the Department has the option to bring the rule to MSB a second time within the 120 days to reinstate or further extend the timeframe, depending on prevailing conditions and current guidance at that time.

   The rule revision at 8.126.1 (10 CCR 2505-10 8.126.1), will allow providers enrolled as a Mass Immunizer with Medicare to temporarily enroll in Colorado to provide administration of COVID-19 vaccinations.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☒ for the preservation of public health, safety and welfare.

   Explain:

   Removing these requirements will expedite the processing of provider enrollment applications during the COVID-19 pandemic, thereby increasing the number of approved providers during this emergency period.

   Allowing Mass Immunizers to enroll and administer COVID-19 vaccinations will increase the availability and administration of these critical vaccines.

Initial Review
Proposed Effective Date
Final Adoption
Emergency Adoption

DOCUMENT #

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3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

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Title of Rule: Revision to the Medical Assistance Rule concerning Provider Enrollment, Sections 8.125.11, 8.125.12, 8.125.13 and 8.126.1
Rule Number: MSB 21-11-03-B
Division / Contact / Phone:Medicaid Operations Office / Clint Eatmon / 720-819-6409

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Those seeking to be approved Medicaid providers and our member population will benefit from this proposed rule.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Those seeking to become approved providers will benefit from a streamlined provider enrollment process. Members will benefit from increased access to care as more providers are enrolled and available to offer treatment and services, including COVID-19 vaccinations.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There are no costs to the Department or to another agency to implement and enforce the proposed rule.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   There are no probable costs to providers.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

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There are no alternative methods for achieving the purpose of the proposed rule.

8.125 PROVIDER SCREENING

8.126 COLORADO NPI RULE

8.126.1 Definitions

A. Billing Provider Field means the data field on a Claim that reflects the Health Care Provider to which the payer issues payment.

B. Campus means the physical area immediately adjacent to the Hospital's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis by the Centers of Medicare and Medicaid Services to be part of the provider's campus.

C. Claim means a request for payment for the delivery of medical care, services, or goods authorized under the Medical Assistance Program, submitted to the Department through its fiscal agent by a Health Care Provider. Claim includes the transmission of encounter information for the purpose of reporting the delivery of medical care, services, or goods.

D. Health Care Provider means any person or organization that furnishes, bills for, or is paid for medical care, services, or goods to one or more Medical Assistance Program members.

1. A Health Care Provider includes an Organization Health Care Provider, Subpart of an Organization Health Care Provider, Off Campus Location, and a Site of an Organization Health Care Provider.

2. Unless specified otherwise in Subsection 8.126.1, a Health Care Provider may include a Health Care Provider located outside the state of Colorado (out-of-state provider) that is licensed and/or certified pursuant to their state laws.

E. Hospital means an Organization Health Care Provider that is enrolled in the Medical Assistance Program under the Provider Type of "Hospital - General" as defined in this Subsection 8.126.1.

F. Medical Assistance Program means the programs authorized under Articles 4, 5, 6, 8, and 10 of Title 25.5.

G. National Provider Identifier (NPI) means the standard, unique health identifier for Health Care Providers or Organization Health Care Providers that is used by the National Plan and Provider Enumeration System (NPPES) in accordance with 45 C.F.R. pt. 162.

H. Off-Campus Location means a facility that:

1. Has operations that are directly or indirectly owned or controlled by, in whole or in part, or affiliated with, a Hospital, regardless of whether the operations are under the same governing body as the Hospital;

2. Is not on the Hospital's Campus;

3. Provides services that are organizationally and functionally integrated with the Hospital;

4. Is an outpatient facility providing preventive, diagnostic, treatment, or emergency services; and

5. Is identified on the Hospital's State License Addendum issued by the Colorado Department of Public Health and Environment or, for Hospitals licensed outside of Colorado, documentation demonstrating direct or indirect ownership or control of the Off-Campus Location.

I. Organization Health Care Provider means a Health Care Provider that is not an individual.

J. Provider Type means a classification of Health Care Provider or Organization Health Care Provider to which the payer issues payment for services provided to individuals enrolled in the Medical Assistance Program, according to the Provider Type license, accreditation, certification, and/or service provided. The Provider Types recognized by the Department are as follows:

1. Administrative Services Organization (ASO) is an entity that has entered into a valid, active contract to provide ASO services with the Colorado Department of Health Care Policy and Financing.

2. Ambulatory Surgical Center (ASC) means a health care entity that is:

a. Licensed by the Colorado Department of Public Health and Environment as an Ambulatory Surgical Center; and

b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as an Ambulatory Surgical Center.

3. Audiologist means an individual licensed as an audiologist by the Division of Professions and Occupations within the Colorado Department of Regulatory Agencies.

4. Behavioral Therapy Clinic means any group practice that has at least one affiliated Behavioral Therapy Individual. The affiliated Behavioral Therapy Individual must be enrolled in the Colorado Medical Assistance Program.

5. Behavioral Therapy Individual means an individual that:

a. Is nationally certified as a Board-Certified Behavioral Analyst (BCBA); or

b. Meets one of the following:

(1) Has a doctoral degree with a specialty in psychiatry, medicine, or clinical psychology and is actively licensed by the State Board of Examiners; and has completed 400 hours of training; and/or has direct supervised experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities; or

(2) Has a doctoral degree in one of the behavioral or health sciences; and has completed 800 hours of specific training; and/or has experience in behavioral therapies that are consistent with best practice and research

on effectiveness for people with autism or other developmental disabilities; or

(3) Is nationally certified as a BCBA; or

(4) Has a master's degree or higher in behavioral or health sciences; and is a licensed teacher with an endorsement of school psychologist; or is a licensed teacher with an endorsement of special education or early childhood special education; or is credentialed as a related services provider (Physical Therapist, Occupational Therapist, or Speech Therapist); and has completed 1,000 hours of direct supervised training or has experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.

6. Birthing Center means a health care entity licensed as a Birth Center by the Colorado Department of Public Health and Environment. Out-of-state providers are not eligible for enrollment.

7. Case Management Agency (CMA) means a public or private not-for-profit or for-profit agency that meets all applicable state and federal requirements and is certified by the Department to provide case management services for Home and Community Based Services waivers.

8. Certified Registered Nurse Anesthetist (CRNA) means an individual who is:

   a. Licensed as a registered nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies; and

   b. Included within the advanced practice registry as a CRNA.

9. Clinic – Dental means any group practice that has at least one affiliated, licensed dentist or dental hygienist.

   a. The affiliated dentist or dental hygienist must be enrolled in the Colorado Medical Assistance Program; and

   b. A dental practice or clinic must be owned by a licensed dentist except if the dental practice or clinic is a non-profit organization defined as a community health center (also known as an FQHC) or having 50% or more patients determined as low income, or a political subdivision (i.e. city, county, state, etc.); and

   c. A dental hygiene practice or clinic must be owned by a licensed dentist or licensed dental hygienist except if the dental hygiene practice or clinic is a non-profit organization defined as a community health center (also known as an FQHC) or having 50% or more patients determined as low income, or a political subdivision (i.e. city, county, state, etc.)

10. Clinic – Practitioner means any group practice that has at least one affiliated, licensed physician, osteopath, or podiatrist. The affiliated practitioner must be enrolled in the Colorado Medical Assistance Program.

11. Community Clinic means a health care entity that is:

a. Licensed as a Community Clinic or Community Clinic and Emergency Center (CCEC) by the Colorado Department of Public Health and Environment;

b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program; and

c. Owned by a Medicare participating hospital.

12. Community Mental Health Center (CMHC) means a health care entity that:

a. Is licensed as a Community Mental Health Center by the Colorado Department of Public Health and Environment;

b. Has program approval to operate as a CMHC from the Colorado Department of Human Services; and

c. If the CMHC delivers substance use disorder services, shall have Substance Use Disorder program approval from Colorado Department of Human Services.

13. Dental Hygienist means an individual who is licensed as a Dental Hygienist by the Colorado Dental Board within the Colorado Department of Regulatory Agencies.

14. Dentist means an individual who is licensed as a Dentist by the Colorado Dental Board within the Colorado Department of Regulatory Agencies.

15. Dialysis Treatment Clinic [Formerly Known as Dialysis Center] means a health care entity that is:

a. Licensed as a Dialysis Treatment Clinic by the Colorado Department of Public Health and Environment; and

b. Certified by Centers for Medicare and Medicaid Services to participate in the Medicare program as an End-Stage Renal Dialysis Facility (ESRD).

16. Federally Qualified Health Center (FQHC) means a health care entity that has been awarded a Section 330 Grant from the Health Resources and Services Administration. A health care entity that has been designated as a “look-alike” is also eligible to be enrolled as an FQHC.

17. Foreign Teaching Physician means an individual who is licensed as a distinguished foreign teaching physician by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

18. Home and Community Based Services (HCBS) means Health First Colorado (Colorado’s Medicaid Program)’s community-based care alternatives to institutional, Long-Term care. Providers enrolling as an HCBS provider shall meet all applicable state and federal requirements to provide HCBS by waiver and specialty type.

19. Home Health Agency means a health care entity that:

a. Has a Class A Home Care Agency license from the Colorado Department of Public Health and Environment; and

b. Is certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as Home Health Agency.

20. Hospice means a health care entity that is:

    a. Licensed as a Hospice by the Colorado Department of Public Health and Environment; and

    b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as a Hospice.

21. Hospital – General means a health care entity that is:

    a. Licensed as a General Hospital by the Colorado Department of Public Health and Environment; and

    b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as a Hospital.

22. Hospital – Psychiatric [Formerly Known as Hospital - Mental] means a health care entity that is:

    a. Licensed as a Psychiatric Hospital by the Colorado Department of Public Health and Environment; and

    b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as a Psychiatric Hospital.

23. Independent Laboratory means a laboratory that:

    a. Has a current and valid Clinical Laboratory Improvement Amendments (CLIA) certification; and

    b. Is certified through the Centers for Medicare and Medicaid Services as a laboratory.

24. Indian Health Service – Federally Qualified Health Center (FQHC) means a health care entity that:

    a. Is treated by the Centers for Medicare and Medicaid Services as a comprehensive Federally funded health center; and

    b. Includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act for the provision of primary health services.

25. Indian Health Service – Pharmacy means a health care entity that has evidence of participation in the Indian Health Service.

26. Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) [Formerly Known as Nursing Facility – ICF/IID] means a health care entity that is:

    a. Licensed as an Intermediate Care Facility for Individuals with Intellectual Disabilities through the Colorado Department of Public Health and Environment; and

b. Certified by the Centers for Medicare and Medicaid Services or the Colorado Department of Health Care Policy and Financing to participate in the Medicaid program as an ICF/IID.

27. Licensed Behavioral Health Clinician means an individual that is licensed by the Colorado Department of Regulatory Agencies as either:

a. A Licensed Clinical Social Worker;

b. A Licensed Professional Counselor;

c. A Licensed Marriage and Family Therapist; or

d. A Licensed Addiction Counselor.

28. Licensed Psychologist means an individual who is licensed as a psychologist by the State Board of Psychologist Examiners within the Colorado Department of Regulatory Agencies.

29. Managed Care Entity [Formerly Known as Health Maintenance Organization (HMO)] means an entity that has a valid and comprehensive or all-inclusive risk contract with the Colorado Department of Health Care Policy and Financing.

30. Non-Physician Practitioner Group means any group practice consisting of any of the following:

a. Licensed Nurse Practitioners;

b. Licensed Audiologists;

c. Licensed Occupational Therapists;

d. Licensed Behavioral Health Clinicians;

e. Licensed Psychologists;

f. Licensed Speech Therapists; and/or

g. Licensed Physical Therapists.

h. Beginning on the effective date of this amended rule, and for the remainder of the COVID-19 Public Health Emergency (PHE), providers that have enrolled as a Mass Immunizer Roster Biller (provider specialty type 73) with Medicare may temporarily enroll in the medical assistance program as a Non-Physician Practitioner Group for the purpose of billing for the administration of COVID-19 vaccinations for medical assistance clients.

31. Non-Physician Practitioner Individual means a registered nurse, which means an individual licensed as a Registered Nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies.

32. Nurse Midwife means an individual who is:

a. Licensed as a registered nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies; and

b. Included within the advanced practice registry as a Nurse Midwife.

33. Nurse Practitioner means an individual who is:

a. Licensed as a registered nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies; and

b. Included within the advanced practice registry as a Nurse Practitioner.

34. Nursing Facility means a health care entity that is:

a. Licensed as a Nursing Care Facility through the Colorado Department of Public Health and Environment; and

b. Certified by the Centers for Medicare and Medicaid Services or the Colorado Department of Health Care Policy and Financing to participate in the Medicaid program as a Skilled Nursing Care Facility.

35. Occupational Therapist means an individual who is licensed as an Occupational Therapist by the Director of the Division of Professions and Occupations within the Colorado Department of Regulatory Agencies.

36. Optical Outlet means a health care supplier that is qualified to make and supply eyeglasses and contact lenses for the correction of vision. If, in the performance of its duties, the Optical Outlet requires laboratory services, the laboratory is required to have a current and valid CLIA certification.

37. Optometrist means an individual who is licensed as an Optometrist by the State Board of Optometry within the Colorado Department of Regulatory Agencies.

38. Osteopath means an individual who holds a degree of “doctor of osteopathy,” and who is licensed as a physician by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

39. Personal Care Agency means a health care entity that has a Class A or Class B Home Care Agency license from the Colorado Department of Public Health and Environment.

40. Pharmacist means an individual who is licensed as a Pharmacist by the State Board of Pharmacy within the Colorado Department of Regulatory Agencies.

41. Pharmacy means a pharmacy, pharmacy outlet, or prescription drug outlet registered by the Board of Pharmacy within the Colorado Department of Regulatory Agencies.

42. Physical Therapist means an individual who is licensed as a Physical Therapist by the Physical Therapy Board within the Colorado Department of Regulatory Agencies.

43. Physician means an individual who is licensed as a physician by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

44. Physician Assistant means an individual who is licensed as a physician assistant by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

45. Podiatrist means an individual licensed as a podiatrist by the Colorado Podiatry Board within the Colorado Department of Regulatory Agencies.

46. Psychiatric Residential Treatment Facility (PRTF) means a health care entity that:

    a. Is licensed by the Colorado Department of Human Services as a Residential Child Care Facility and a PRTF; and

    b. Is certified as a qualified residential provider by the Department of Public Health and Environment; and

    c. Is accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children; and

    d. Has provided an attestation to the Department that the PRTF is in compliance with the conditions of participation as required by Colorado Department of Human Services and the Centers for Medicare and Medicaid Services.

47. Qualified Medicare Beneficiary (QMB) Benefits Only means the provider type designation used for Chiropractors who participate under the QMB Program. Chiropractor means an individual licensed as a chiropractor by the Board of Chiropractic Examiners within the Colorado Department of Regulatory Agencies. QMB Benefits Only providers must also be certified as QMB Benefits Only providers through the Centers for Medicare and Medicaid Services.

48. Regional Accountable Entity (RAE) means an entity that has entered into a valid, existing contract with the Colorado Department of Health Care Policy and Financing to be a Regional Accountable Entity.

49. Rehabilitation Agency means a group practice that requires at least one affiliated and licensed professional enrolled in the Colorado Medical Assistance Program.

50. Residential Child Care Facility (RCCF) means a health care entity that is:

    a. Designated by the Colorado Department of Human Services to provide Medicaid-reimbursable mental health services as an RCCF; and

    b. Licensed by Colorado Department of Human Services as an RCCF.

51. Rural Health Clinic (RHC) means a clinic that is certified by the Centers for Medicare and Medicaid Services as a Rural Health Clinic.

52. School Health Services means a school district or Board of Cooperative Educational Services that has a valid, active contract with the Colorado Department of Health Care Policy and Financing to participate in the Colorado School Health Services Program.

    a. The Site at which an Organization Health Care Provider delivers medical care, services, or goods authorized under the Medical Assistance Program enrolled under the Provider Type of School Health Services is a school district.

53. Speech Therapist is an individual certified as a Speech Language Pathologist by the Director of the Divisions of Professions and Occupations within the Colorado Department of Regulatory Agencies.

54. Substance Use Disorder (SUD) – Clinic means a health care entity that:

    a. Is licensed as a SUD Provider by the Colorado Department of Human Services;

b. Has program approval to operate as a SUD – Clinic from Colorado Department of Human Services; and

c. Has at least one affiliated advanced practice nurse, physician/psychiatrist, physician assistant, or behavioral health clinician who is certified in addiction medicine.

55. Supply means a Durable Medical Equipment, Prosthetic, Orthotic and Supplies (DMEPOS) provider that meets one or both of the following definitions:

a. Complex Rehabilitation Technology (CRT) Supplier means a health care supplier that meets all the requirements of Section 8.590.5.D, and that:

(1) Has a Sales Tax Certificate or Tax-Exempt Certificate;

(2) Has CRT Professional Certification; and

(3) Is accredited by the Centers for Medicare and Medicaid Services to provide DMEPOS and CRT.

b. Durable Medical Equipment (DME) means a health care supplier that meets the requirements of Sections 8.590.5.A and B, and that:

(1) Has a Sales Tax Certificate or Tax-Exempt Certificate; and

(2) Is accredited by the Centers for Medicare and Medicaid Services to provide DMEPOS.

56. Transportation means a provider that meets one or both of the following definitions:

a. Emergency Medical Transportation (EMT) [Formerly Known as Emergency Medical Transportation and Air Ambulance] means providers that:

(1) Meet all provider screening requirements in Section 8.125.

(2) Comply with commercial liability insurance requirements.

(3) Maintain the appropriate licensure for:

(a) Ground ambulance license as required by Colorado Department of Public Health and Environment; and

(b) Air ambulance license as required by Colorado Department of Public Health and Environment.

(4) License, operate, and equip ground and air ambulances in accordance with federal and state regulations.

b. Non-Emergent Medical Transportation (NEMT) means a provider that:

(1) Has a Public Utilities Commission (PUC) common carrier certificate as a taxicab; or

(2) Has a PUC Medicaid Client Transport (MCT) Permit as required by the PUC; or

(3) Has a ground ambulance license as required by Department of Public Health and Environment; or

(4) Has an Air Ambulance license as required by Colorado Department of Public Health and Environment; or

(5) Is exempt from licensure requirements in accordance with the PUC.

57. X-Ray Facility means an imaging center that:

a. Has an X-Ray Facility and Machine Registration Report certified by the Colorado Department of Public Health and Environment; and

b. Is certified by the Centers for Medicare and Medicaid Services to participate in Medicare as an X-Ray facility.

K. Service Facility Location Field means the physical location specifically where services were rendered as identified on the Claim.

L. Site means the physical location by street address, including suite number, where goods and/or services are provided. The term Site when involving a Health Care Provider that voluntarily contracts with a RAE as a Primary Care Medical Provider (PCMP) to participate in the Department's Accountable Care Collaborative (ACC) as a medical home, also includes the following requirements:

1. PCMP services must be identifiable from other goods and/or services, including services provided by specialists provided by the Health Care Provider in the same physical location through a separate and unique NPI.

2. PCMP services provided at a Campus or Off-Campus Location must be identifiable from other goods and/or services, including services provided by specialists, provided by the Health Care Provider on the same Campus or Off-Campus Location through a separate and unique NPI.

M. Subpart means a component or separate physical location of an Organization Health Care Provider that may be separately licensed or certified. This definition is intended to be consistent with the use of the term "Subpart" as defined in 45 C.F.R. pt. 162.

N. The definitions in Subsection 8.126.1 apply only to Section 8.126.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Nursing Facility Immunization Administration, Sections 8.815 and 8.443
Rule Number: MSB 21-11-05-B
Division / Contact / Phone:Health Program Office / Christina Winship/303-866-5578

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 21-11-05-B, Revision to the Medical Assistance Act Rule concerning Nursing Facility Immunization Administration, Sections 8.815 and 8.443

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.815, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 12/07/2021

   Is rule to be made permanent? (If yes, please attach notice of hearing). No<Select One>

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.815 with the proposed text beginning at 8.815.1 through the end of 8.815.1. Replace the current text at 8.815.3 with the proposed text beginning at 8.815.3.A through the end of 8.815.3.A. Replace the current text at 8.815.4 beginning at 8.815.4.A through the end of 8.815.4.C. Replace the current text at 8.815.6 with the proposed text beginning at 8.815.6 through the end of 8.815.6. Replace the current text at

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

8.443 with the proposed text beginning at 8.443.7.A.5 through the end of 8.443.7.A.5. This rule is effective December 7, 2021.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

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Rule Number: MSB 21-11-05-B
Division / Contact / Phone: Health Program Office / Christina Winship/303-866-5578

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This rule revision will allow the Department to reimburse pharmacies for administration of the COVID-19 vaccine in Long-term Care Facilities through the Centers for Disease Control and Prevention's (CDC's) Pharmacy Partnership for Long-term Care Program or other partnership between an LTC and a pharmacy.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

   These revisions are required to facilitate administration of the forthcoming COVID-19 vaccine to nursing home facility residents.

3. Federal authority for the Rule, if any:

   Section 6008(b)(4) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116-136

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Health First Colorado members residing in nursing facilities and pharmacy providers licensed to administer vaccines will benefit from the flexibility provided by this rule revision. Current policy limits reimbursement to vaccines ordered by the resident's own physician and administration is either included in the facility's rate or part of a regularly scheduled home health service.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

This revision will help expedite administration of the COVID-19 vaccine to Health First Colorado members residing in nursing facilities. The rule will also allow nursing facility providers to utilize existing partnerships with pharmacies to administer the vaccine.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Department expects this change to cost approximately $60,000 in total funds, which will be incorporated through the regular budget process.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The proposed rule will facilitate the expeditious administration of the COVID-19 vaccine to this population.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or intrusive methods to achieve the purpose of the proposed rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There are no alternative methods for achieving the purpose of the proposed rule.

8.815 IMMUNIZATION SERVICES

8.815.1 Definitions

8.815.1.A. Advisory Committee on Immunization Practices (ACIP) means the group of medical and public health experts that develops recommendations on how to use vaccines to control diseases in the United States. ACIP was established under Section 222 of the Public Health Service Act (42 U.S.C. § 2l7a).

8.815.1.B. Immunization means the process whereby a person is made immune or resistant to an infectious disease, typically by the administration of a vaccine.

8.815.1.C. School District means any board of cooperative services established pursuant to article 5 of title 22, C.R.S., any state educational institution that serves students in kindergarten through twelfth grade including, but not limited to, the Colorado School for the Deaf and Blind, created in article 80 of title 22, C.R.S., and any public School District organized under the laws of Colorado except a junior college district.

8.815.1.D. Vaccine means a biological preparation that improves immunity to a particular disease.

8.815.1.E. Vaccine Administration Services means the provision of an injection, nasal absorption, or oral administration of a vaccine product.

8.815.1.F. Vaccines for Children (VFC) means the federally funded program administered through the Centers for Disease Control for the purchase and distribution of pediatric vaccines to program-registered providers for the Immunization of vaccine-eligible children 18 years of age and younger.

8.815.2 Client Eligibility

8.815.2.A. All Colorado Medicaid clients are eligible for Immunization and Vaccine Administration Services.

8.815.3 Provider Eligibility

8.815.3.A. Rendering Providers

1. Colorado Medicaid enrolled providers are eligible to administer Vaccines and Vaccine Administration Services as follows:

    a. If it is within the scope of the provider’s practice;

    b. In accordance with the requirements at 10 CCR 2505-10, Section 8.200.2.; and

    c. If the provider is administering Vaccines and Vaccine Administration Services to a client 18 years of age or younger, the provider is using Vaccines provided free of cost by the federal government, including through the VFC program.

8.815.3.B. Prescribing Providers

1. Colorado Medicaid enrolled providers are eligible to prescribe Vaccines and Vaccine Administration Services in accordance with Section 8.815.3.A.1.a.-b.

8.815.4 Covered Services

8.815.4.A. Vaccines identified in the ACIP Vaccine Recommendations and Guidelines are updated routinely and are covered as follows:

1. For clients 18 years of age and younger, Vaccines are either provided through the VFC program or are otherwise provided without cost by the federal government.

2. For clients 19 years of age and older, Vaccines are covered by Colorado Medicaid.

8.815.4.B. Administration of Vaccines identified in the ACIP Vaccine Recommendations and Guidelines is a covered service for all clients.

8.815.4.C. Immunization and Vaccine Administration Services that are provided by home health agencies, physicians, or other non-physician practitioners to clients at nursing facilities, group homes, or residential treatment centers are covered only as follows:

1. Immunization services for clients who are residents of nursing facilities and clients receiving home health services are covered only if ordered by their physician. The skilled nursing component for Immunization administration provided at a nursing facility is included in the facility's rate or part of a regularly scheduled home health service for clients receiving home health services.

2. Clients who are residents of an Alternative Care Facility, as defined at Section 8.495.1, may receive Immunization services from their own physician. They may also receive Immunization services as part of a home health service in accordance with Section 8.815.4.C.1.

8.815.5 Prior Authorization Requirements

8.815.5.A. Prior authorization is not required for this benefit.

8.815.6 Non-covered Services

8.815.6.A. The following services are not covered by Colorado Medicaid:

1. For clients 18 years of age and younger, Vaccines that have been obtained from a source other than the federal government;

2. Immunization and Vaccine Administration Services provided by a School District provider; and

3. Travel-related Immunization and Vaccine Administration Services.

8.443 NURSING FACILITY REIMBURSEMENT

8.443.7 HEALTH CARE REIMBURSEMENT RATE CALCULATION

8.443.7.A Health Care Services Defined: Health Care Services means the categories of reasonable, necessary and patient-related support services listed below. No service shall be considered a health care service unless it is listed below:

1. The salaries, payroll taxes, worker compensation payments, training and other employee benefits of registered nurses, licensed practical nurses, restorative aides, nurse aides, feeding assistants, registered dietician, MDS coordinators, nursing staff development personnel, nursing administration (not clerical) case manager, patient care coordinator, quality improvement, clinical director. These personnel shall be appropriately licensed and/or certified, although nurse aides may work in any facility for up to four months before becoming certified.

   If a facility employee or a management company/home office employee or owner has dual health care and administrative duties, the provider must keep contemporaneous time records or perform time studies to verify hours worked performing health care related duties. If no contemporaneous time records are kept or time studies performed, total salaries, payroll taxes and benefits of personnel performing health care and administrative functions will be classified as administrative and general. Licenses are not required unless otherwise specified. Periodic time studies in lieu of contemporaneous time records may be used for the allocation. Time studies used must meet the following criteria:

   a. A minimally acceptable time study must encompass at least one full week per month of the cost reporting period.

   b. Each week selected must be a full work week (Monday to Friday, Monday to Saturday, or Sunday to Saturday).

   c. The weeks selected must be equally distributed among the months in the cost reporting period, e.g., for a 12 month period, 3 of the 12 weeks in the study must be the first week beginning in the month, 3 weeks the 2nd week beginning in the month, 3 weeks the 3rd, and 3 weeks the fourth.

   d. No two consecutive months may use the same week for the study, e.g., if the second week beginning in April is the study week for April, the weeks selected for March and May may not be the second week beginning in those months.

   e. The time study must be contemporaneous with the costs to be allocated. Thus, a time study conducted in the current cost reporting year may not be used to allocate the costs of prior or subsequent cost reporting years.

   f. The time study must be provider specific. Thus, chain organizations may not use a time study from one provider to allocate the costs of another provider or a time study of a sample group of providers to allocate the costs of all providers within the chain.

2. The salaries, payroll taxes, workers compensation payments, training and other employee benefits of medical records librarians, social workers, central or medical supplies personnel and activity personnel.

   Health Information Managers (Medical Records Librarians): Must work directly with the maintenance and organization of medical records.

   Social Workers: Includes social workers, life enhancement specialists and admissions coordinators.

Central or Medical Supply personnel: Includes duties associated with stocking and ordering medical and/or central supplies.

Activity personnel: Personnel classified as “activities” must have a direct relationship (i.e., providing entertainment, games, and social opportunities) to residents. For instance, security guards and hall monitors do not qualify as activities personnel. Costs associated with security guards and hall monitors are classified as administrative and general.

3. If the provider’s chart of accounts directly identifies payroll taxes and benefits associated with health care versus administrative and general cost centers, the amounts directly identified will be appropriately allowed as either health care or administrative and general. If these costs are comingled in the chart of accounts, payroll taxes and benefits shall be allocated to the cost centers (health care and administrative and general) based on total employee wages reported in those cost centers. The reporting method for payroll taxes and benefits by cost center is required to be consistent from year to year. When a provider wishes to change its reporting method because it believes the change will result in more appropriate and a more accurate allocation, the provider must make a written request to the Department for approval of the change ninety (90) days prior to the end of that cost reporting period. The Department has sixty (60) days from receipt of the request to make a decision or the change is automatically accepted. The provider must include with the request all supporting documentation to establish that the new method is more accurate. If the Department approves the provider's request, the change must be applied to the cost reporting period for which the request was made and to all subsequent cost reporting periods. The approval will be for a minimum three year period. The provider cannot change methods until the three year period has expired.

4. Personnel licensed to perform patient care duties shall be reported in the administrative and general cost center if the duties performed by these personnel are administrative in nature.

5. Non-prescription drugs ordered by a physician that are included in the per diem rate, including costs associated with vaccinations.

    a. Pharmacies are eligible for reimbursement for administration of the COVID-19 vaccine

6. Consultant fees for nursing, medical records, registered dieticians, patient activities, social workers, pharmacies, physicians and therapies. Consultants shall be appropriately licensed and/or certified, as applicable and professionally qualified in the field for which they are consulting. The guidance provided in (1) above for employees also applies to consultants.

7. Purchases, rental, depreciation, interest and repair expenses of health care equipment and medical supplies used for health care services such as nursing care, medical records, social services, therapies and activities. Purchases, lease expenses or fees associated with computers and software (including the associated training and upgrades) used in departments within the facility that provide direct or indirect health care services to residents. Dual purpose software that includes both a health care and administrative and general component will be considered a health care service.

8. Purchase or rental of motor vehicles and related expenses, including salary and benefits associated with the van driver(s), for operating or maintaining the vehicles to the extent that they are used to transport residents to activities or medical appointments. Such use shall be documented by contemporaneous logs if there is dual purpose. An example of the dual purpose vehicle is one used for both resident transport and maintenance activities.

9. Copier lease expense.

10. Salaries, fees, or other expenses related to health care duties performed by a facility owner or manager who has a medical or nursing credential. Note that costs associated with the Nursing Home Administrator are an administrative and general cost.

11. Related Party Management Fees and Home Office Costs

Related party management fees and home office costs shall be classified as administrative and general. However, costs incurred by the facility as a direct charge from the related party which are listed in this section, may be included in the health care cost center equal to the actual costs incurred by the related party. Documentation supporting the cost and health care licenses must be maintained. Only salaries, payroll taxes and employee benefits associated with health care personnel will be considered as allowable in the health care cost center. No overhead expenses will be included. The amount allowable in the health care cost category will be calculated in one of two ways:

a. Keeping contemporaneous time logs in 15 minute increments supporting the number of hours worked at each facility.

b. Distributing the cost evenly across all facilities as follows: the amount allowable in each health care facility's health care costs shall be equal to the total salary, payroll taxes and benefits of the health care personnel divided by the number of facilities where the health care personnel worked during the year. For example, if a nurse's total salary, payroll taxes, and benefits total $80,000, and the nurse worked on five facilities during the year, $16,000 is allowable in each of the facility's health care costs.

Auditable documentation supporting the number of facilities worked on during the year must be maintained. Even if a related party exception is granted in accordance with 10 CCR 2505-10 section 8.441.5.I.4, no mark-up or profit will be allowed in the health care cost center, only supported actual costs.

Non-Related Party Management Fees

Non-related party management fees shall be classified as administrative and general. However, costs incurred by the facility as a direct charge from the management company which are listed in this section, may be included in the health care cost center. Management contracts which specify percentages related to health care services will not be considered a direct charge from the management company.

12. Professional liability insurance, whether self-insurance or purchased, loss settlements, claims paid and insurance deductibles.

13. Medical director fees.

14. Therapies and services provided by an individual qualified to provide these services under Federal Medicare/Medicaid regulations including:

Utilization review
Dental care, when required by federal law
Audiology
Psychology and mental health services
Physical therapy
Recreational therapy

Occupational therapy
Speech therapy

15. Nursing licenses and permits, disposal costs associated with infectious material (medical or hazardous waste), background checks and flu or hepatitis shots and uniforms for personnel listed in (1) above.

16. Food Costs. Food costs means the cost of raw food, and shall not include the costs of property, staff, preparation or other items related to the food program.

8.443.7.B CLASS I HEALTH CARE STATE-WIDE MAXIMUM ALLOWABLE PER DIEM REIMBURSEMENT RATES (LIMIT)

For the purpose of reimbursing Medicaid-certified nursing facility providers a per diem rate for direct and indirect health care services and raw food, the state department shall establish an annual maximum allowable rate (limit). In computing the health care per diem limit, each nursing facility provider shall annually submit cost reports, and actual days of care shall be counted, not occupancy-imputed days of care. The health care limit will be calculated as follows:

1. Determination of the health care limit beginning on July 1 each year shall utilize the most current MED-13 cost report filed, in accordance with these regulations, by each facility on or before December 31 of the preceding year.

2. The MED-13 cost report shall be deemed filed if actually received by the Department's designee or postmarked by the U.S. Postal Service on or before December 31.

3. If, in the judgment of the Department, the MED-13 contains errors, whether willful or accidental, that would impair the accurate calculation of the limit, the Department may:

   a. Exclude part, or all, of a provider's MED-13.

   b. Replace part, or all, of a provider's MED-13 with the MED-13 the provider submitted in its most recent audited cost report adjusted by the percentage change in the Skilled Nursing Facility Market Basket (without capital) published by Global Insight, Inc. measured from the midpoint of the reporting period to the midpoint of the payment-setting period.

4. The health care limit and the data used in that computation shall be subject to administrative appeal only on or before the expiration of the thirty (30) day period following the date the information is made available.

5. The health care limit shall not exceed one hundred twenty-five percent (125%) of the median costs of direct and indirect health care services and raw food as determined by an array of all class I facility providers; except that, for state veteran nursing homes, the health care limit will be one hundred thirty percent (130%) of the median cost.

   a. In determining the median cost, the cost of direct health care shall be case-mix neutral.

   b. Actual days of care shall be counted, not occupancy-imputed days of care, for purposes of calculating the health care limit.

   c. Amounts contained in cost reports used to determine the health care limit shall be adjusted by the percentage change in the Skilled Nursing Facility Market Basket (without capital) inflation indexes published by Global Insight, Inc.

measured from the midpoint of the reporting period of each cost report to the midpoint of the payment-setting period.

i). The percentage change shall be rounded at least to the fifth decimal point.

ii). The latest available publication prior to July 1 rate setting shall be used to determine the inflation indexes.

6. Annually, the state department shall redetermine the median per diem cost based upon the most recent cost reports filed during the period ending December 31 of the prior year.

7. The health care limit for health care reimbursement shall be changed effective July 1 of each year and individual facility rates shall be adjusted accordingly.

8.443.7.C. CLASS I HEALTH CARE PER DIEM LIMITATION ON HEALTH CARE GROWTH

For the fiscal year beginning July 1, 2009, and for each fiscal year thereafter, any increase in the direct and indirect health care services and raw food costs shall not exceed eight percent (8%) per year. The calculation of the eight percent per year limitation for rates effective on July 1, 2009, shall be based on the direct and indirect health care services and raw food costs in the as-filed facility's cost reports up to and including June 30, 2009. For the purposes of calculating the eight percent limitation for rates effective after July 1, 2009, the limitation shall be determined and indexed from the direct and indirect health care services and raw food costs as reported and audited for the rates effective July 1, 2009.

8.443.7.D. CLASS I HEALTH CARE PER DIEM REIMBURSEMENT RATES AND MEDICAID CASE MIX INDEX (CMI):

For the purpose of reimbursing a Medicaid-certified class I nursing facility provider a per diem rate for the cost of direct and indirect health care services and raw food, the State Department shall establish an annually readjusted schedule to pay each nursing facility provider the actual amount of the costs. This payment shall not exceed the health care limit described at 10 CCR 2505-10 section 8.443.7B. The health care per diem reimbursement rate is the lesser of the provider's acuity adjusted health care limit or the provider's acuity adjusted actual allowable health care costs.

The state department shall adjust the per diem rate to the nursing facility provider for the cost of direct health care services based upon the acuity or case-mix of the nursing facility provider's residents in order to adjust for the resource utilization of its residents. The state department shall determine this adjustment in accordance with each resident's status as identified and reported by the nursing facility provider on its federal Medicare and Medicaid minimum data set assessment. The state department shall establish a case-mix index for each nursing facility provider according to the resource utilization groups system, using only nursing weights. The state department shall calculate nursing weights based upon standard nursing time studies and weighted by facility population distribution and Colorado-specific nursing salary ratios. The state department shall determine an average case-mix index for each nursing facility provider's Medicaid residents on a quarterly basis

1. Acuity information used in the calculation of the health care reimbursement rate shall be determined as follows:

a. A facility's cost report period resident acuity case mix index shall be the average of quarterly resident acuity case mix indices, carried to four decimal places, using the facility wide resident acuity case mix indices. The quarters used in this

average shall be the quarters that most closely coincide with the cost reporting period.

b. The facility's Medicaid resident acuity case mix index shall be a two quarter average, carried to four decimal places, of the Medicaid resident acuity average case mix indices. The two quarter average used in the July 1 rate calculation shall be the same two quarter average used in the rate calculation for the rate effective date prior to July 1.

c. The statewide average case mix index shall be a simple average, carried to four decimal places, of the cost report period case mix indices for all Medicaid facilities calculated effective each July 1.

d. The normalization ratio shall be determined by dividing the statewide average case mix index by the facility's cost report period case mix index.

e. The facility Medicaid acuity ratio shall be determined by dividing the facility's Medicaid resident acuity case mix index by the facility cost report period case mix index.

f. The facility overall resident acuity ratio shall be determined by dividing the facility cost report period case mix index by the statewide average case mix acuity index.

2. The annual facility specific direct health care maximum reimbursement rate shall be determined as follows:

a. The percentage of the normalized per diem case mix adjusted nursing cost to total health care cost shall be determined by dividing the normalized per diem case mix adjusted nursing cost by the sum of the normalized per diem case mix adjusted nursing cost and other health care per diem cost.

b. The statewide health care maximum allowable reimbursement rate (calculated at 10 CCR 2505-10 section 8.443.7B) shall be multiplied by the percentage established in the preceding paragraph to determine the amount of the statewide health care maximum allowable reimbursement rate that is attributable to the case mix reimbursement rate component.

c. The facility specific maximum reimbursement rate for case mix adjusted nursing costs shall be determined by multiplying the facility specific overall acuity ratio by the amount of the statewide health care maximum allowable reimbursement rate that is attributable to the case mix reimbursement rate component as established in the preceding paragraph.

3. The annual facility specific indirect health care maximum allowable reimbursement shall be determined as follows:

a. The percentage of the indirect health care per diem cost to total health care cost shall be determined by dividing the indirect health care per diem cost by the sum of the normalized per diem case mix adjusted nursing cost and other health care per diem cost.

b. The facility specific in direct health care maximum reimbursement rate shall be determined by multiplying the statewide health care maximum allowable reimbursement rate by the percentage established in the preceding paragraph.

4. The case mix reimbursement rate component shall be determined as follows:

   a. The case mix reimbursement rate component shall be established using the facility Medicaid resident acuity ratio.

   b. This ratio shall be multiplied by the lesser of the facility's allowable case mix adjusted nursing cost or the facility specific maximum reimbursement rate for case mix adjusted nursing costs. The resulting calculation shall the case mix reimbursement rate component.

5. The indirect health care reimbursement rate shall be the lesser of the facility's allowable other health care cost or the facility specific other health care maximum reimbursement rate.

8.443.7.E DETERMINATION OF THE HEALTH CARE SERVICES MAXIMUM ALLOWABLE RATE (LIMIT) FOR CLASS II AND IV FACILITIES

1. For class II facilities, one hundred twenty-five percent (125%) of the median actual costs of all class II facilities;

2. For non-state administered class IV facilities, one hundred twenty-five percent (125%) of the median actual costs of all class IV facilities.

3. State-administered class IV facilities shall not be subject to the health care limit. The Med-13s of the state-administered class IV facilities shall be included in the health care limit calculation for other class IV facilities.

4. The determination of the reasonable cost of services shall be made every 12 months.

5. Determination of the health care limit beginning on July 1 each year shall utilize the most current MED-13 cost report filed in accordance with these regulations, by each facility on or before May 2.

6. The MED-13 cost report shall be deemed submitted if actually received by the Department's designee or postmarked by the U.S. Postal Service on or before May 2nd.

7. If, in the judgment of the Department, the MED-13 contains errors, whether willful or accidental, that would impair the accurate calculation of reasonable costs for the class, the Department may:

   a. Exclude part, or all, of a provider's MED-13; or

   b. Replace part, or all, of a provider's MED-13 with the MED-13 the provider submitted in its most recent audited cost report adjusted by the change in the "medical care" component of the Consumer Price Index published for all urban consumers (CPI-U) by the United States Department of Labor, Bureau of Labor Statistics over the time period from the provider's most recent audited cost report.

8. State-administered class IV facilities shall not be subject to the maximum reasonable rate ceiling. The Med-13s of the state-administered class IV facilities shall be included in the maximum rate calculation for other class IV facilities.

9. The maximum reasonable rate and the data used in that computation shall be subject to administrative appeal only on or before the expiration of the thirty (30) day period following the date the information is made available.

10. The maximum rate for reimbursement shall be changed effective July 1 of each year and individual facility rates shall be adjusted accordingly.

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Title of Rule: Revision to the Medical Assistance Rule concerning Medical Assistance program rule updates, Sections 8.100.1,8100.3, 8.100.4, 8.100.5 and 8.100.6
Rule Number: MSB 21-11-07-A
Division / Contact / Phone: Eligibility / Ana Bordallo / 3558

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

a

2. Title of Rule: MSB 21-11-07-A, Revision to the Medical Assistance Rule concerning Medical Assistance program rule updates, Sections 8.100.1,8100.3, 8.100.4, 8.100.5 and 8.100.6

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.1,8100.3, 8.100.4, 8.100.5 and 8.100.6, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 12/07/21
   Is rule to be made permanent? (If yes, please attach notice of hearing). No

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100 with the proposed text beginning at 8.100.3.D through the end of 8.100.3.D. Replace the current text at 8.100.3.F with the proposed text beginning at 8.100.3.F through the end of 8.100.3.F. Replace the current text at 8.100.3.I with the proposed text beginning at 8.100.3.I through the end of 8.100.3.I. Replace the current text at 8.100.3.K with the proposed text beginning at 8.100.3.K through the end of 8.100.3.K. Replace the current text at 8.100.3.L with the proposed text beginning at 8.100.3.L. Replace the current text at 8.100.3.P with the proposed text

*to be completed by MSB Board Coordinator

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beginning at 8.100.3.P through the end of 8.100.3.P. Replace the current text at 8.100.4.B with the proposed beginning at 8.100.4.B through the end of 8.100.4.B. Replace the current text at 8.100.4.C with the proposed text beginning at 8.100.4.C through the end of 8.100.4.C. Replace the current text at 8.100.4.G with the proposed text beginning at 8.100.4.G through the end of 8.100.4.G. Replace the current text at 8.100.5.A with the proposed text beginning at 8.100.5.A through the end of 8.100.5.A. Replace the current text at 8.100.5.B with the proposed text beginning at 8.100.5.B through the end of 8.100.5.B. Replace the current text at 8.100.6.P with the proposed text beginning at 8.100.6.P through the end of 8.100.6.P. Replace the current text at 8.100.6.Q with the proposed text beginning at 8.100.6.Q through the end of 8.100.6.Q. This rule is effective December 7, 2021.

*to be completed by MSB Board Coordinator

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STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed rule change will amend 10 CCR 2505-10 sections 8.100.1,8.100.3, 8.100.4, 8.100.5 and 8.100.6 based on the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (FFCRA) and the Affordable Care Act(ACA), which includes the Maintenance of Effort (MOE) provision. All policy revisions will align with federal regulations for the state to be in compliance during the federal Coronavirus (COVID-19) Public Health Emergency. These changes will impact all Medical Assistance categories and these policy changes will stay in place until the end of the federal Coronavirus (COVID-19) Public Health Emergency. The following policy changes are: Self-attestation for most verifications will be acceptable to be in compliance with the Maintenance of Effort (MOE) provision to ensure the continuance of health coverage for all eligible members. When a member is not reasonable compatible based off income a member self-attests, documentation will not be required, and the member will remain eligible for Medical Assistance. Self-attestation of resources will be acceptable for Non-MAGI programs. Premiums for the Buy-In program will be waived. Required through the Federal CARES Act for the Maintenance of Effort (MOE), members who had a loss of employment will remain in the Buy-In program. Newly enrolled members will still need to meet the work requirements. For applicants who are not eligible for Medical Assistance but have been exposed or who are potentially infected by the COVID-19, will be eligible for Medical Assistance for related COVID testing. The economic stimulus relief package designed to provide direct assistance to individuals to help offset the financial impacts of the COVID-19 Public Health Emergency will be exempt for MAGI and Non-MAGI eligibility determinations. The economic stimulus will *not* be a countable resource for 12 months for any Non-MAGI financial eligibility determinations that include a resource test. Lastly, the Federal Pandemic Unemployment Compensation (FPUC) program which provides an extra $600.00 a week is not countable unearned income for Medical Assistance categories

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

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Explain:

Due to the Coronavirus (COVID-19) Public Health Emergency the state rules need to be updated to comply with federal regulations.

3. Federal authority for the Rule, if any:

   Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 and Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136 and the Affordable Care Act (ACA), which includes the Maintenance of Effort (MOE) provision.

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   25.5-4-205(3)(II)(b)(A), 25.5-5-105, 25.5-5-206(1)(II)(B), 25.5-6-1404(1)(b) and(3)(a)(b), 25.5-6-1405(1),25.5.-6-1405(2)

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The proposed rules will impact applicants and members who are applying or enrolled in a MAGI and Non-MAGI Medical Assistance program. The rule updates will benefit both an applicant and member who becomes eligible for Medical Assistance by remaining eligible during this Coronavirus (COVID-19) Public Health Emergency.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule will help to determine eligibility correctly by applying regulations based on the CARES Act to help applicants and members remain eligible for MAGI and Non-MAGI Medical Assistance programs during this Coronavirus (COVID-19) Public Health Emergency.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   Self-attestation of all eligibility requirements, including resources, is likely to increase the number of individuals who will be eligible to enroll in Medicaid, therefore the Department expects its expenditures to increase as a result of this policy change. The Department expects that the waiving of premiums for the Disabled Buy-In program will reduce the revenues to the Department, which will result in an increase in expenditures from the Healthcare Affordability and Sustainability Fee (HAS) Cash Fund and federal funds, in order to fill the gap in revenue lost from the premiums.

   The Department expects that the provision of COVID testing to applicants will increase expenditures to the Department, but these expenditures will

be covered with 100% federal funds and will not impact expenditures from state fund sources.

The exemptions to counting the economic relief provided to individuals from the federal government towards eligibility for Medical Assistance is likely to not affect eligibility, and therefore not impact costs to the Department.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The allowance of self-attestation of eligibility criteria is mandated by the Families First Coronavirus Response Act in order for states to qualify for an enhanced FMAP of 6.2%. If the Department does not act in accordance with this policy, the costs to the Department will increase beyond what is necessary. The benefit of implementing this policy will allow the Department to secure a higher FMAP, which will allow the Department to operate with less administrative burden and serve more members during the emergency period. With respect to the proposal to waive the premiums for the Disabled Buy-In program, the Department expects that inaction will cause potential members to not qualify for buy-in because they will be unable to pay the premiums due to the severity of the economic shock. Therefore, the Department sees no benefit to inaction of the rule changes.

   In addition, the Families First Coronavirus Response Act allows state Medicaid and CHP+ programs to fund the cost of COVID-19 diagnostic testing for residents who do not qualify for Medical Assistance through 100% federal funds. Thus, inaction will lead to less testing of individual during the emergency and more uncertainty of the status of the emergency in Colorado. Again, the Department sees no benefit to inaction as the costs will be covered by federal funds.

   The exemptions to counting the economic relief provided to individuals from the federal government towards eligibility for Medical Assistance are mandated by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. If the Department does not act it will be in violation of the law.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly methods available to the Department to comply with the Families First Coronavirus Response Act and the CARES Act. The purposes of the proposed rule changes are to allow the Department to better serve Medicaid members and the people of Colorado during this

emergency period and the Department sees no other method to accomplish this goal.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There are no alternative methods for the proposed rule that were considered

8.100 MEDICAL ASSISTANCE ELIGIBILITY

8.100.1 Definitions

300% Institutionalized Special Income Group is a Medical Assistance category that provides Long-Term Care Services to aged or disabled individuals.

1619b is section 1619b of the Social Security Act which allows individuals who are eligible for Supplemental Security Income (SSI) to continue to be eligible for Medical Assistance coverage after they return to work.

AB - Aid to the Blind is a program which provides financial assistance to low-income blind persons.

ABD - Aged, Blind and Disabled Medical Assistance is a group of Medical Assistance categories for individuals that have been deemed to be aged, blind, or disabled by the Social Security Administration or the Department.

Achieving a Better Life Experience (ABLE) accounts – Special savings accounts that are set up by (or for) certain individuals with disabilities in a qualified ABLE program that are exempt for eligibility. They can be established by any state's qualified ABLE Program. Colorado's ABLE program is administered by the Department of Higher Education.

Adjusted Gross Income (AGI)-means" gross income", as defined in federal tax rules, minus certain adjustments prescribed in the federal tax rules to derive the "Adjusted Gross Income" line on the tax return. These adjustments from gross income are taken before the taxpayer takes his or her Schedule A deductions or Standard Deduction.

Adult MAGI Medical Assistance Group provides Medical Assistance to eligible adults from the age of 19 through the end of the month that the individual turns 65, who do not receive or who are ineligible for Medicare.

AND - Aid to Needy Disabled is a program which provides financial assistance to low-income persons over age 18 who have a total disability which is expected to last six months or longer and prevents them from working.

AFDC - Aid to Families with Dependent Children is the Title IV federal assistance program in effect from 1935 to 1997 which was administered by the United States Department of Health and Human Services. This program provided financial assistance to children whose families had low or no income.

AP-5615 is the form used to determine the patient payment for clients in nursing facilities receiving Long Term Care.

Alien is a person who was not born in the United States and who is not a naturalized citizen.

Ambulatory Services is any medical care delivered on an outpatient basis.

Annuity is an investment vehicle whereby an individual establishes a right to receive fixed periodic payments, either for life or a term of years.

Applicant is an individual who is seeking an eligibility determination for Medical Assistance through the submission of an application.

Application Date is the date the application is received and date-stamped by the eligibility site or the date the application was received and date-stamped by an Application Assistance site or Presumptive Eligibility

site. In the absence of a date-stamp, the application date is the date that the application was signed by the client.

Application for Public Assistance is the designated application used to determine eligibility for financial assistance. It can also be used to determine eligibility for Medical Assistance.

Blindness is defined in this volume as the total lack of vision or vision in the better eye of 20/200 or less with the use of a correcting lens and/or tunnel vision to the extent that the field of vision is no greater than 20 degrees.

Burial Spaces are burial plots, gravesites, crypts, mausoleums, urns, niches and other customary and traditional repositories for the deceased's bodily remains provided such spaces are owned by the individual or are held for his or her use, including necessary and reasonable improvements or additions to or upon such burial spaces such as: vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased.

Burial Trusts are irrevocable pre-need funeral agreements with a funeral director or other entity to meet the expenses associated with burial for Medical Assistance applicants/recipients. The agreement can include burial spaces as well as the services of the funeral director.

Caretaker Relative is a person who is related to the dependent child or any adult with whom the dependent child is living and who assumes responsibility for the dependent child’s care.

Case Management Services are services provided by community mental health centers, clinics, community centered boards, and EPSDT case managers to assist in providing services to Medical Assistance clients in gaining access to needed medical, social, educational and other services.

Cash Surrender Value is the amount the insurer will pay to the owner upon cancellation of the policy before the death of the insured or before maturity of the policy.

Categorically Eligible means persons who are eligible for Medical Assistance due to their eligibility for one or more Federal categories of public assistance.

CBMS - Colorado Benefits Management System is the computer system that determines an applicant’s eligibility for public assistance in the state of Colorado.

CDHS -Colorado Department of Human Services is the state department responsible for administering the social service and financial assistance programs for Colorado.

Children MAGI Medical Assistance group provides Medical Assistance coverage to tax dependents or otherwise eligible applicants through the end of the month that the individual turns 19 years old.

Child Support Services is a CDHS program that assures that all children receive financial and medical support from each parent. This is accomplished by locating each parent, establishing paternity and support obligations, and enforcing those obligations.

Citizen is a person who was born in the United States or who has been naturalized.

Client is a person who is eligible for the Medical Assistance Program. “Client” is used interchangeably with “recipient” when the person is eligible for the program.

CMS - Centers for Medicare and Medicaid Services is the Federal agency within the US Department of Health and Human Services that partners with the states to administer Medicaid and CHP+ via State Plans in effect for each State. Colorado is in Region VIII.

CHP+ - Child Health Plan Plus is low-cost health insurance for Colorado's uninsured children and pregnant women. CHP+ is public health insurance for children and pregnant women who earn too much to qualify for The Medical Assistance Program, but cannot afford private health insurance.

COLA - Cost of Living Adjustment is an annual increase in the dollar value of benefits made automatically by the United States Department of Health and Human Services or the state in OASDI, SSI and OAP cases to account for rises in the cost of living due to inflation.

Colorado State Plan is a written statement which describes the purpose, nature, and scope of the Colorado's Medical Assistance Program. The Plan is submitted to the CMS and assures that the program is administered consistently within specific requirements set forth in both the Social Security Act and the Code of Federal Regulations (CFR) in order for a state to be eligible for Federal Financial Participation (FFP).

Common Law Marriage is legally recognized as a marriage in the State of Colorado under certain circumstances even though no legally recognized marriage ceremony is performed or civil marriage contract is executed. Individuals declaring or publicly holding themselves out as a married couple through verbal or written methods may be recognized as legally married under state law. C.R.S. § 14-2-104(3).

Community Centered Boards are private non-profit organizations designated in statute as the single entry point into the long-term service and support system for persons with developmental disabilities.

Community Spouse is the spouse of an institutionalized spouse.

Community Spouse Resource Allowance is the amount of resources that the Medical Assistance regulations permit the spouse staying at home to retain.

Complete Application means an application in which all questions have been answered, which is signed, and for which all required verifications have been submitted.The Department is defined in this volume as the Colorado Department of Health Care Policy and Financing which is responsible for administering the Colorado Medical Assistance Program and Child Health Plan Plus programs as well as other State-funded health care programs.

Dependent Child is a child who lives with a parent, legal guardian, caretaker relative or foster parent and is under the age of 18, or, is age 18 and a full-time student, and expected to graduate by age 19.

Dependent Relative for purposes of this rule is defined as one who is claimed as a dependent by an applicant for federal income tax purposes.

Difficulty of Care Payments is a payment to an applicant or member as compensation for providing live-in home care to an individual who qualifies for foster care or Home and Community Based Services (HCBS) waiver program and lives in the home of the care recipient. This additional care must be required due to a physical, mental, or emotional handicap.

Disability means the inability to do any substantial gainful activity (or, in the case of a child, having marked and severe functional limitations) by reason of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of l2 months or more.

Dual Eligible clients are Medicare beneficiaries who are also eligible for Medical Assistance.

Earned Income is defined for purposes of this volume as any compensation from participation in a business, including wages, salary, tips, commissions and bonuses.

Earned Income Disregards are the allowable deductions and exclusions subtracted from the gross earnings. Income disregards vary in amount and type, depending on the category of assistance.

Electronic Data Source is an interface established with a federal or state agency, commercial entity, or other data sources obtained through data sharing agreements to verify data used in determining eligibility. The active interfaces are identified in the Department's verification plan submitted to CMS.

Eligibility Site is defined in this volume as a location outside of the Department that has been deemed by the Department as eligible to accept applications and determine eligibility for applicants.

Employed means that an individual has earned income and is working part time, full time or is self-employed, and has proof of employment. Volunteer or in-kind work is not considered employment.

EPSDT- Early Periodic Screening, Diagnosis and Treatment is the child health component of the Medical Assistance Program. It is required in every state and is designed to improve the health of low-income children by financing appropriate, medically necessary services and providing outreach and case management services for all eligible individuals.

Equity Value is the fair market value of land or other asset less any encumbrances.

Ex Parte Review is an administrative review of eligibility during a redetermination period in lieu of performing a redetermination from the client. This administrative review is performed by verifying current information obtained from another current aid program.

Face Value of a Life Insurance Policy is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or other special provisions.

Fair Market Value is the average price a similar property will sell for on the open market to a private individual in the particular geographic area involved. Also, the price at which the property would change hands between a willing buyer and a willing seller, neither being under any pressure to buy or to sell and both having reasonable knowledge of relevant facts.

FBR - The Federal Benefit Rate is the monthly Supplemental Security Income payment amount for a single individual or a couple. The FBR is used by the Aged, Blind and Disabled Medical Assistance Programs as the eligibility income limits.

FFP - Federal Financial Participation as defined in this volume is the amount or percentage of funds provided by the Federal Government to administer the Colorado Medical Assistance Program.

FPL - Federal Poverty Level is a simplified version of the federal poverty thresholds used to determine financial eligibility for assistance programs. The thresholds are issued each year in the Federal Register by the Department of Health and Human Services (HHS).

Good Cause is the client's justification for needing additional time due to extenuating circumstances, usually used when extending deadlines for submittal of required documentation.

Good Cause for Child Support is the specific process and criteria that can be applied when a client is refusing to cooperate in the establishment of paternity or establishment and enforcement of a child support order due to extenuating circumstances.

HCBS are Home and Community Based Services are also referred to as "waiver programs". HCBS provides services beyond those covered by the Medical Assistance Program that enable individuals to remain in a community setting rather than being admitted to a Long-Term Care institution.

In-Kind Income is income a person receives in a form other than money. It may be received in exchange for work or service (earned income) or a non-cash gift or contribution (unearned income).

Inpatient is an individual who has been admitted to a medical institution on recommendation of a physician or dentist and who receives room, board and professional services for 24 hours or longer, or is expected to receive these services for 24 hours or longer.

Institution is an establishment that furnishes, in single or multiple facilities, food, shelter and some treatment or services to four or more persons unrelated to the proprietor.

Institutionalization is the commitment of a patient to a health care facility for treatment.

Institutionalized Individual is a person who is institutionalized in a medical facility, a Long-Term Care institution, or applying for or receiving Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE).

Institutionalized Spouse is a Medicaid eligible client who begins a stay in a medical institution or nursing facility on or after September 30, 1989, or is first enrolled as a Medical Assistance client in the Program of All Inclusive Care for the Elderly (PACE) on or after October 10, 1997, or receives Home and Community Based Services (HCBS) on or after July 1, 1999; and is married to a spouse who is not in a medical institution or nursing facility. An institutionalized spouse does not include any such individual who is not likely to be in a medical institution or nursing facility or to receive HCBS or PACE for at least 30 consecutive days. Irrevocable means that the contract, trust, or other arrangement cannot be terminated, and that the funds cannot be used for any purpose other than outlined in the document.

Insurance Affordability Program (IAP) refers to Medicaid, Child Health Plan *Plus* (CHP+), and premium and cost-sharing assistance for purchasing private health insurance through state insurance marketplace.

Legal Immigrant is an individual who is not a citizen or national and has been permitted to remain in the United States by the United States Citizenship and Immigration Services (USCIS) either temporarily or as an actual or prospective permanent resident or whose extended physical presence in the United States is known to and allowed by USCIS.

Legal Immigrant Prenatal is a medical program that provides medical coverage for pregnant legal immigrants who have been legal immigrants for less than five years.

Limited Disability for the Medicaid Buy-In Program for Working Adults with Disabilities means that an individual has a disability that would meet the definition of disability under SSA without regard to Substantial Gainful Activity (SGA).

Long-Term Care is Medical Assistance services that provides nursing-home care, home-health care, personal or adult day care for individuals aged at least 65 years or with a chronic or disabling condition.

Long-Term Care Institution means class I nursing facilities, intermediate care facilities for the mentally retarded (ICF/MR) and swing bed facilities. Long-Term Care institutions can include hospitals.

Managed care system is a system for providing health care services which integrates both the delivery and the financing of health care services in an attempt to provide access to medical services while containing the cost and use of medical care.

Medical Assistance is defined as all medical programs administered by the Department of Health Care Policy and Financing. Medical Assistance/Medicaid is the joint state/federal health benefits program for individuals and families with low income and resources. It is an entitlement program that is jointly funded by the states and federal government and administered by the state. This program provides for payment of all or part of the cost of care for medical services.

Medical Assistance Required Household is defined for purposes of this volume as all parents or caretaker relatives, spouses, and dependent children residing in the same home.

Minimal Verification is defined in this volume as the minimum amount of information needed to process an application for benefits. No other verification can be requested from clients unless the information provided is questionable or inconsistent.

Minimum Essential Coverage is the type of coverage one must maintain to be in compliance with the Affordable Care Act in order to avoid paying a penalty for being uninsured. Minimum essential coverage may include but not limited to: Medicaid; CHP+; private health plans through Connect for Health Colorado; Medicare; job-based insurance, and certain other coverage.

MMMNA - Minimum Monthly Maintenance Needs Allowance is the calculation used to determine the amount of institutionalized spouse's income that the community spouse is allowed to retain to meet their monthly living needs.

MAGI - Modified Adjusted Gross Income refers to the methodology by which income and household composition are determined for the MAGI Medical Assistance groups under the Affordable Care Act. These MAGI groups include Parents and Caretaker Relatives, Pregnant Women, Children, and Adults. For a more complete description of the MAGI categories and pursuant rules, please refer to section 8.100.4.

MAGI-Equivalent is the resulting standard identified through a process that converts a state's net-income standard to equivalent MAGI standards.

MIA - Monthly Income Allowance is the amount of institutionalized spouse's income that the community spouse is allowed to retain to meet their monthly living needs.

MSP - Medicare Savings Program is a Medical Assistance Program to assist in the payment of Medicare premium, coinsurance and deductible amounts. There are four groups that are eligible for payment or part-payment of Medicare premiums, coinsurance and deductibles: Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLIMBs), Qualified Disabled and Working Individuals (QDWIs), and Qualifying Individuals – 1 (QI-1s).

Non-Filer is an individual who neither files a tax return nor is claimed as a tax dependent. For a more complete description of how household composition is determined for the MAGI Medical Assistance groups, please refer to the MAGI household composition section at 8.100.4.E.

Nursing Facility is a facility or distinct part of a facility which is maintained primarily for the care and treatment of inpatients under the direction of a physician. The patients in such a facility require supportive, therapeutic, or compensating services and the availability of a licensed nurse for observation or treatment on a twenty-four-hour basis.

OAP - Old Age Pension is a financial assistance program for low income adults age 60 or older.

OASDI - Old Age, Survivors and Disability Insurance is the official term Social Security uses for Social Security Act Title II benefits including retirement, survivors, and disability. This does not include SSI payments.

Outpatient is a patient who is not hospitalized overnight but who visits a hospital, clinic, or associated facility for diagnosis or treatment. Is a patient who does not require admittance to a facility to receive medical services.

PACE - Program of All-inclusive Care for the Elderly is a unique, capitated managed care benefit for the frail elderly provided by a not-for-profit or public entity. The PACE program features a comprehensive

medical and social service delivery system using an interdisciplinary team approach in an adult day health center that is supplemented by in-home and referral services in accordance with participants' needs.

Parent and Caretaker Relative is a MAGI Medical Assistance group that provides Medical Assistance to adults who are parents or Caretaker Relatives of dependent children.

Patient is an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

PEAK – the Colorado Program Eligibility and Application Kit is a web-based portal used to apply for public assistance benefits in the State of Colorado, including Medical Assistance.

PNA - Personal Needs Allowance means moneys received by any person admitted to a nursing care facility or Long-Term Care Institution which are received by said person to purchase necessary clothing, incidentals, or other personal needs items which are not reimbursed by a Federal or state program.

Pregnant Women is a MAGI Medical Assistance group that provides Medical Assistance coverage to pregnant women whose MAGI-based income calculation is less than 185% FPL, including women who are 60 days post-partum.

Premium means the monthly amount an individual pays to participate in a Medicaid Buy-In Program.

Provider is any person, public or private institution, agency, or business concern enrolled under the state Medical Assistance program to provide medical care, services, or goods and holding a current valid license or certificate to provide such services or to dispense such goods.

Psychiatric Facility is a facility that is licensed as a residential care facility or hospital and that provides inpatient psychiatric services for individuals under the direction of a licensed physician.

Public Institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

Questionable is defined as inconsistent or contradictory tangible information, statements, documents, or file records.

Reasonable Compatibility refers to an allowable difference or discrepancy between the income an applicant self attests and the amount of income reported by an electronic data source. For a more complete description of how reasonable compatibility is used to determine an applicant’s financial eligibility for Medical Assistance, please refer to the MAGI Income section at 8.100.4.C

Reasonable Explanation refers to the opportunity afforded an applicant to explain a discrepancy between self-attested income and income as reported by an electronic data source, when the difference is above the threshold percentage for reasonable compatibility.

Recipient is any person who has been determined eligible to receive benefits.

Resident is any individual who is living within the state and considers the state as their place of residence. Residents include any unemancipated child whose parent or other person exercising custody lives within the state.

RRB - Railroad Retirement Benefits is a benefit program under Federal law 45 U.S.C. § 231 et seq that became effective in 1935. It provides retirement benefits to retired railroad workers and families from a special fund, which is separate from the Social Security fund.

Secondary School is a school or educational program that provides instruction or training towards a high school diploma or an equivalent degree such as a High School Equivalency Diploma (HSED).

SGA – Substantial Gainful Activity is defined by the Social Security Administration. SGA is the term used to describe a level of work activity and earnings. Work is “substantial” if it involves performance of significant physical or mental activities or a combination of both, which are productive in nature. For work activity to be substantial, it does not need to be performed on a full-time basis. Work activity performed on a part-time basis may also be substantial gainful activity. “Gainful” work activity is work performed for pay or profit; or work of a nature generally performed for pay or profit; or work intended for profit, whether or not a profit is realized.

Single Entry Point Agency means the organization selected to provide case management functions for persons in need of Long-Term Care services within a Single Entry Point District.

Single Streamlined Application or “SSAp” is the general application for health assistance benefits through which applicants will be screened for Medical Assistance programs including Medicaid, CHP+, or premium and cost-sharing assistance for purchasing private health insurance through a state insurance marketplace.

SISC- Supplemental Income Status Codes are system codes used to distinguish the different types of state supplementary benefits (such as OAP) a recipient may receive. Supplemental Income Status Codes determine the FFP for benefits paid on behalf of groups covered under the Medical Assistance program.

SSA - Social Security Administration is an agency of the United States federal government that administers Social Security, a social insurance program consisting of retirement, disability, and survivors' benefits.

SSI - Supplemental Security Income is a Federal income supplement program funded by general tax revenues (not Social Security taxes) that provides income to aged, blind or disabled individuals with little or no income and resources.

SSI Eligible means an individual who is eligible to receive Supplemental Security Income under Title XVI of the Social Security Act, and may or may not be receiving the monetary payment.

TANF - Temporary Assistance to Needy Families is the Federal assistance program which provides supportive services and federal benefits to families with little or no income or resources. It is the Block Grant that was established under the Personal Responsibility and Work Opportunity Reconciliation Act in Title IV of the Social Security Act.

Tax Dependent is anyone expected to be claimed as a dependent by a Tax-Filer.

Tax-Filer is an individual, head of household or married couple who is required to and who files a personal income tax return.

Third Party is an individual, institution, corporation, or public or private agency which is or may be liable to pay all or any part of the medical cost of an injury, a disease, or the disability of an applicant for or recipient of Medical Assistance.

Title XIX is the portion of the federal Social Security Act which authorizes a joint federal/state Medicaid program. Title XIX contains federal regulations governing the Medicaid program.

TMA - Transitional Medical Assistance is a Medical Assistance category for families that lost Medical Assistance coverage due to increased earned income or loss of earned income disregards.

ULTC 100.2 is an assessment tool used to determine level of functional limitation and eligibility for Long-Term Care services in Colorado.

Unearned Income is the gross amount received in cash or kind that is not earned from employment or self-employment.

VA - Veterans Affairs is The Department of Veterans Affairs which provides patient care and Federal benefits to veterans and their dependents.

8.100.2 Legal Basis

Constitution of Colorado, Article XXIV, Old Age Pensions, section 7, established a health and medical care fund for persons who qualify to receive old age pensions.

Colorado Revised Statutes, Title 25.5, Article 4, Colorado Medical Assistance Act, section 102, provides for a program of Medical Assistance for individuals and families, whose income and resources are insufficient to meet the costs of necessary medical care and services, to be administered in cooperation with the federal government.

The Social Security Act, Title XIX, Grants to States for Medical Assistance Programs, and the consequent Federal regulations, Title 42, CFR (Code of Federal Regulations), Chapter IV, Subchapter C, set forth the conditions for states to obtain Federal Financial Participation in Medical Assistance expenditures.

Under the Colorado Medical Assistance Program, the Medicaid program provides coverage of certain groups specified in Title XIX of the Social Security Act. The OAP State Only Medical Assistance Program provides coverage to certain old age pension clients entitled to health and medical care under the Colorado Constitution.

The Department of Health Care Policy and Financing is the single State agency designated to administer the Colorado Medical Assistance Program under Title XIX of the Social Security Act and Colorado statutes. The Office of Medical Assistance of the Department is delegated the duties and responsibilities for administration of the Colorado Medical Assistance Program.

8.100.3. Medical Assistance General Eligibility Requirements

8.100.3.A. Application Requirements

1. The eligibility site shall advise individuals concerning the benefits of the Medical Assistance Program and determine or redetermine eligibility for Medical Assistance in accordance with rules and regulations of the Department. A person who is applying for the Medical Assistance Program or a client who is determined ineligible for the Medical Assistance Program in one category shall be evaluated under all other categories of eligibility. There is no time limit for Medical Assistance coverage as long as the client remains categorically eligible.

2. If the applicant applied for Medical Assistance on the Single Streamlined Application and was found ineligible, this application shall be reviewed for all other Medical Assistance eligibility programs, the Child Health Plan Plus (CHP+) program and premium and cost-sharing assistance for purchasing private health insurance through the state insurance marketplace.

    a. The application data and verifications shall be automatically transferred to the state insurance marketplace through a system interface when applicants are found ineligible for Medical Assistance eligibility programs. If an individual is pending for a Non-MAGI Medical Assistance eligibility program but has been found financially ineligible for MAGI

Medical Assistance eligibility programs, the application data and verifications shall be transferred to the state insurance marketplace.

3. Persons applying for assistance need complete only one application form to apply for both Medical Assistance and Financial Assistance under the Federal or State Financial Assistance Programs administered in the county. The application will be the Application for Public Assistance.

4. If an applicant is found to be ineligible for a particular program, the Application for Public Assistance shall be reviewed and processed for other financial programs the household has requested on the Application for Public Assistance and all other Medical Assistance Programs. Referrals to other community agencies and organizations shall be made for the applicant whenever available or requested.

5. The applicant must sign the application form, give declaration in lieu of a signature by telephone, or may opt to use an electronic signature in order to receive Medical Assistance.

6. A family member, adult in the applicant's Medical Assistance Required Household or authorized representative may submit an application and request assistance on behalf of an applicant.

7. If the applicant is not able to participate in the completion of the application forms because they are a minor (as defined in C.R.S. § 13-22-101) or due to physical or mental incapacity, the spouse, other relative, friend, or representative acting responsibly on behalf of the applicant may complete the forms. When no such person is available to assist in these situations, the eligibility site shall assist the applicant in the completion of the necessary forms. This type of situation should be identified clearly in the case record.

8. For the purpose of Medical Assistance, when an applicant is incompetent or incapacitated and unable to sign an application, or in case of death of the applicant, the application shall be signed, under penalty of perjury, by someone acting responsibly on behalf of the applicant either:

   a. A parent, or other specified relative, or legally appointed guardian or conservator, or

   b. For a person in a medical institution for whom none of the above in 8.a. are available, an authorized official of the institution may sign the application.

9. Application interviews or requested visits to the eligibility site for Medical Assistance shall not be required. All correspondence may occur by mail, email or telephone.

10. During normal business hours, eligibility sites shall not restrict the hours in which applicants may file an application. The eligibility site must afford any individual wishing to do so the opportunity to apply for Medical Assistance without delay.
11. The applicant has the right to withdraw his or her application at any time.

8.100.3.B. Residency Requirements

1. Individuals shall make application in the county in which they live. Individuals who reside in a county but who do not reside in a permanent dwelling nor have a fixed mailing address shall be considered eligible for the Medical Assistance Program, provided all other eligibility requirements are met. In no instance shall there be a durational residency requirement imposed upon the applicant, nor shall there be a requirement for the applicant to reside in a permanent dwelling or have a fixed mailing address. If an individual without a permanent dwelling or fixed mailing address is hospitalized, the county where the hospital is located shall be responsible for processing the application to completion. If the individual moves prior to completion of the

eligibility determination the origination eligibility site completes the determination and transfers the case as applicable.

a. For applicants in Long Term Care institutions - The county of domicile for all Long Term Care clients is the county in which they are physically located and receiving services.

2. A resident of Colorado is defined as a person that is living within the state of Colorado and considers Colorado to be their place of residence at the time of application. For institutionalized individuals who are incapable of indicating intent as to their state of residence, the state of residence shall be where the institution is located unless that state determines that the individual is a resident of another state, by applying the following criteria:

a. for any institutionalized individual who is under age 21 or who is age 21 or older and incapable of indicating intent before age 21, the state of residence is that of the individual's parent(s) or legally appointed guardian at the time of placement;

b. for any institutionalized individual who became incapable of indicating intent at or after age 21, (1) the state of residence is the state in which the person was living when he or she became incapable of indicating intent, or (2) if this cannot be determined, the state of residence is the state in which the person was living when he or she was first determined to be incapable of indicating intent;

c. upon placement in another state, the new state is the state of residence unless the current state of residence is involved in the placement. If a current state arranged for an individual to be placed in an institution located in another state, the current state shall be the individual's state of residence, irrespective of the individual's indicated intent or ability to indicate intent;

d. in the case of conflicting opinions between states, the state of residence is the state where the individual is physically located.

3. For purposes of this section on establishing an individual's state of residence, an individual is considered incapable of indicating intent if:

a. the person has an I.Q. of 49 or less or has a mental age of 7 or less, based on standardized tests as specified in the persons in medical facilities section of this volume;

b. the person is judged legally incompetent; or

c. medical documentation, or other documentation acceptable to the eligibility site, supports a finding that the person is incapable of indicating intent.

4. Residence shall be retained until abandoned. A person temporarily absent from the state, inside or outside the United States, retains Colorado residence. Temporarily absent means that at the time he/she leaves, the person intends to return.

5. A non-resident shall mean a person who considers his/her place of residence to be other than Colorado. Any person who enters the state to receive Medical Assistance or for any other reason is a non-resident, so long as they consider their permanent place of residence to be outside of the state of Colorado.

8.100.3.C. Transferring Requirements

1. When a family or individual moves from one county to another within Colorado, the client shall report the change of address to the eligibility site responsible for the current active Medical

Assistance Program case(s). If a household applies in the county in which they live and then moves out of that county during the application determination process, the originating eligibility site shall complete the processing of that application before transferring the case. The originating eligibility site shall electronically transfer the case to the new county of residence in CBMS.

2. The originating eligibility site must notify the receiving eligibility site of the client's transfer of Medical Assistance. The originating eligibility site may notify the receiving eligibility site by telephone that a client has moved to the receiving county. If the family or individual wishes to apply for other types of assistance, they shall submit a new application to the receiving eligibility site.

3. If the household is transferring the current Medical Assistance case, the receiving eligibility site cannot mandate a new application, verification, or an office visit to authorize the transfer. The receiving eligibility site can request copies of specific case documents to be forwarded from the originating eligibility site to verify the data contained in CBMS.

4. If the originating eligibility site closes a case for the discontinuation reason of “unable to locate,” the applicant shall reapply at the receiving eligibility site for the Medical Assistance Program.

5. If a case is closed for any other discontinuation reason than “unable to locate” and the client provides appropriate information to overturn the discontinuation with the originating eligibility site, then, upon transfer, the receiving eligibility site shall reopen the case with case comments in CBMS. These actions shall be performed according to timeframes defined by the Department.

6. When a recipient moves from his/her home to a nursing facility in another county or when a recipient moves from one nursing facility to another in a different county:

    a. the initiating eligibility site will transfer the case electronically in the eligibility system to the eligibility site in which the nursing facility is located when the individual is determined eligible; and

    b. The following items shall be furnished by the initiating eligibility site to the new eligibility site in hard copy format:

        i) 5615 that was sent to the nursing facility indicating the case transfer; and

        ii) Identification and citizenship documents; and

        iii) The ULTC 100.2.

7. When transferring a case, the initiating eligibility site will send an AP-5615 form to the nursing facility administrator of the new nursing facility showing the date of case closure and the current patient payment at the time of transfer. Should the Medical Assistance Program reimbursement be interrupted, the receiving eligibility site will have the responsibility to process the application and back date the Medical Assistance eligibility date to cover the period of ineligibility.

8.100.3.D. Processing Requirements

1. The eligibility site shall process a Single Streamlined Application for Medical Assistance Program benefits within the following deadlines:

    a. 90 days for persons who apply for the Medical Assistance Program and a disability determination is required.

    b. 45 days for all other Medical Assistance Program applicants.

c. The above deadlines cover the period from the date of receipt of a complete application to the date the eligibility site mails a notice of its decision to the applicant.

d. In unusual circumstances, documented in the case record and in CBMS case comments, the eligibility site may delay its decision on the application beyond the applicable deadline at its discretion. Examples of such unusual circumstances are a delay or failure by the applicant or an examining physician to take a required action such as submitting required documentation, or an administrative or other emergency beyond the agency's control.

e. Due to the Coronavirus COVID-19 Public Health Emergency, required through the Federal CARES Act for the Maintenance of Effort (MOE), the Department will continue eligibility for all Medical Assistance categories, regardless of changes made for a redetermination or additional documentation for current Medicaid enrollees. The Department will allow these individuals to continue eligibility through the period of the COVID-19 pandemic federal emergency declaration. Once the federal emergency declaration has concluded, the Department will process eligibility redeterminations and /or changes for all members whose eligibility was maintained during the emergency declaration.

2. Upon request, applicants will be given an extension of time within the application processing timeframe to submit requested verification. Applicants may request an extension of time beyond the application processing timeframe to obtain necessary verification. The extension may be granted at the eligibility site's discretion. The amount of time given should be determined on a case-by-case basis and should be based on the amount of time the individual needs to obtain the required documentation.

3. The eligibility site shall not use the above timeframes as a waiting period before determining eligibility or as a reason for denying eligibility.

4. For clients who apply for the Medical Assistance Program and a disability determination is required, the eligibility site shall send a notice informing the applicant of the reason for a delay beyond the applicable deadline, and of the applicant's right to appeal if dissatisfied with the delay. The eligibility site shall send this notice no later than 91 days following the application for the Medical Assistance Program.

5. For information regarding continuation of benefits during the pendency of an appeal to the Social Security Administration (SSA) based upon termination of disability benefits see section 8.057.5.C.

6. Effective July 1, 1997, as a condition of eligibility for the Medical Assistance Program, any legal immigrant who is applying for or receiving Medical Assistance shall agree in writing that, during the time period the client is receiving Medical Assistance, he or she will not sign an affidavit of support for the purpose of sponsoring an alien who is seeking permission from the United States Immigration and Citizenship Services to enter or remain in the United States. A legal immigrant's eligibility for Medical Assistance shall not be affected by the fact that he or she has signed an affidavit of support for an alien before July 1, 1997.

7. Eligibility sites at which an individual is able to apply for Medical Assistance benefits shall also provide the applicant the opportunity to register to vote.

a. The eligibility site shall provide to the applicant the prescribed voter registration application.

b. The eligibility site shall not:

i) Seek to influence the applicant's political preference or party registration;

ii) Display any political preference or party allegiance;

iii) Make any statement to the applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote; and

iv) Make any statement to an applicant which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

c. The eligibility site shall ensure the confidentiality of individuals registering and declining to register to vote.

d. Records concerning registration and declination to register to vote shall be maintained for two years by the eligibility site. These records shall not be part of the public assistance case record.

e. A completed voter registration application shall be transmitted to the county clerk and recorder for the county in which the eligibility site is located not later than ten (10) days after the date of acceptance; except that if a registration application is accepted within five (5) days before the last day for registration to vote in an election, the application shall be transmitted to the county clerk and recorder for the county not later than five (5) days after the date of acceptance.

8. Individuals who transfer from one Colorado county to another shall be provided the same opportunity to register to vote in the new county of residence. The new county of residence shall follow the above procedure. The new county of residence shall notify its county clerk and recorder of the client's change in address within five (5) days of receiving the information from the client.

8.100.3.E. Retroactive Medical Assistance Coverage

1. An applicant for Medical Assistance shall be provided such assistance any time during the three months preceding the date of application, or as of the date the person became eligible for Medical Assistance, whichever is later. That person shall have received medical services at any time during that period and met all applicable eligibility requirements.

2. An explanation of the conditions for retroactive Medical Assistance shall be given to all applicants. Those applicants who within the three months period prior to the date of application or as of the date the person became eligible for Medical Assistance, whichever is later, have received medical services which would be a benefit under the Colorado State Plan, can request retroactive coverage on the application form. The determination of eligibility for retroactive Medical Assistance shall be made as part of the application process. An applicant does not have to be eligible in the month of application to be eligible for retroactive Medical Assistance. The applicant or client may verbally request retroactive coverage at any time following the completion of an application. Verification required to determine Medical Assistance Program eligibility for the retroactive period shall be secured by the eligibility site to determine retroactive eligibility. Proof of the declared medical service shall not be required.

8.100.3.F. Groups Assisted Under the Program

1. The Medical Assistance Program provides benefits to the following persons who meet the federal definition of categorically needy at the time they apply for benefits:

a. Parents and Caretaker Relatives, Pregnant Women, Children, and Adults as defined under the Modified Adjusted Gross Income (MAGI)Medical Assistance section 8.100.4.

b. Persons who meet legal immigrant requirements as outlined in this volume, who were or would have been eligible for SSI but for their alien status, if such persons meet the resource, income and disability requirements for SSI eligibility.

c. Persons who are receiving financial assistance; and who are eligible for a SISC Code of A or B. See section 8.100.3.M for more information on SISC Codes.

d. Persons who are eligible for financial assistance under Old Age Pension (OAP) and SSI, but are not receiving the money payment.

e. Persons who would be eligible for financial assistance from OAP or SSI, except for the receipt of Social Security Cost of Living Adjustment (COLA) increases, or other retirement, survivors, or disability benefit increases to their own or a spouse's income. This group also includes persons who lost OAP or SSI due to the receipt of Social Security Benefits and who would still be eligible for the Medical Assistance Program except for the cost of living adjustments (COLA's) received. These populations are referenced as Pickle and Disabled Widow(er)s.

f. Persons who are blind, disabled, or aged individuals residing in the medical institution or Long Term Care Institution whose income does not exceed 300% of SSI.

g. Persons who are blind, disabled or aged receiving HCBS whose income does not exceed 300% of the SSI benefit level and who, except for the level of their income, would be eligible for an SSI payment.

h. A disabled adult child who is at least 18 years of age and who was receiving SSI as a disabled child prior to the age of 22, and for whom SSI was discontinued on or after May 1, 1987, due to having received of OASDI drawn from a parent(s) Social Security Number, and who would continue to be eligible for SSI if the above OASDI and all subsequent cost of living adjustments were disregarded. This population is referenced as Disabled Adult Child (DAC).

i. Children age 18 and under who would otherwise require institutionalization in an Long Term Care Institution, Nursing Facility (NF), or a hospital but for which it is appropriate to provide care outside of an institution as described in 1902(e)(3) of the Act Public Law No. 97-248 (Section 134).

j. Persons receiving OAP-A, OAP-B, and OAP Refugees who do not meet SSI eligibility criteria but do meet the state eligibility criteria for the OAP State Only Medical Assistance Program. These persons qualify for a SISC Code C.

k. Persons who apply for and meet the criteria for one of the categorical Medical Assistance programs, but do not meet the criteria of citizenship shall receive Medical Assistance benefits for emergencies only.

l. Persons with a disability or limited disability who are at least 16 but less than 65 years of age, with income less than or equal to 450% of FPL after income disregards, regardless of resources, and who are employed.

m. Children with a disability who are age 18 and under, with household income less than or equal to 300% of FPL after income disregards, regardless of resources.

n. Due to the Coronavirus COVID-19 Public Health Emergency, an applicant who is not eligible for Medical Assistance but has been impacted through exposure to or potential infection of COVID-19 may be eligible to receive services for COVID-19 testing only. To

qualify for this limited benefit, the applicant must satisfy residency and immigration-or citizenship and not be enrolled in other health insurance.

8.100.3.G. General and Citizenship Eligibility Requirements

1. To be eligible to receive Medical Assistance, an eligible person shall:

a. Be a resident of Colorado;

b. Meet the following requirements while being an inmate, in-patient or resident of a public institution:

i). The following individuals, if eligible, may be enrolled for Medical Assistance

1. Patients in a public medical institution

2. Residents of a Long-Term Care Institution

3. Prior inmates who have been paroled

4. Resident of a publicly operated community residence which serves no more than 16 residents

5. Individuals participating in community corrections programs or residents in community corrections facilities (“halfway houses”) who have freedom of movement and association which includes individuals who:

a) are not precluded from working outside the facility in employment available to individuals who are not under justice system supervision;

b) can use community resources (e.g., libraries, grocery stores, recreation, and education) at will;

c) can seek health care treatment in the broader community to the same or similar extent as other Medicaid enrollees in the state; and/or

d) are residing at their home, such as house arrest, or another location

ii). Inmates who are incarcerated in a correctional institution such as a city, county, state or federal prison may be enrolled, if eligible, with benefits limited to an in-patient stay of 24 hours or longer in a medical institution.

c. Not be a patient in an institution for tuberculosis or mental disease, unless the person is under 21 years of age or has attained 65 years of age and is eligible for the Medical Assistance Program and is receiving active treatment as an inpatient in a psychiatric facility eligible for Medical Assistance reimbursement. See section 8.100.4.H for special provisions extending Medical Assistance coverage for certain patients who attain age 21 while receiving such inpatient psychiatric services;

d. Meet all financial eligibility requirements of the Medical Assistance Program for which application is being made;

e. Meet the definition of disability or blindness, when applicable. Those definitions appear in this volume at 8.100.1 under Definitions;

f. Meet all other requirements of the Medical Assistance Program for which application is being made; and

g. Fall into one of the following categories:

i) Be a citizen or national of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa or Swain's Island; or

ii) Be a lawfully admitted non-citizen who entered the United States prior to August 22, 1996, or

iii) Be a non-citizen who entered the United States on or after August 22, 1996 and is applying for Medical Assistance benefits to begin no earlier than five years after the non-citizen's date of entry into the United States who falls into one of the following categories:

1) lawfully admitted for permanent residence under the Immigration and Nationality Act (hereafter referred to as the "INA");

2) paroled into the United States for at least one year under 8 U.S.C. § 1182(d)(5); or

3) granted conditional entry under section 203(a)(7) of the INA, as in effect prior to April 1, 1980; or

4) determined by the eligibility site, in accordance with guidelines issued by the U.S. Attorney General, to be a spouse, child, parent of a child, or child of a parent who, in circumstances specifically described in 8 U.S.C. §1641(c), has been battered or subjected to extreme cruelty which necessitates the provision of Medical Assistance (Medicaid); or

iv) Be a non-citizen who arrived in the United States on any date, who falls into one of the following categories:

1) lawfully residing in Colorado and is an honorably discharged military veteran (also includes spouse, unremarried surviving spouse and unmarried, dependent children), or

2) lawfully residing in Colorado and is on active duty (excluding training) in the U.S. Armed Forces (also includes spouse, unremarried surviving spouse and unmarried, dependent children), or

3) granted asylum under section 208 of the INA, or

4) refugee under section 207 of the INA, or

5) deportation withheld under section 243(h) (as in effect prior to September 30, 1996) or section 241(b)(3) (as amended by P.L. 104-208) of the INA, or

6) Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, or

7) an individual who (1) was born in Canada and possesses at least 50 percent American Indian blood, or is a member of an Indian tribe as defined in 25 U.S.C. sec. 5304(e)(2016), or

8) admitted to the U.S. as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. 100-461), or

9) lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam conflict, or

10) a victim of a severe form of trafficking in persons, as defined in section 103 of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L.106-386, as amended (22 U.S.C. § 7105(b) (2016)), or

11) An alien who arrived in the United States on or after December 26, 2007 who is an Iraqi special immigrant under section 101(a)(27) of the INA, or

12) An alien who arrived in the United States on or after December 26, 2007 who is an Afghan Special Immigrant under section 101(a)(27) of the INA.

v) The statutes listed at sections 8.100.3.G.1.g.iii.1-5 and at 8.100.3.G.1.g.iv.3-11 are incorporated herein by reference. No amendments or later editions are incorporated. These regulations are available for public inspection at the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Pursuant to C.R.S. 24-4-103(12.5)(b)(2016), 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.

vi) Be a lawfully admitted non-citizen who is a pregnant women or a child under the age of 19 years in the United States who falls into one of the categories listed in 8.100.3.G.1.g.iii or into one of the following categories listed below. These individuals are exempt from the 5-year waiting period:

1) granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a,or

2) granted Temporary Protected Status (TPS) in accordance with 8 U.S.C 1254a and pending applicants for TPS granted employment authorization,

3) granted employment authorization under 8 CFR 274a.12(c),or

4) Family Unity beneficiary in accordance with section 301 of Pub. L. 101-649, as amended.

5) Deferred Enforced Departure (DED), pursuant to a decision made by the President,

6) granted Deferred Action status (excluding Deferred Action for Childhood Arrivals (DACA)) as described in the Secretary of Homeland Security's June 15,2012 memorandum,

7) granted an administrative stay of removal under 8 CFR 241.6(2016), or

8) Beneficiary of approved visa petition who has a pending application for adjustment of status.

9) Pending an application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who-

a) as been granted employment authorization; or

b) Is under the age of 14 and has had an application pending for at least 180 days.

10) granted withholding of removal under the Convention Against Torture,

11) A child who has a pending application for Special Immigrant Juvenile status under 8 U.S.C. 1101(a)(27)(J), or

12) Citizens of Micronesia, the Marshall Islands, and Palau, or

13) is lawfully present American Samoa under the immigration of laws of American Samoa.

14) A non-citizen in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or under 8 U.S.C. 1101(a)(17), or

15) A non-citizen who has been paroled into the United States for less than one year under 8 U.S.C. § 1182(d)(5), except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings.

vii) Exception: The exception to these requirements is that persons who apply for and meet the criteria for one of the categorical Medical Assistance programs, but who are not citizens, and are not eligible non-citizens, according to the criteria set forth in 8.100.3.G.1.g, shall receive Medical Assistance benefits for emergency medical care only. The rules on confidentiality prevent the Department or eligibility site from reporting to the United States Citizenship and Immigration Services persons who have applied for or are receiving assistance. These persons need not select a primary care physician as they are eligible only for emergency medical services.

For non-qualified aliens receiving Medical Assistance emergency only benefits, the following medical conditions will be covered:

An emergency medical condition (including labor and delivery) which manifests itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

1) placing the patient's health in serious jeopardy;

2) serious impairment of bodily function; or

3) serious dysfunction of any bodily organ or part.

A physician shall make a written statement certifying the presence of an emergency medical condition when services are provided and shall indicate that services were for a medical emergency on the claim form. Coverage is limited to care and services that are necessary to treat immediate emergency medical conditions. Coverage does not include prenatal care or follow-up care.

2. For determinations of eligibility for Medical Assistance, legal immigration status must be verified. This requirement applies to a non-citizen individual who meets the criteria of any category defined at 8.100.3.G(1)(g)(ii) (iii) (iv) or (vi) and has declared that he or she has a legal immigration status.

a. The Verify Lawful Presence (VLP) interface will be used to verify immigration status. The VLP interface connects to the Systematic Alien Verification for Entitlements (SAVE) Program to verify legal immigration status.

i) If an automated response from VLP confirms that the information submitted is consistent with VLP data for immigration status verification requirements, no further action is required for the individual and no additional documentation of immigration status is required.

ii) If the VLP cannot automatically confirm the information submitted, the individual will be contacted with a request for additional documents and/or information needed to verify their legal immigration status through the VLP interface. If a response from the VLP interface confirms that the additional documents and/or information received from the individual verifies their legal immigration status, no further action is required for the individual and no additional documentation of immigration status is required.

3. Reasonable Opportunity Period

a. If the verification through the electronic interface is unsuccessful then the applicant will be provided a reasonable opportunity period, of 90 days, to submit documents indicating a legal immigration status, as listed in 8.100.3.G.1.g. The reasonable opportunity period will begin as of the date of the Notice of Action. The required documentation must be received within the reasonable opportunity period.

b If the applicant does not provide the necessary documents within the reasonable opportunity period, then the applicant's Medical Assistance application shall be terminated.

c. The reasonable opportunity period applies to MAGI, Adult and Buy-In Programs.

i) For the purpose of this section only, MAGI Programs for persons covered pursuant to 8.100.4.G or 8.100.4.I. include the following:

Commonly Used Program Name	Rule Citation
Children's Medical Assistance	8.100.4.G.2
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Adult Medical Assistance	8.100.4.G.4
Pregnant Women Medical Assistance	8.100.4.G.5
Legal Immigrant Prenatal Medical Assistance	8.100.4.G.6

Transitional Medical Assistance	8.100.4.I.1-5

ii) For the purpose of this section only, Adult and Buy-In Programs for persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715. include the following:

Commonly Used Program Name	Rule Citation
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c
Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P
Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q
Breast and Cervical Cancer Program (BCCP)	8.715

8.100.3.H. Citizenship and Identity Documentation Requirements

1. For determinations of initial eligibility and redeterminations of eligibility for Medical Assistance made on or after July 1, 2006, citizenship or nationality and identity status must be verified unless such satisfactory documentary evidence has already been provided, as described in 8.100.3.H.4.b. This requirement applies to an individual who declares or who has previously declared that he or she is a citizen or national of the United States.

   a. The following electronic interfaces shall be accepted as proof of citizenship and/or identity as listed and should be used prior to requesting documentary evidence from applicants/clients:

      i) SSA Interface is an acceptable interface to verify citizenship and identity. An automated response from SSA that confirms that the data submitted is consistent with SSA data, including citizenship or nationality, meets citizenship and identity verification requirements. No further action is required for the individual and no additional documentation of either citizenship or identity is required.

      ii) Department of Motor Vehicles (DMV) Interface is an acceptable interface to verify identity. An automated response from DMV confirms that the data submitted is consistent with DMV data for identity verification requirements. No further action is required for the individual and no additional documentation of identity is required.

   b. This requirement does not apply to the following groups:

      i) Individuals who are entitled to or who are enrolled in any part of Medicare.

      ii) Individuals who receive Supplemental Security Income (SSI).

      iii) Individuals who receive child welfare services under Title IV-B of the Social Security Act on the basis of being a child in foster care.

      iv) Individuals who receive adoption or foster care assistance under Title IV-E of the Social Security Act.

v) Individuals who receive Social Security Disability Insurance (SSDI).

vi) Children born to a woman who has applied for, has been determined eligible, and is receiving Medical Assistance on the date of the child's birth, as described in 8.100.4.G.5. This includes instances where the labor and delivery services were provided before the date of application and were covered by the Medical Assistance Program as an emergency service based on retroactive eligibility.

1) A child meeting the criteria described in 8.100.3.H.1.b.vi shall be deemed to have provided satisfactory documentary evidence of citizenship or nationality and shall not be required to provide further documentary evidence at any time in the future, regardless of any subsequent changes in the child's eligibility for Medical Assistance.

2) Special Provisions for Retroactive Reversal of a Previous Denial

a) If a child described at 8.100.3.H.1.b.vi was previously determined to be ineligible for Medical Assistance solely for failure to meet the citizenship and identity documentation requirements, the denial shall be reversed. Eligibility shall be effective retroactively to the date of the child's birth provided all of the following criteria are met:

(1) The child was determined to be ineligible for Medical Assistance during the period between July 1, 2006 and October 1, 2009 solely for failure to meet the citizenship and identity documentation requirements as they existed during that period;

(2) The child would have been determined to be eligible for Medical Assistance had 8.100.3.H.1.b.vi and/or 8.100.3.H.1.b.vi.2.a been in effect during the period from July 1, 2006 through October 1, 2009; and

(3) The child's parent, caretaker relative, or legally appointed guardian or conservator requests that the denial of eligibility for Medical Assistance be reversed. The request may be verbal or in writing.

b) A child for whom denial of eligibility for Medical Assistance has been retroactively reversed shall be subject to the eligibility redetermination provisions described at 8.100.3.P.1. Such redetermination shall occur twelve months from the retroactive eligibility date determined when the denial was reversed pursuant to this subsection 1.

c) A child granted retroactive eligibility for Medical Assistance shall be subject to the requirements described at 8.100.4.G.2. for continued eligibility.

vii) Individuals receiving Medical Assistance during a period of presumptive eligibility.

2. Satisfactory documentary evidence of citizenship or nationality includes the following:

a. Stand-alone documents for evidence of citizenship and identity. The following evidence shall be accepted as satisfactory documentary evidence of both identity and citizenship:

i) A U.S. passport issued by the U.S. Department of State that:

1) includes the applicant or recipient, and

2) was issued without limitation. A passport issued with a limitation may be used as proof of identity, as outlined in 8.100.3.H.3.

ii) A Certificate of Naturalization (DHS Forms N-550 or N-570) issued by the Department of Homeland Security (DHS) for naturalized citizens.

iii) A Certificate of U.S. Citizenship (DHS Forms N-560 or N-561) issued by the Department of Homeland Security for individuals who derive citizenship through a parent.

iv) A document issued by a federally recognized Indian tribe, evidencing membership or enrollment in, or affiliation with, such tribe (such as a tribal enrollment card or certificate of degree of Indian blood).

1) Special Provisions for Retroactive Reversal of a Previous Denial

a) For a member of a federally recognized Indian tribe who was determined to be ineligible for Medical Assistance solely for failure to meet the citizenship and identity documentation requirements, the denial of eligibility shall be reversed and eligibility shall be effective as of the date on which the individual was determined to be ineligible provided all of the following criteria are met:

(1) The individual was determined to be ineligible for Medical Assistance on or after July 1, 2006 solely on the basis of not meeting the citizenship and identity documentation requirements as they existed during that period;

(2) The individual would have been determined to be eligible for Medical Assistance had 8.100.3.H.2.a.iv) been in effect on or after July 1, 2006; and

(3) The individual or a legally appointed guardian or conservator of the individual requests that the denial of eligibility for Medical Assistance be reversed. The request may be verbal or in writing.

b) A member of a federally recognized Indian tribe for whom denial of eligibility for Medical Assistance has been retroactively reversed shall be subject to the eligibility redetermination provisions described at 8.100.3.P.1. Such redetermination shall occur twelve months from the retroactive eligibility date determined when the denial was reversed as provided in this subsection 2.

b. Evidence of citizenship. If evidence from the list in 8.100.3.H.2.a. is not provided, an applicant or recipient shall provide satisfactory documentary evidence of citizenship from the list specified in this section to establish citizenship AND satisfactory documentary evidence from the documents listed in section 8.100.3.H. 3. to establish identity. Evidence of citizenship includes:

i) A U.S. public birth certificate.

1) The birth certificate shall show birth in any one of the following:

a) One of the 50 States,

b) The District of Columbia,

c) Puerto Rico (if born on or after January 13, 1941),

d) Guam (if born on or after April 10, 1899),

e) The Virgin Islands of the U.S. (if born on or after January 17, 1917),

f) American Samoa,

g) Swain's Island, or

h) The Northern Mariana Islands (NMI) (if born after November 4, 1986 (NMI local time)).

2) The birth record document shall have been issued by the State, Commonwealth, Territory or local jurisdiction.

3) The birth record document shall have been recorded before the person was 5 years of age. A delayed birth record document that is recorded at or after 5 years of age is considered fourth level evidence of citizenship, as described in 8.100.3.H.2.d.

ii) A Certification of Report of Birth (DS-1350) issued by the U.S. Department of State to U.S. citizens who were born outside the U.S. and acquired U.S. citizenship at birth.

iii) A Report of Birth Abroad of a U.S. Citizen (Form FS-240) issued by the U.S. Department of State consular office overseas for children under age 18 at the time of issuance. Children born outside the U.S. to U.S. military personnel usually have one of these.

iv) A Certification of birth issued by the U.S. Department of State (Form FS-545 or DS-1350) before November 1,1990.

v) A U.S. Citizen I.D. card issued by the U.S. Immigration and Naturalization Services (INS):

1) Form I-179 issued from 1960 until 1973, or

2) Form I-197 issued from 1973 until April 7, 1983.

vi) A Northern Mariana Identification Card (I-873) issued by INS to a collectively naturalized citizen of the U.S. who was born in the NMI before November 4, 1986.

vii) An American Indian Card (I-872) issued by the Department of Homeland Security with the classification code “KIC.”

viii) A final adoption decree that:

1) shows the child's name and U.S. place of birth, or

2) a statement from a State approved adoption agency that shows the child's name and U.S. place of birth. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.

ix) Evidence of U.S. Civil Service employment before June 1, 1976. The document shall show employment by the U.S. government before June 1, 1976.

x) U.S. Military Record that shows a U.S. place of birth such as a DD-214 or similar official document showing a U.S. place of birth.

xi) Data verification with the Systematic Alien Verification for Entitlements (SAVE) Program for naturalized citizens.

xii) Child Citizenship Act. Adopted or biological children born outside the United States may establish citizenship obtained automatically under section 320 of the Immigration and Nationality Act (8 USC § 1431), as amended by the Child Citizenship Act of 2000 (Pub. L. 106-395, enacted on October 30, 2000). section 320 of the Immigration and Nationality Act (8 USC § 1431), as amended by the Child Citizenship Act of 2000 (Pub. L. 106-395, enacted on October 30, 2000) is incorporated herein by reference. No amendments or later editions are incorporated. Copies are available for inspections from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203-1818. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

Documentary evidence must be provided at any time on or after February 27, 2001, if the following conditions have been met:

1) At least one parent of the child is a United States citizen by either birth or naturalization (as verified under the requirements of this part);

2) The child is under the age of 18;

3) The child is residing in the United States in the legal and physical custody of the U.S. citizen parent;

4) The child was admitted to the United States for lawful permanent residence (as verified through the Systematic Alien Verification for Entitlements (SAVE) Program); and

5) If adopted, the child satisfies the requirements of section 101(b)(1) of the Immigration and Nationality Act (8 USC § 1101(b)(1)) pertaining to international adoptions (admission for lawful permanent residence as IR-3 (child adopted outside the United States), or as IR-4 (child coming to the United States to be adopted) with final adoption having subsequently occurred. 8 USC § 1101(b)(1) is incorporated herein by reference. No amendments or later editions are incorporated. Copies are available for inspections from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203-1818. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

xiii) Extract of a hospital record on hospital letterhead.

1) The record shall have been established at the time of the person's birth;

2) The record shall have been created at least 5 years before the initial application date; and

3) The record shall indicate a U.S. place of birth;

4) For children under 16 the document shall have been created near the time of birth or at least 5 years before the date of application.

5) Souvenir “birth certificates” issued by a hospital are not acceptable.

xiv) Life, health, or other insurance record.

1) The record shall show a U.S. place of birth; and

2) The record shall have been created at least 5 years before the initial application date.

3) For children under 16 the document must have been created near the time of birth or at least 5 years before the date of application.

xv) Religious record.

1) The record shall have been recorded in the U.S. within 3 months of the date of the individual's birth;

2) The record shall show that the birth occurred in the U.S.;

3) The record shall show either the date of birth or the individual's age at the time the record was made; and

4) The record shall be an official record recorded with the religious organization.

xvi) Early school record that meets the following criteria:

1) The school record shows the name of the child;

2) The school record shows the child's date of admission to the school;

3) The school record shows the child's date of birth;

4) The school record shows a U.S. place of birth for the child; and

5) The school record shows the name(s) and place(s) of birth of the applicant's parents.

xvii) Federal or State census record showing U.S. citizenship or a U.S. place of birth and the applicant's age.

xviii) One of the following documents that shows a U.S. place of birth and was created at least 5 years before the application for The Medical Assistance Program. For children under 16 the document must have been created near the time of birth or at least 5 years before the date of application.

1) Seneca Indian tribal census record;

2) Bureau of Indian Affairs tribal census records of the Navajo Indians;

3) U.S. State Vital Statistics official notification of birth registration;

4) A delayed U.S. public birth record that is recorded more than 5 years after the person's birth;

5) Statement signed by the physician or midwife who was in attendance at the time of birth; or

6) The Roll of Alaska Natives maintained by the Bureau of Indian Affairs.

xix) Institutional admission papers from a nursing facility, skilled care facility or other institution created at least 5 years before the initial application date that indicate a U.S. place of birth.

xx) Medical (clinic, doctor, or hospital) record.

1) The record shall have been created at least 5 years before the initial application date; and

2) The record shall indicate a U.S. place of birth.

3) An immunization record is not considered a medical record for purposes of establishing U.S. citizenship.

4) For children under 16 the document shall have been created near the time of birth or at least 5 years before the date of application.

xxi) Written affidavit. Affidavits shall only be used in rare circumstances. They may be used by U.S. citizens or nationals born inside or outside the U.S. If documentation is by affidavit, the following rules apply:

1) There shall be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship (the two affidavits could be combined in a joint affidavit);

2) At least one of the individuals making the affidavit cannot be related to the applicant or recipient. Neither of the two individuals can be the applicant or recipient;

3) In order for the affidavit to be acceptable the persons making them shall provide proof of their own U.S. citizenship and identity.

4) If the individual(s) making the affidavit has (have) information which explains why documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be readily obtained, the affidavit shall contain this information as well;

5) The applicant/recipient or other knowledgeable individual (guardian or representative) shall provide a separate affidavit explaining why the evidence does not exist or cannot be obtained; and

6) The affidavits shall be signed under penalty of perjury pursuant to 18 U.S.C. §1641 and Title 18 of the Criminal Code article 8 part 5 and need not be notarized.

c. Evidence of citizenship for collectively naturalized individuals. If a document shows the individual was born in Puerto Rico, the Virgin Islands of the U.S., or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. A second document from 8.100.3.H.3. to establish identity shall also be presented.

i) Puerto Rico:

1) Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; OR

2) Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.

ii) US Virgin Islands:

1) Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; OR

2) The applicant's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; OR

3) Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or Territory or the Canal Zone on June 28, 1932.

iii) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

1) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); OR

2) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); OR

3) Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

4) If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile, and the individual is not a U.S. citizen.

d) Referrals for Colorado Birth Certificates

i) An applicant or client who was born in the State of Colorado who does not possess a Colorado birth certificate shall receive a referral to the Department of Public Health and Environment by the county department to obtain a birth certificate at no charge, pursuant to C.R.S. § 25-2-117(2)(a)(I)(C).

ii) The referral shall be provided on county department letterhead and shall include the following:

1) The name and address of the applicant or client;

2) A statement that the county department requests that the Department of Public Health and Environment waive the birth certificate fee, pursuant to C.R.S. § 25-2-117(2)(a)(I)(C); and

3) The name and contact telephone number for the county caseworker responsible for the referral.

iii) An applicant or client who has been referred to the Department of Public Health and Environment to obtain a birth certificate shall not be required to present a birth certificate to satisfy the citizenship documentation requirement at 8.100.3.H.2. The applicant or client shall have the right to use any of the documents listed under 8.100.3.H.2. to satisfy the citizenship documentation requirement.

3. The following documents shall be accepted as proof of identity and shall accompany a document establishing citizenship from the groups of documentary evidence outlined in 8.100.3.H.2.b. through d.

a) A driver's license issued by a State or Territory either with a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color;

b) School identification card with a photograph of the individual;

c) U.S. military card or draft record;

d) Identification card issued by the Federal, State, or local government with the same information included on driver's licenses;

e) Military dependent's identification card;

f) U.S. Coast Guard Merchant Mariner card;

g) Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual. The document is acceptable if it carries a photograph of the individual or has other personal identifying information relating to the individual such as age, weight, height, race, sex, and eye color; or

h) Three or more documents that together reasonably corroborate the identity of an individual provided such documents have not been used to establish the individual's citizenship and the individual submitted evidence of citizenship listed under 8.100.3.H.2.b. or 8.100.3.H.2.c. The following requirements must be met:

i) No other evidence of identity is available to the individual;

ii) The documents must at a minimum contain the individual's name, plus any additional information establishing the individual's identity; and

iii) All documents used must contain consistent identifying information.

iv) These documents include, but are not limited to, employer identification cards, high school and college diplomas from accredited institutions (including general education and high school equivalency diplomas), marriage certificates, divorce decrees, and property deeds/titles.

i) Special identity rules for children. For children under 16, the following records are acceptable:

i) Clinic, doctor, or hospital records; or

ii) School records.

1) The school record may include nursery or daycare records and report cards; and

2) The school, nursery, or daycare record must be verified with the issuing school, nursery, or daycare.

3) If clinic, doctor, hospital, or school records are not available, an affidavit may be used if it meets the following requirements:

a) It shall be signed under penalty of perjury by a parent or guardian;

b) It shall state the date and place of birth of the child; and

c) It cannot be used if an affidavit for citizenship was provided.

d) The affidavit is not required to be notarized.

e) An affidavit may be accepted on behalf of a child under the age of 18 in instances when school ID cards and drivers' licenses are not available to the individual until that age.

j) Special identity rules for disabled individuals in institutional care facilities.

i) An affidavit may be used for disabled individuals in institutional care facilities if the following requirements are met:

1) It shall be signed under penalty of perjury by a residential care facility director or administrator on behalf of an institutionalized individual in the facility; and

2) No other evidence of identity is available to the individual.

3) The affidavit is not required to be notarized.

k) Expired identity documents.

i) Identity documents do not need to be current to be acceptable. An expired identity document shall be accepted as long as there is no reason to believe that the document does not match the individual.

l) Referrals for Colorado Identification Cards

i) An applicant or client who does not possess a Colorado driver’s license or identification card shall be referred to the Department of Revenue Division of Motor Vehicles by the county department to obtain an identification card at no charge, pursuant to C.R.S. § 42-2-306(1)(a)(II).

ii) The referral shall be provided on county department letterhead and shall include the following:

1) The name and address of the applicant or client;

2) A statement that the county department requests that the Department of Revenue Division of Motor Vehicles waive the identification card fee, pursuant to C.R.S § 42-2-306(1)(a)(II).; and

3) The name and contact telephone number for the county caseworker responsible for the referral.

iii) An applicant or client who has been referred to the Division of Motor Vehicles to obtain an identification card shall not be required to present a Colorado identification card to satisfy the identity documentation requirement at 8.100.3.H.3. The applicant or client shall have the right to use any of the documents listed under 8.100.3.H.3. to satisfy the identity documentation requirement.

4. Documentation Requirements

a. Citizenship and identity documents may be submitted as originals, certified copies, photocopies, facsimiles, scans or other copies.

b. Individuals who submitted notarized copies of citizenship and identity documents as part of an application or redetermination before January 1, 2008 shall not be required to submit originals or copies certified by the issuing agency for any application or redetermination processed on or after January 1, 2008.

c. All citizenship and identity documents shall be presumed to be genuine unless the authenticity of the document is questionable.

d. Individuals shall not be required to submit citizenship and identity documentation in person. Documents shall be accepted from a Medical Assistance applicant or client or from his or her guardian or authorized representative in person or by mail.

    i) Individuals are strongly encouraged to use alternatives to mailing original documents to counties, such as those described in 8.100.3.H.4.e.

e. Individuals may present original citizenship and identity documents or copies certified by the issuing agency to Medical Assistance (MA) sites, School-based Medical Assistance sites, Presumptive Eligibility (PE) sites, Federally Qualified Health Centers (FQHCs), Disproportionate Share Hospitals (DSHs), or any other location designated by the Department by published agency letter.

    i) Staff at these locations shall make a copy of the original documents and shall complete a “Citizenship and Identity Documentation Received” form, stamp the copy, or provide other verification that identifies that the documents presented were originals. The verification shall include the name, telephone number, organization name and address, and signature of the individual who reviewed the document(s). This form, stamp, or other verification shall be attached to or directly applied to the copy.

    ii) Upon request by the client or eligibility site, the copy of the original document with the “Citizenship and Identity Documentation Received” form, stamp, or other verification as described in 8.100.3.H.4.e. i) shall be mailed or delivered directly to the eligibility site within five business days.

f. Counties shall accept photocopies of citizenship and identity documents from any location described in 8.100.3.H.4.e provided the photocopies include the form, stamp, or verification described in 8.100.3.H.4.e.i).

g. Counties shall develop procedures for handling original citizenship and identity documents to ensure that these documents are not lost, damaged, or destroyed.

    i) Upon receiving the original documents, eligibility site staff shall make a copy of the original documents and shall complete a “Citizenship and Identity Documentation Received” form, stamp the copy, or provide other verification that identifies that the documents presented were originals, as described in 8.100.3.H.4.e. i). This form, stamp, or other verification shall be attached to or directly applied to the copy.

    ii) The original documents shall be sent by mail or returned to the individual in person within five business days of the date on which they were received.

    iii) To limit the risk of original documents being lost, damaged, or destroyed, counties are strongly encouraged to make copies of documents immediately upon receipt and to return original documents to the individual while he or she is present.

h. Once an individual has provided the required citizenship and identity documentation, he or she shall not be required to submit the documentation again unless:

i) Later evidence raises a question about the individual's citizenship or identity; or

ii) There is a gap of more than five years between the ending date of the individual's last period of eligibility and a subsequent application for The Medical Assistance Program and the eligibility site has not retained the citizenship and identity documentation the individual previously provided.

5. Record Retention Requirements

a. The eligibility site shall retain a paper or electronically scanned copy of an individual's citizenship and identity documentation, including any verification described in 8.100.3.H.4.e.i), for at least five years from the ending date of the individual's last period of Medical Assistance eligibility.

6. Name Change Provisions

a. An individual who has changed his or her last name for reasons including, but not limited to, marriage, divorce, or court order shall not be required to produce any additional documentation concerning the name change unless:

i) With the exception of the last name, the personal information in the citizenship and identity documentation provided by the individual does not match in every way;

ii) In addition to changing his or her last name, the individual also changed his or her first name and/or middle name; or

iii) There is a reasonable basis for questioning whether the citizenship and identity documents belong to the same individual.

7. Reasonable Level of Assistance

a. The eligibility site shall provide a reasonable level of assistance to applicants and clients in obtaining the required citizenship and identity documentation.

b. Examples of a reasonable level of assistance include, but are not limited to:

i) Providing contact information for the appropriate agencies that issue the required documents;

ii) Explaining the documentation requirements and how the client or applicant may provide the documentation; or

iii) Referring the applicant or client to other agencies or organizations which may be able to provide further assistance.

c. The eligibility site shall not be required to pay for the cost of obtaining required documentation.

8. Individuals Requiring Additional Assistance

a. The eligibility site shall provide additional assistance beyond the level described in 8.100.3.H.7 to applicants and clients in obtaining the required citizenship and identity documentation if the client or applicant:

i) Is unable to comply with the requirements due to physical or mental impairments or homelessness; and

ii) The individual lacks a guardian or representative who can provide assistance.

b. Examples of additional assistance include, but are not limited to:

i) Contacting any known family members who may have the required documentation;

ii) Contacting any known current or past health care providers who may have the required documentation; or

iii) Contacting other social services agencies that are known to have provided assistance to the individual.

c. The eligibility site shall document its efforts to provide additional assistance to the client or applicant. Such documentation shall be subject to the record retention requirements described in 8.100.3.H.5.a.

9. Reasonable Opportunity Period

a. If a Medical Assistance applicant does not have the required documentation, he or she must be given a reasonable opportunity period to provide the required documentation. The reasonable opportunity period will begin as of the date of the Notice of Action. The required documentation must be received within the reasonable opportunity period. If the applicant does not provide the required documentation within the reasonable opportunity period, then the applicant's Medical Assistance benefits shall not be terminated during the federal Coronavirus COVID-19 Public Health Emergency. Required documentation will be requested during the federal Coronavirus COVID-19 Public Health Emergency. When the federal COVID-19 Public Health Emergency has ended, a reasonable opportunity period will be given to request proper documentation from the member.

i) During the federal Coronavirus COVID-19 Public Health Emergency the Department will continue eligibility for all Medical Assistance categories, regardless of requested documentation and/or reported change for these individuals to ensure continuity of eligibility for Medical Assistance coverage.

b. The reasonable opportunity period is 90 calendar days and applies to MAGI, Adult, and Buy-In Programs:

i) For the purpose of this section only, MAGI Programs for persons covered pursuant to 8.100.4.G or 8.100.4.I, include the following:

Commonly Used Program Name	Rule Citation
Children’s Medical Assistance	8.100.4.G.2
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Adult Medical Assistance	8.100.4.G.4
Pregnant Women Medical Assistance	8.100.4.G.5
Transitional Medical Assistance	8.100.4.I.1-5

ii) For the purpose of this section only, Adult and Buy-In Programs for persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715 include the following:

Commonly Used Program Name	Rule Citation
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c
Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P
Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q
Breast and Cervical Cancer Program (BCCP)	8.715

10. Good Faith Effort

a. In some cases, a Medical Assistance client or applicant may not be able to obtain the required documentation within the applicable reasonable opportunity period. If the client or applicant is making a good faith effort to obtain the required documentation, then the reasonable opportunity period should be extended. The amount of time given should be determined on a case-by-case basis and should be based on the amount of time the individual needs to obtain the required documentation.

Examples of good faith effort include, but are not limited to:

i) Providing verbal or written statements describing the individual's effort at obtaining the required documentation;

ii) Providing copies of emails, letters, applications, checks, receipts, or other materials sent or received in connection with a request for documentation; or

iii) Providing verbal or written statements of the individuals' efforts at identifying people who could attest to the individual's citizenship or identity, if citizenship and/or identity are included in missing documentation.

An individual's verbal statement describing his or her efforts at securing the required documentation should be accepted without further verification unless the accuracy or truthfulness of the statement is questionable. The individual's good faith efforts should be documented in the case file and are subject to all record retention requirements.

8.100.3.I. Additional General Eligibility Requirements

1. Each person for whom Medical Assistance is being requested shall furnish a Social Security Number (SSN); or, if one has not been issued or is unknown, shall apply for the number and submit verification of the application, unless an exception below applies. The application for an SSN shall be documented in the case record by the eligibility site. Upon receipt of the assigned SSN, the client shall provide the number to the eligibility site. This requirement does not apply to those individuals who are not requesting Medical Assistance yet appear on the application, nor does it apply to individuals applying for emergency medical services or eligible newborns born to a Medical Assistance eligible mother.

a. An applicant's or client's refusal to furnish or apply for a Social Security Number affects the family's eligibility for assistance as follows:

i) that person cannot be determined eligible for the Medical Assistance Program; and/or

ii) if the person with no SSN or proof of application for SSN is the only dependent child on whose behalf assistance is requested or received, assistance shall be denied or terminated.

b. Exception: An individual who qualifies for any of the following exceptions must not be required to provide an SSN:

i.) The individual is not eligible to receive an SSN; or

ii) The individual does not have an SSN and may only be issued an SSN for a valid non-work reason in accordance with 20 CFR 422.104; or

iii) The individual refuses to obtain an SSN because of a well-established religious objection.

c. Due to the COVID-19 Public Health Emergency, the Department will accept self-attestations for SSN verification. At the end of the COVID-19 Public Health Emergency, verification for eligibility criteria will be required as specified prior to the public health emergency.

2. A person who is applying for or receiving Medical Assistance shall assign to the State all rights against any other person (including but not limited to the sponsor of an alien) for medical support or payments for medical expenses paid on the applicant's or client's behalf or on the behalf of any other person for whom application is made or assistance is received.

All appropriate clients of the Medical Assistance Program shall have the option to be referred for child support enforcement services using the form as specified by the Department.

3. A person who is applying for or receiving Medical Assistance shall provide information regarding any third party resources available to any member of the assistance unit. Third party resources are any health coverage or insurance other than the Medical Assistance Program. A client’s refusal to supply information regarding third party resources may result in loss of Medical Assistance Program eligibility.

4. A person who is eligible for Medical Assistance shall be free to choose any qualified and approved participating institution, agency, or person offering care and services which are benefits of the program unless that person is enrolled in a managed care program operating under Federal waiver authority.

8.100.3.J. Supplemental Security Income (SSI) And Aid To The Needy Disabled (AND) Recipients

1. Persons who may be eligible for benefits under either MAGI Medical Assistance or SSI:

a. shall be advised of the benefits available under each program;

b. may apply for a determination of eligibility under either or both programs;

c. have the option to receive benefits under the program of their choice, but may not receive benefits under both programs at the same time; and

d. may change their selection if their circumstances change or if they decide later that it would be more advantageous to receive benefits from the other program.

2. Any family member who is receiving financial assistance from SSI or OAP-A is not considered a member of the Medical Assistance required household, is not counted as a member of the household, and the individual's income and resources are disregarded in making the determination of need for Medical Assistance.

a. Exception: For MAGI Medical Assistance a family member who is receiving SSI, when appropriate can be counted as a member of the household and their income when appropriate can be considered in making the determination of eligibility for MAGI Medical Assistance. For treatment of income and household construction for MAGI Medical Assistance cases, see section 8.100.4.

3. An individual receiving Aid to the Needy Disabled (AND) may also receive MAGI Medical Assistance, if the recipient meets the eligibility requirements for MAGI Medical Assistance. For these individuals, eligibility sites shall not include the applicant's AND payment when calculating income to determine the household's financial eligibility for MAGI Medical Assistance.

8.100.3.K. Consideration of Income

1. Income or resources of an alien sponsor or an alien sponsor's spouse shall be countable to the sponsored alien effective December 19, 1997. Forms used prior to December 19, 1997, including but not limited to forms I-134 or I-136 are legally unenforceable affidavits of support. The attribution of the income and resources of the sponsor and the sponsor's spouse to the alien will continue until the alien becomes a U.S. citizen or has worked or can be credited with 40 qualifying quarters of work, provided that an alien crediting the quarters to the applicant/client has not received any public benefit during any creditable quarter for any period after December 31, 1996.

a. Exception: When the sponsored alien is a pregnant woman or a child the income or resources of an alien sponsor or an alien sponsor's spouse will not be countable to the sponsored alien.

2. Income, in general, is the receipt by an individual of a gain or benefit in cash or in kind during a calendar month. Income means any cash, payments, wages, in-kind receipt, inheritance, gift, prize, rents, dividends, interest, etc., that are received by an individual or family.

3. Earned income is payment in cash or in kind for services performed as an employee or from self-employment.

4. Earned in kind income shall be income produced as a result of the performance of services by the applicant/client, for which he/she is compensated in shelter or other items in lieu of wages.

5. Received means "actually" received or legally becomes available, whichever occurs first; the point at which the income first is available to the individual for use. For example, interest income on a savings account is counted when it is credited to the account.

6. All Home Care Allowance (HCA) income paid to a Medical Assistance applicant or member by the HCA recipient to provide home care services is countable earned income.

7. An applicant or member who is a live-In home care provider to a care recipient receiving a Difficulty of Care Payment and who is being determined for a MAGI Medical Assistance program, must meet the following requirements for Difficulty of Care payments to be excluded as countable income:

    a. The care provider receiving payments for personal care or supportive services provided to a care recipient must live full-time in the same home with the care recipient; and

    b. The care recipient must either

        i) receiving personal care or supportive services must be enrolled in Long Term Service Supports (LTSS), with additional services through a Home-Based Services (HCBS) waiver program; or

        ii) The care recipient must be enrolled in the Buy-In Program for Working Adults with Disabilities, and receive additional services through the Home and Community Based Services (HCBS) waiver program.

    c. Exception: Difficulty of Care Payments are not excluded if the payments are for more than 10 qualified foster individuals under the age of 19 or 5 qualified foster individuals who are over the age of 19

8. Participation in the Workforce Investment Act (WIA) affects eligibility for Medical Assistance as follows:

    a. Wages derived from participation in a program carried out under WIA (work experience or on-the-job training) and paid to a caretaker relative is considered countable earned income.

    b. Training allowances granted by WIA to a dependent child or a caretaker relative of a dependent child to participate in a training program is exempt.

    c. Wages derived from participation in a program carried out the under Workforce Investment Act (WIA) and paid to any dependent child who is applying for or receiving Medical Assistance are exempt in determining eligibility for a period not to exceed six months in each calendar year.

9. An individual involved in a profit-making activity as a sole proprietor, partner in a partnership, independent contractor, or consultant shall be classified as self-employed.

    a. To determine the net profit of a self-employed applicant/client deduct the cost of doing business from the gross income. These business expenses include, but are not limited to:

        i) the rent of business premises,

        ii) wholesale cost of merchandise,

        iii) utilities,

        iv) taxes,

        v) labor, and

        vi) upkeep of necessary equipment.

b. The following are not allowed as business expenses:

i) Depreciation of equipment;

1) Exception: For the purpose of calculating MAGI-based income, depreciation of equipment is an allowable business expense if the equipment is not used for capital improvements.

ii) The cost of and payment on the principal of loans for capital asset or durable goods;

iii) Personal expenses such as personal income tax payments, lunches, and transportation to and from work.

c. Appropriate allowances for cost of doing business for Medical Assistance clients who are licensed, certified or approved day care providers are (1) $ 55 for the first child for whom day care is provided, and (2) $ 22 for each additional child. If the client can document a cost of doing business which is greater than the amounts above set forth, the procedure described in A, shall be used.

d. When determining self-employment expenses and distinguishing personal expenses from business expenses it is a requirement to only allow the percentage of the expense that is business related.

10. Self-employment income includes, but is not limited to, the following:

a. Farm income - shall be considered as income in the month it is received. When an individual ceases to farm the land, the self-employment deductions are no longer allowable.

b. Rental income - shall be considered as self-employment income only if the Medical Assistance client actively manages the property at least an average of 20 hours per week.

c. Board (to provide a person with regular meals only) payment shall be considered earned income in the month received to the extent that the board payment exceeds the maximum food stamp allotment for one-person household per boarder and other documentable expenses directly related to the provision of board.

d. Room (to provide a person with lodging only) payments shall be considered earned income in the month received to the extent that the room payment exceeds documentable expenses directly related to the provision of the room.

e. Room and board payments shall be considered earned income in the month received to the extent that the payment for room and board exceeds the food stamp allotment for a one-person household per room and boarder and documentable expenses directly related to the provision of room and board.

11. Unearned income is the gross amount received in cash or kind that is not earned from employment or self-employment. Unearned income includes, but is not limited to, the following:

a. Pensions and other period payments, such as:

i) Private pensions or disability benefits

1) Exception: Refer to section 8.100.4 for treatment of private disability benefits for MAGI Medical Assistance.

ii) Social Security benefits (Retirement, survivors, and disability)

iii) Workers' Compensation payments

iv) Railroad retirement annuities

v) Unemployment insurance payments

vi) Veterans benefits other than Aid and Attendance (A&A) and Unusual Medical Expenses (UME).

vii) Alimony and support payments

viii) Interest, dividends and certain royalties on countable resources

12. For all Medical Assistance categories, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and American Rescue Plan (ARP) Act Recovery Rebate, known as the COVID-19 Economic Stimulus, shall be exempt from consideration as income.

13. Federal Pandemic Unemployment Compensation (FPUC) program, which provides an extra $600.00 a week for qualifying individuals, is exempt as countable unearned income for all Medical Assistance categories.

8.100.3.L Consideration of Resources

Consideration of Resources

1. Resources are counted in determining eligibility for the Aged, Blind and Disabled, and Long-Term Care institutionalized and Home and Community Based Services categories of Medical Assistance. Resources are not counted in determining eligibility for the MAGI Medical Assistance programs, the Medicaid Buy-in Program for Working Adults with Disabilities, or the Medicaid Buy-In Program for Children with Disabilities, See section 8.100.5 for rules regarding consideration of resources.

2. The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and American Rescue Plan (ARP) Act Recovery Rebate known as COVID-19 Economic Stimulus, shall be an exempt resource for the first 12 months following the receipt of the Recovery Rebate, after which the remaining balance will be considered a countable resource for all Medical Assistance categories which include an asset test.

8.100.3.M. Federal Financial Participation (FFP)

1. The state is entitled to claim federal financial participation (FFP) for benefits paid on behalf of groups covered under the Colorado Medical Assistance Program and also for the Medicare supplementary medical insurance benefits (SMIB) premium payments made on behalf of certain groups of categorically needy persons.

2. The SISC codes are as follows:

a. Code A - for institutionalized persons whose income is under 300% of the SSI benefit level and who, except for the level of their income, would be eligible for an SSI payment; and non-institutionalized persons receiving Home and Community Based Services,

whose income does not exceed 300% of the SSI benefit level and who, except for the level of their income, would be eligible for an SSI payment; code A signifies that FFP is available in expenditures for medical care and services which are benefits of the Medical Assistance program but not for SMIB premium payments;

b. Code B - for persons eligible to receive financial assistance under SSI; persons eligible to receive financial assistance under OAP “A” who, except for the level of their income, would be eligible for an SSI payment; persons who are receiving mandatory State supplementary payments; and persons who continue to be eligible for Medical Assistance after disregarding certain Social Security increases; code B signifies that FFP is available in expenditures for medical care and services which are benefits of the Medical Assistance program and also for SMIB premium payments;

c. Code C - for persons eligible to receive assistance under OAP “A”, OAP “B”, or OAP Refugee Assistance for financial assistance only; who do not receive SSI payment and do not otherwise qualify under SISC code B as described in item B. above; code C signifies that no FFP is available in Medical Assistance program expenditures.

d. Code D1 – for persons eligible to receive assistance under AwDC from program implementation through 12/31/2013; Code D1 signifies 50% FFP is available in expenditures for medical care and services which are benefits of the Medical Assistance program.

e. Code E1 - for persons eligible to receive assistance under the Medicaid Buy-In Program for Working Adults with Disabilities and whose annual adjusted gross income, as defined under IRS statute, is less than or equal to 450% of FPL – after SSI earned income deductions; as well as for children eligible to receive assistance under the Medicaid Buy-In Program for Children with Disabilities and whose household income is less than or equal to 300% of FPL after income disregards. Code E1 signifies that FFP is available in expenditures for medical care and services which are benefits of the Medical Assistance program but not for SMIB premium payments.

3. Recipients of financial assistance under State AND, State AB, or OAP “C” are not automatically eligible for Medical Assistance and the SISC code which shall be entered on the eligibility reporting form is C.

8.100.3.N. Confidentiality

1. All information obtained by the eligibility site concerning an applicant for or a recipient of Medical Assistance is confidential information.

2. A signature on the Single Streamlined Application and the Application for Public Assistance allows an eligibility site worker to consult banks, employers, or any other agency or person to obtain information or verification to determine eligibility. The identification of the worker as an eligibility site employee will, in itself, disclose that an application for the Medical Assistance Program has been made by an individual. In this type of contact, as well as other community contacts, the eligibility site should strive to maintain confidentiality. The signature on the Single Streamlined Application and the Application for Public Assistance also provides permission for the release of the client's medical information to be provided by health care providers to the State and its agents for purpose of administration of the Medical Assistance Program.

3. Eligibility site staff may release a client's Medical Assistance state identification number and approval eligibility spans to a Medical Assistance provider for billing purposes.

Eligibility site staff may inform a Medical Assistance provider that an application has been denied but may not inform them of the reason why.

4. Access to information concerning applicants or recipients must be restricted to persons or agency representatives who are subject to standards of confidentiality that are comparable to those of the State and the eligibility site.

5. The eligibility site must obtain permission from a family, individual, or authorized representative, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of Medical Assistance payment. This permission must be obtained unless the request is from State authorities, federal authorities, or State contractors acting within the scope of their contract. If, because of an emergency situation, time does not permit obtaining consent before release, the eligibility site must notify the family or individual immediately after supplying the information.

6. The eligibility site policies must apply to all requests for information from outside sources, including government bodies, the courts, or law enforcement officials. If a court issues a subpoena for a case record or for any eligibility site representative to testify concerning an applicant or recipient, the eligibility site must inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

7. The following types of information are confidential and shall be safeguarded:

    a. Names and addresses of applicants for and recipients of the Medical Assistance Program;

    b. Medical services provided;

    c. Social and economic conditions or circumstances;

    d. Agency evaluation of personal information;

    e. Medical data, including diagnosis and past history of disease or disability;

    f. All information obtained through the Income and Eligibility Verification System (IEVS), Colorado Department of Labor and Employment, SSA or Internal Revenue Service;

    g. Any information received in connection with identification of legally liable third party resources;

    h. Any information received for verifying income and resources if applicable, or other eligibility and the amount of Medical Assistance payments;

    i. Social Security Numbers.

8. The confidential information listed above may be released to persons outside the eligibility site only as follows:

    a. In response to a valid subpoena or court order;

    b. To State or Federal auditors, investigators or others designated by the Federal or State departments on a need-to-know basis;

    c. To individuals executing Income and Eligibility Verification System;

d. Child Support enforcement officials;

e. To a recipient or applicant themselves or their designated representative.

f. To a Long Term Care institution on the AP-5615 form.

9. The applicant/recipient may give a formal written release for disclosure of information to other agencies, such as hospitals, or the permission may be implied by the action of the other agency in rendering service to the client. Before information is released, the eligibility site should be reasonably certain the confidential nature of information will be preserved, the information will be used only for purposes related to the function of the inquiring agency, and the standards of protection established by the inquiring agency are equal to those established by the State Department. If the standards for protection of information are unknown, a written consent from the recipient shall be obtained.

8.100.3.O. Protection Against Discrimination

1. Eligibility sites are to administer the Medical Assistance Program in such a manner that no person will, on the basis of race, color, sex, age, religion, political belief, national origin, or handicap, be excluded from participation, be denied any aid, care, services, or other benefits of, or be otherwise subjected to discrimination in such program.

2. The eligibility site shall not, directly or through contractual or other arrangements, on the grounds of race, color, sex, age, religion, political belief, national origin, or handicap:

   a. Provide aid, care, services, or other benefits to an individual which is different, or provided in a different manner, from that of others;

   b. Subject an individual to segregation barriers or separate treatment in any manner related to access to or receipt of assistance, care services, or other benefits;

   c. Restrict an individual in any way in the enjoyment or any advantage or privilege enjoyed by others receiving aid, care, services, or other benefits provided under the Medical Assistance Program;

   d. Treat an individual differently from others in determining whether he/she satisfies any eligibility or other requirements or conditions which individuals shall meet in order to receive aid, care, services, or other benefits provided under the Medical Assistance Programs;

   e. Deny an individual an opportunity to participate in programs of assistance through the provision of services or otherwise, or afford him/her an opportunity to do so which is different from that afforded others under the Medical Assistance Program.

3. No distinction on the grounds of race, color, sex, age, religion, political belief, national origin, or handicap is permitted in relation to the use of physical facilities, intake and application procedures, caseload assignments, determination of eligibility, and the amount and type of benefits extended by the eligibility site to Medical Assistance recipients.

4. An individual who believes he/she is being discriminated against may file a complaint with the eligibility site, the Department, or directly with the Federal government. When a complaint is filed with the eligibility site, the county director is responsible for an immediate investigation of the matter and taking necessary corrective action to eliminate any discriminatory activities found. If such activities are not found, the individual is given an explanation. If the person is not satisfied, he/she is requested to direct his/her complaint, in writing, to the State Department, Complaint

Section, which will be responsible for further investigation and other necessary action consistent with the provisions of Title VI of the 1963 Civil Rights Act, as amended 42 U.S.C. §2000e et seq. and section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. §791.

8.100.3.P. Redetermination of Eligibility

1. A redetermination of eligibility shall mean a case review and necessary verification to determine whether the Medical Assistance Program client continues to be eligible to receive Medical Assistance. Beginning as of the case approval date, a redetermination shall be accomplished each 12 months for Title XIX Medical Assistance only cases. An eligibility site may redetermine eligibility through telephone, mail, or electronic means. The use of telephone or electronic redeterminations should be noted in the case record and in CBMS case comments.

2. The eligibility site shall promptly redetermine eligibility when:

    a. it receives and verifies information which indicates a change in a client's circumstances which may affect continued eligibility for Medical Assistance; or

    b. it receives direction to do so from the Department.

    The eligibility site shall redetermine eligibility according to timelines defined by the Department.

3. A redetermination form is not required to be sent to the client if all current eligibility requirements can be verified by reviewing information from another assistance program, verification system, and/or CBMS. When applicable, the eligibility site shall redetermine eligibility based solely on information already available. If verification or information is available for any of the three months prior to redetermination month, no request shall be made of the client and a notice of the findings of the review will go to the client. If not all verification or information is available, the eligibility site shall only request the additional minimum verification from the client. This procedure is referenced as Ex Parte Review.

4. A redetermination form, approved by the Department, shall be mailed to the person at least 30 days prior to the first of the month in which completion of eligibility redetermination is due. The redetermination form shall be used to inform the client of the redetermination and verification needed, but the form itself cannot be required to be returned. The only verification that can be required at redetermination is the minimum verification needed to complete a redetermination of eligibility.

    The redetermination form shall direct clients to review current information and to take no action if there are no changes to report in the household. Eligibility sites and CBMS shall view the absence of reported changes from the client at this redetermination period as confirmation that there have been no changes in the household. This procedure is referenced as automatic reenrollment.

    The following procedures relate to mail-out redetermination:

    a. A Redetermination Form shall be mailed to the client together with any other forms to be completed;

    b. Required verification shall be returned by the client to the eligibility site no later than ten working days after receipt of request;

    c. When the individual is unable to complete the forms due to physical, mental or emotional disabilities, or other good cause, and has no one to help him/her, the eligibility site shall either assist the client or refer him/her to a legal or other resource. When initial

arrangements or a change in arrangements are being made, an extension of up to thirty days shall be allowed. The action of the eligibility site in assistance or referral shall be recorded in the case record and CBMS case comments.

d. The redetermination form shall require that a recipient and community spouse of a recipient of HCBS, PACE or institutional services disclose a description of any interest the individual or community spouse has in an annuity or similar financial instrument regardless of whether the annuity is irrevocable or treated as an asset. The redetermination form shall include a statement that the Department shall be a remainder beneficiary for any annuity or similar financial instrument purchased on or after February 8, 2006 for the total amount of Medical Assistance provided to the individual.

e. The eligibility site shall notify in writing the issuer of any annuity or financial instrument that the Department is a preferred remainder beneficiary in the annuity or similar financial instrument for the total amount of Medical Assistance provided to the individual. This notice shall require the issuer to notify the eligibility site when there is a change in the amount of income or principal that is being withdrawn from the annuity.

5. When the redetermination verification information is received by the eligibility site, it shall be date stamped. Within ten working days, the verification information shall be thoroughly reviewed for completeness, accuracy, and consistency. All factors shall be evaluated as to their effect on eligibility at that time. Verifications shall be documented in the case file and CBMS case comments. The case file shall be used as a checklist in the redetermination process, and shall be used to keep track of matters requiring further action. When additional information is needed:

a. due to incomplete information, the request form shall be mailed back to the client with a letter specifying the items that require completion;

b. due to incomplete, inaccurate or inconsistent data, the Medical Assistance client shall be contacted by telephone or in writing so that the worker may secure the proper information according to timelines defined by the Department.

6. Due to the federal Coronavirus COVID-19 Public Health Emergency, the Department will continue eligibility for all Medical Assistance categories, regardless of a redetermination and/or reported change for these individuals to ensure continuity of eligibility for Medical Assistance coverage.

8.100.3.Q. Continuous Eligibility (CE) for Medical Assistance programs

1. Continuous eligibility applies to children under age 19, who through an eligibility determination, reassessment or redetermination, are found eligible for a Medical Assistance program. The continuous eligibility period may last for up to 12 months.

a. The continuous eligibility period applies without regard to changes in income or other factors that would otherwise cause the child to be ineligible.

i) A 14-day no fault period shall begin on the date the child is determined eligible for Medical Assistance. During the 14-day period, any changes to income or other factors made to the child's case during the 14-day no fault period may change his or her eligibility for Medical Assistance.

b. Exception: A child's continuous eligibility period will end effective the earliest possible month if any of the following occur:

i) Child is deceased

ii) Becomes an inmate of a public institution

iii) The child is no longer part of the Medical Assistance required household

iv) Is no longer a Colorado resident

v) Is unable to be located based on evidence or reasonable assumption

vi) Requests to be withdrawn from continuous eligibility

vii) Fails to provide documentation during a reasonable opportunity period as specified in section 8.100.3.H.9

viii) Fails to provide a reasonable explanation or paper documentation when self-attested income is not reasonably compatible with income information from an electronic data source, by the end of the 90-day reasonable opportunity period. This exception only applies the first-time income is verified following an initial eligibility determination or an annual redetermination.

2. The continuous eligibility period will begin on the first day of the month the application is received or from the date all criteria is met. Continuous eligibility is applicable to children enrolled in the following Medical Assistance programs:

a. MAGI-Medical Assistance, program as specified in section 8.100.4.G.2

b. SSI Mandatory, as specified in section 8.100.6.C

i.) When a child is no longer eligible for SSI Mandatory they will be categorized as eligible within the MAGI-Child category for the remainder of the eligibility period.

c. Long- Term Care services

i.) When a child is no longer eligible for Long-Term Care services they will be categorized as eligible within the MAGI- Child category for the remainder of the eligibility period.

d. Medicaid Buy-In program specified in section 8.100.6.Q

i) Exception: Enrollment will be discontinued if there is a failure to pay premiums

e. Pickle

f. Disabled Adult Child DAC)

3. Children, under the age of 19, no longer enrolled in Foster Care Medicaid will be eligible for the MAGI-Medical Assistance program. The continuous eligibility period will begin the month the child is no longer enrolled in Foster Care Medicaid as long as they meet one of the following conditions:

a. Begin living with other Relatives

b. Are reunited with Parents

c. Have received guardianship

8.100.4 MAGI Medical Assistance Eligibility [Eff. 01/01/2014]

8.100.4.A. MAGI Application Requirements

1. Persons requesting a MAGI Medical Assistance category need only to complete the Single Streamlined Application.

2. Parents and Caretaker Relatives, Pregnant Women, Children, and Adults may apply for Medical Assistance at sites other than the County Department of Social Services, including eligibility sites and Certified Application Assistance Sites (CAAS). The Department shall approve these sites to receive and initially process these applications. The application used shall be the Single Streamlined Application. The eligibility site shall determine eligibility.

3. The eligibility sites shall refer Medical Assistance clients who are pregnant and/or age 20 and under to EPSDT offices (designated by the Department) by:

    a. Copying the page of the Single Streamlined Application that includes the EPSDT benefit questions. The eligibility site will then forward this page to the EPSDT office within five working days from the date of application approval; or by:

    b. Means of secure, electronic data transfer approved by the Department

8.100.4.B. MAGI Category Verification Requirements

1. Minimal Verification – At minimum, applicants seeking Medical Assistance shall provide all of the following:

    a. Social Security Number: Each individual requesting assistance on the application shall provide a Social Security Number (SSN), or each shall submit proof of an application to obtain an SSN, unless they qualify for an exception listed in 8.100.3.I.1.b. Individuals who qualify for an exception must not be required to provide an SSN.

        i) Due to the COVID-19 Public Health Emergency, at the time of application, self-attestation is acceptable for SSN criteria, with the exception of verification of citizenship and immigration status. At the end of the federally declared COVID-19 Public Health Emergency, verification for SSN eligibility criteria will be required.

            1)Applicants who meet the criteria for any categorical Medical Assistance programs, but do not meet federal and state citizenship and immigration status requirements, are only eligible to receive emergency medical services.

    b. Verification of citizenship and identity as outlined in section 8.100.3.H under Citizenship and Identity Documentation Requirements.

    c. Earned Income: Income shall be self-attested by an applicant and verified through an electronic data source. Individuals who provide self-attestation of income must also provide a Social Security Number for wage verification purposes.

        If earned income is not or cannot be self-attested, it shall be verified by wage stubs, tax documents, written documentation from the employer stating the employee's gross income or a telephone call to an employer. Applicants may request that communication with their employers be made in writing.

Estimated earned income shall be used to determine eligibility if the applicant/client provides less than a full calendar month of wage stubs for the application month. A single recent wage stub shall be sufficient if the applicant's income is expected to be the same amount for the month of application. Verification of earned income received during the month prior to the month of application shall be acceptable if the application month verification is not yet available. Actual earned income shall be used to determine eligibility if the client provides verification for the full calendar month.

Due to the Coronavirus COVID -19 Public Health Emergency, the Department will not take action on any electronic interfaces that notify that the individual's income has changed for all Medical Assistance programs in which the individual is currently enrolled. The Department will take action and require documentation from the individual once the federal emergency declaration has concluded.

d. Unearned income: Unearned income can be self-attested by an applicant. Certain types of unearned income, such as unemployment and survivor benefits may be verified through electronic data sources. Due to the Coronavirus COVID -19 Public Health Emergency, the Department will not take action on any electronic interfaces that notify that the individual's income has changed for all Medical Assistance programs in which the individual is currently enrolled. The Department will take action and require documentation from the individual once the federal emergency declaration has concluded, for all people whose eligibility was maintained during the emergency declaration, for these individuals to maintain eligibility.

e. Verification of Legal Immigrant Status: Immigration status can be self-declared by an applicant applying for Medical Assistance, to determine eligibility for full Medical Assistance benefits. This declaration of legal immigration status will be verified through the Verify Lawful Presence (VLP) interface. The VLP interface connects to the Systematic Alien Verification for Entitlements (SAVE) program to verify legal immigration status. See section 8.100.3.G for a description of the VLP interface. If status cannot be verified, or if the applicant does not provide the necessary documents within the reasonable opportunity period, then the applicant's Medical Assistance application shall be terminated.

2. Additional Verification: No other verification shall be required of the client unless information is found to be questionable on the basis of fact.

3. The determination that information is questionable shall be documented in the applicant's case file and CBMS case comments.

4. Information that exists in another case record or in CBMS shall be used by the eligibility site to verify those factors that are not subject to change, if the information is reasonably accessible.

5. The criteria of age and relationship can be declared by the client unless questionable. If questionable, these criteria can be established with information provided from:

   a. official papers such as: a birth certificate, order of adoption, marriage license, immigration or naturalization papers; or

   b. records or statements from sources such as: a court, school, government agency, hospital, or physician.

6. Establishing that a dependent child meets the eligibility criteria of:

a. age, if questionable requires (1) viewing the birth certificate or comparably reliable document at eligibility site discretion, and (2) documenting the source of verification in the case file and CBMS case comments;

b. living in the home of the caretaker relative, if questionable requires (1) viewing the appropriate documents which identify the relationship, (2) documenting these sources of verification in the case file and CBMS case comments.

8.100.4.C. MAGI Methodology for Income Calculation

1. For an in depth treatment of gross income, refer to 26 U.S.C. § 61, which is hereby incorporated by reference. The incorporation of 26 U.S.C. § 61 (2014) excludes later amendments to, or editions of, the referenced material. Pursuant to § 24-4-103(12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver CO 80203. Certified copies of incorporated materials are provided at cost upon request. Except as otherwise provided, pursuant to 26 U.S.C. § 61 gross income means all income from all derived sources, The Modified Adjusted Gross Income calculation for the purposes of determining a household's financial eligibility for Medical Assistance shall consist of, but is not limited to, the following:

   a. Earned Income:

      i) Wages, salaries, tips;

      ii) Gross income derived from business;

      iii) Gains derived from dealings in property;

      iv) Distributive share of partnership gross income (not a limited partner);

      v) Compensation for services, including fees, commissions, fringe benefits and similar items; and

      vi) Taxable private disability income.

   b. Unearned Income:

      i) Interest (includes tax exempt interest);

      ii) Rents;

      iii) Royalties;

      iv) Dividends;

      v) Alimony received counts as unearned income if the divorce or legal separation is executed on or before December 31, 2018. Alimony received will not be countable income if the divorce or legal separation is modified or executed on or after January 1, 2019;

      vi) Pensions and annuities;

      vii) Income from life insurance and endowment contracts;

viii) Income from discharge of indebtedness;

ix) Income in respect of a decedent;

x) Income from an interest in an estate or trust;

xi) Social Security (SSA) income; and

xii) Distributive share of partnership gross income (limited partner).

c. Additional Income: In addition to the types of income identified in section 8.100.4.C.1.a-b., the following income is included in the MAGI calculation.

i) Any tax exempt interest income.

ii) Untaxed foreign wages and salaries.

iii) Social Security Title II Benefits (Old Age, Disability and Survivor's benefits).

d. The following are Income exclusions:

i) An amount received as a lump sum is counted as income only in the month received;

ii) Scholarships, awards, or fellowship grants used for educational purposes and not for living expenses;

iii) Child support received;

iv) Worker's Compensation;

v) Supplemental Security Income (SSI);

vi) Veteran's Benefits;

vii) The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and the American Rescue Plan (ARP) Act Recovery Rebate, also known as the COVID-19 Economic Stimulus, shall be exempt from consideration as income.

viii) Federal Pandemic Unemployment Compensation (FPUC) program, which provides an extra $600.00 a week for qualified individuals, is exempt as countable unearned income.

ix) American Indian/Alaskan Native income exceptions listed at 42 C.F.R. § 435.603(e) (2012) is hereby incorporated by reference. The incorporation of 42 C.F.R. § 435.603(e) (2012) excludes later amendments to, or editions of, the referenced material. Pursuant to § 24-4-103(12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

e. Allowable Deductions: For an in-depth treatment of allowable deductions from gross income, please refer to 26 U.S.C. 62, which is hereby incorporated by reference. The incorporation of 26 U.S.C. 62 (2014) excludes later amendments to, or editions of, the

referenced material. Pursuant to § 24-4-103(12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver CO 80203. Certified copies of incorporated materials are provided at cost upon request.

The following deductions can be subtracted from an individual's taxable gross income, in order to calculate the Adjusted Gross Income (AGI) including (but not limited to):

i) Student loan interest deductions;

ii) Certain Self- employment expenses SEP, SIMPLE and qualified plans, and health insurance deductions;

iii) Deductible part of self-employment tax;

iv) Health savings account deduction;

v) Certain business expenses of reservists, performing artist, and fee-basis government officials;

vi) Reimbursed expenses of employees;

vii) Moving expenses for active duty military who are moving due to a permanent change of station;

viii) IRA deduction: Regular Individual Retirement Account (IRA) contributions claimed on a federal income tax return and which does not exceed the IRA contributions limits;

ix) Penalty on early withdrawal of savings;

x) Domestic production activities deduction;

xi) Alimony paid can be deducted only if the divorce or legal separation is executed on or before December 31, 2018. It cannot be deducted if the divorce or separation is modified or executed on or after January 1, 20019. ;

xii) Certain educator expenses; and

xiii) Certain pre-tax contributions.

f. Income of children and tax dependents:

i) The income of a child who is included in the household of their natural, adopted, or step parent will not be included in the household income unless that child has income above the tax filing threshold..

1) Income from Title II Social Security benefits and Tier I Railroad benefits are excluded when determining if a child is required to file taxes.

ii) The income of a person, other than a child or spouse, who expects to be claimed as a tax dependent will not be included in the household income of the taxpayer unless that tax dependent has income above the tax filing threshold.

1) Income from Title II Social Security benefits and Tier I Railroad benefits are excluded when determining if a tax dependent is required to file taxes.

ii) The income of a child or tax dependent who does not live with their natural, adopted, or step parent will always count towards the determination of their own eligibility, even if the child's or tax dependent's income is below the tax filing threshold.

2. Income verifications: When discrepancies arise between self-attested income and electronic data source results, the applicant shall receive every reasonable opportunity to establish his/her financial eligibility through the test for reasonable compatibility, by providing a reasonable explanation of the discrepancy, or by providing paper documentation in accordance with this section. For Reasonable Opportunity Period please see section 8.100.3.H.9.

a. Income information obtained through an electronic data source shall be considered reasonably compatible with income information provided by or on behalf of an applicant in the following circumstances:

i) If the amount attested by the applicant and the amount reported by an electronic data source are both below the applicable income standard for the requested program, that income shall be determined reasonably compatible and the applicant shall be determined eligible.

ii) If the amount attested by the applicant is below the applicable income standard for that program, but the amount reported by the electronic data source is above, and the difference is within the reasonable compatibility threshold percentage of 20%, the income shall be determined reasonably compatible and the applicant shall be determined eligible.

iii) If both amounts are above the applicable income standard for that program, the income shall be determined reasonably compatible, and the applicant shall continue to be determined eligible during the federal Coronavirus COVID-19 Public Health Emergency.

b. If income information provided by or on behalf of an applicant is not determined reasonably compatible with income information obtained through an electronic data source, a reasonable explanation of the discrepancy shall be requested during the federal Coronavirus COVID-19 Public Health Emergency. If the applicant does not provide the required documentation within the reasonable opportunity period, then the applicant's Medical Assistance benefits shall not be terminated during the federal Coronavirus COVID-19 Public Health Emergency. When the federal COVID-19 Public Health Emergency has ended, a reasonable opportunity period will be given to request proper documentation from the member.

i) During the federal Coronavirus COVID-19 Public Health Emergency the Department may request paper documentation when the Department does not find income to be reasonably compatible. If the member does or does not provide paper documentation they will remain eligible during the public health emergency period.

3. Self-Employment – If the applicant is self-employed the ledger included in the Single Streamlined Application shall be sufficient verification of earnings, unless questionable.

4. Budget Periods for MAGI-based Income determination – The financial eligibility of applicants for Medical Assistance shall be determined based on current or previous monthly household income and family size.

    a. Applicants who are found financially ineligible based on current or previous monthly household income and family size, and whose household has earned income from self-employment, seasonal employment, and/or commission-based employment, shall have their financial eligibility determined using annualized self-employment, seasonal employment, and commission-based employment income.

5. If an applicant does not meet the financial eligibility requirements for Medical Assistance based on MAGI, but meets all other eligibility requirements, the applicant shall be found eligible for MAGI Medical Assistance if the applicant's income, as calculated using the methodology for determining eligibility for Advanced Premium Tax Credits or Cost Sharing Reductions through the marketplace, is below 100% of the federal poverty level.

8.100.4.D. Income Disregard

1. An income disregard equivalent to five percentage points of the Federal Poverty Level for the applicable family size will be subtracted from MAGI-based income.

    a. If an individual's MAGI-based countable income is above the income threshold for the applicable MAGI program under title XIX (Medicaid) or title XXI (CHP+) of the Social Security Act, the five percent (5%) disregard will be applied for each qualifying MAGI program as the last step to determine eligibility.

    b. If the countable income is below the income threshold for the applicable MAGI program, the individual is income eligible and the five percent (5%) disregard will not be applied to determine eligibility.

8.100.4.E. Determining MAGI Household Composition.

1. MAGI household composition is similar to, but not necessarily the same as a tax household. To determine MAGI household composition, the individual's relationship to the tax filer must be established as declared on the Single Streamlined Application.

    a. In the case of an applicant who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and does not expect to be claimed as a tax dependent by anyone else, then the applicant's MAGI household shall consist of the following:

        i) The Tax-Filer;

        ii) The Tax-Filer's spouse if living in the home;

        iii) All persons whom the Tax-Filer expects to claim as a tax dependent on their personal income tax return

    b. In the case of an applicant who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the applicant's MAGI household shall be:

        i) The Tax Dependent;

        ii) The Tax-Filer and their spouse if living in the home;

iii) The Tax-Filer's other tax dependents;

iv) The Tax Dependent's spouse, if living with the Tax Dependent.

c. The MAGI household of an applicant who expects to be claimed as a tax dependent is as outlined in 8.100.4.E.b above, except in the following circumstances:

i) The applicant expects to be claimed as a tax dependent by someone other than a spouse, biological, adoptive or step parent.

ii) The applicant is a child under 19 who is expected to be claimed by one parent as a tax dependent and is living with both parents, but the parents do not expect to file a joint tax return.

iii) The applicant is a child under 19 and who expects to be claimed as a tax dependent by anon-custodial parent.

d. If the applicant meets one of the exceptions in 8.100.4.E.c above or is a non-filer, household composition shall be determined using the following non-filer rules and the applicant's household shall consist of the following:

i) The applicant;

ii) The applicant's spouse who lives in the household;

iii) The applicant's natural, adopted, and step children under the age of 19, who live in the household; and

iv) In the case of applicants under the age of 19, the applicant's natural, adoptive, and step parents and natural, adoptive, and step siblings under age 19, who live in the household.

2. When a household includes a pregnant woman, regardless of the Medical Assistance category, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

3. Married couples living together will each be included in the other's MAGI household regardless of whether or not they expect to file taxes jointly, separately or if one expects to be claimed as a tax dependent of the other.

4. If a child is claimed as a tax dependent by both parents who are married and who will file taxes jointly but one parent lives outside of the household due to separation or pending divorce, the child's household composition is determined by non-filer rules. The parent living outside of the household will not be counted as part of the household.

5. An individual who is both a tax dependent and a tax filer will be considered a tax dependent for the purpose of determining eligibility for Medical Assistance.

8.100.4.F. MAGI Category Presumptive Eligibility

1. A pregnant applicant may apply for presumptive eligibility for ambulatory services through Medical Assistance presumptive eligibility sites. A child under the age of 19may apply or have an adult apply on their behalf for presumptive eligibility for State Plan approved medical services through presumptive eligibility sites.

2. To be eligible for presumptive eligibility:

a. a pregnant woman shall have an attested pregnancy, declare that her household's income shall not exceed 185% of the federal poverty level (MAGI-equivalent) and declare that she is a United States citizen or a documented immigrant. Refer to the MAGI-Medicaid income guidelines chart available on the Department's website

b. a child under the age of 19 shall have a declared household income that does not exceed 133% of federal poverty level (MAGI-equivalent) and declare that the child is a United States citizen or a documented immigrant.

3. Presumptive eligibility sites shall be certified by the Department to make presumptive eligibility determinations. Sites shall be re-certified by the Department every 2 years to remain approved presumptive eligibility sites.

4. The presumptive eligibility site shall forward the application to the county within five business days.

5. The presumptive eligibility period begins on the date the applicant is determined eligible and ends with the earlier of:

a. The day an eligibility determination for Medical Assistance is made for the applicant(s); or

b. The last day of the month following the month in which a determination for presumptive eligibility was made.

6. A presumptive eligible client may not appeal the end of a presumptive eligibility period.

7. Presumptively eligible women and Medical Assistance clients may appeal the county department's failure to act on an application within 45 days from date of application or the denial of an application. Appeal procedures are outlined in the State Hearings section of this volume.

8.100.4.G. MAGI Covered Groups

1. For MAGI Medical Assistance, any person who is determined to be eligible for Medical Assistance based on MAGI at any time during a calendar month shall be eligible for benefits during the entire month.

2. Children applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level (MAGI-equivalent) shall be determined financially eligible for Medical Assistance. Refer to the MAGI-Medicaid income guidelines chart available on the Department's website.

a. Children are eligible for Children's MAGI Medical Assistance through the end of the month in which they turn 19 years old. After turning 19, the individual may be eligible for a different Medical Assistance category.

3. Parents and Caretaker Relatives applying for Medical Assistance whose total household income does not exceed 60% of the federal poverty level (MAGI-equivalent) shall be determined financially eligible for Medical Assistance. Parents or Caretaker Relatives eligible for this category shall have a dependent child in the household.

a. A dependent child is considered to be living in the home of the parent or caretaker relative as long as the parent or specified relative exercises responsibility for the care and control of the child even if:

i) The child is under the jurisdiction of the court (for example, receiving probation services);

ii) Legal custody is held by an agency that does not have physical possession of the child;

iii) The child is in regular attendance at a school away from home;

iv) Either the child or the relative is away from the home to receive medical treatment;

v) Either the child or the relative is temporarily absent from the home;

vi) The child is in voluntary foster care placement for a period not expected to exceed three months. Should the foster care plan change within the three months and the placement become court ordered, the child is no longer considered to be living in the home as of the time the foster care plan is changed.

4. Adults applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level shall be determined financially eligible for Medical Assistance. This category includes adults who are parents or caretaker relatives of dependent children whose income exceeds the income threshold to qualify for the Parents and Caretaker Relatives MAGI category and who meet all other eligibility criteria.

   a. A dependent child living in the household of a parent or caretaker relative shall have minimum essential coverage, in order for the parent or caretaker relative to be eligible for Medical Assistance under this category. Refer to section 8.100.4.G.3.a on who is considered a dependent child.

   b. Due to the COVID-19 Public Health Emergency an applicant who is not eligible for Medical Assistance but has been impacted through exposure to or potential infection with COVID-19 may be eligible to receive services for COVID-19 testing only. To qualify for this limited benefit, the applicant must satisfy residency and immigration or citizenship status and not be enrolled in other health insurance.

5. Pregnant Women whose household income does not exceed 185% of the federal poverty level (MAGI-equivalent) are eligible for the Pregnant Women MAGI Medical Assistance program. Medical Assistance shall be provided to a pregnant woman for a period beginning with the date of application for Medical Assistance through the last day of the month following 60 days from the date the pregnancy ends. Once eligibility has been approved, Medical Assistance coverage will be provided regardless of changes in the woman's financial circumstances once the income verification requirements are met.

   a. A pregnant women’s eligibility period will end effective the earliest possible month, if the following occurs:

      i) Fails to provide a reasonable explanation or paper documentation when self-attested income is not reasonably compatible with income information from an electronic data source, by the end of the 90 day reasonable opportunity period. This exception only applies the first-time income is verified following an initial eligibility determination or an annual redetermination.

6. A lawfully admitted non-citizen who is pregnant and who has been in the United States for less than five years is eligible for Medical Assistance if she meets all of the other eligibility requirements specified at 8.100.4.G.5 and fits into one of the immigration categories listed in

8.100.3.G.1.g.iii.1-5 and 8.100.3.G.1.g.vi.1-15. This population is referenced as Legal Immigrant Prenatal.

7. A child whose mother is receiving Medical Assistance at the time of the child's birth is continuously eligible for one year. This population is referred to as “Eligible Needy Newborn”. This coverage also applies in instances where the mother received Medical Assistance to cover the child’s birth through retroactive Medical Assistance. The child is not required to live with the mother receiving Medical Assistance to qualify as an Eligible Needy Newborn.

    a. To receive Medical Assistance under this category, the birth must be reported verbally or in writing to the County Department of Human Services or eligibility site. Information provided shall include the baby’s name, date of birth, and mother’s name or Medical Assistance number. A newborn can be reported at any time by any person. Once reported, a newborn meeting the above criteria shall be added to the mother’s Medical Assistance case, or his or her own case if the newborn does not reside with the mother, according to timelines defined by the Department. If adopted, the newborn’s agent does not need to file an application or provide a Social Security Number or proof of application for a Social Security Number for the newborn

8.100.4.H. Needy Persons

1. Medical Assistance shall be provided to certain needy persons under 21 years of age, including the following:

    a. Those receiving care in a Long Term Care Institution eligible for Medical Assistance reimbursement or receiving active treatment as inpatients in a psychiatric facility eligible for Medical Assistance reimbursement and whose household income is less than the MAGI needs standard for his/her family size when the client applies for assistance. Clients that are receiving benefits under this category and are still receiving active inpatient treatment in the facility at age 21 shall be eligible to age 22. This population is referenced as Psych <21.

    b. Those for whom the Department of Human Services is assuming full or partial financial responsibility and who are in foster care, in homes or private institutions or in subsidized adoptive homes. A child shall be the responsibility of the county, even if the child may be in a medical institution at that time. See Colorado Department of Human Services “Social Services Staff Manual” section 7 for specific eligibility requirements (12 CCR § 2509-1). 12 CCR § 2509-1 (2013) is hereby incorporated by reference. The incorporation of 12 CCR § 2509-1 excludes later amendments to, or editions of, the referenced material. Pursuant to § 24-4-103(12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver CO 80203. Certified copies of incorporated materials are provided at cost upon request.

    c. Those for whom the Department of Human Services is assuming full or partial financial responsibility and who are in independent living situations subsequent to being in foster care.

    d. Those for whom the Department of Human Services is assuming full or partial responsibility and who are receiving services under the state’s Alternatives to Foster Care Program and would be in foster care except for this program and whose household income is less than the MAGI needs standard for his/her family size.

e. Those for whom the Department of Human Services is assuming full or partial responsibility and who are removed from their home either with or without (court ordered) parental consent, placed in the custody of the county and residing in a county approved foster home.

f. Those for whom the Department of Human Services is assuming full or partial responsibility and who are receiving services under the state's subsidized adoption program, including a clause in the subsidized adoption agreement to provide Medical Assistance for the child.

g. Those for whom the Department of Human Services is assuming full or partial financial responsibility on their 18th birthday or at the time of emancipation. These individuals also must have received foster care maintenance payments or subsidized adoption payments from the State of Colorado pursuant to article 7 of title 26, C.R.S. immediately prior to the date the individual attained 18 years of age or was emancipated. Eligibility shall be extended until the individual's 21st birthday for these individuals with the exception of those receiving subsidized adoption payments.

2. Medical Assistance shall be extended to certain needy persons until the end of the month of the individual's 26th birthday, including the following:

a. Those individuals that were formerly in foster care under the responsibility of the State or Tribe on their 18th, 19th, 20th or up to their 21st birthday and were receiving Medical Assistance.

i) This extension does not apply to youth that are receiving subsidized adoption payments or

ii) To youth that are enrolled in mandatory Medical Assistance.

b) Former Foster Care youth are not subject to either an income or resource test.

c) Former Foster Care youth's newborn shall be considered a needy newborn.

8.100.4.I. Transitional Medical Assistance and 4 Month Extended Medical Assistance

1. Eligibility for Transitional Medical Assistance shall be granted for twelve months (beginning with the first month of ineligibility) to individuals who are no longer eligible for the Parent/Caretaker Relative category due to a change in income.

The extension shall be applied to individuals who:

a. Were eligible for the Parent/Caretaker Relative category in at least three of the six months preceding the month in which the individual would have become ineligible, and

b. Are no longer eligible for coverage under the Parent/Caretaker Relative category because of new or increased income from employment or hours of employment

i) At least one Parent/Caretaker Relative must continue to be employed and cannot terminate employment without good cause. This does not need to be the same person for the whole period the family is receiving Transitional Medical Assistance.

2. Any dependent child or Parent/Caretaker Relative who was or becomes part of the Medical Assistance household after the individual has begun receiving Transitional Medical Assistance is eligible for the remaining months of Transitional Medical Assistance.

    a. A dependent child in the household who received Medical Assistance through continuous eligibility, but is no longer eligible for Medical Assistance based on a redetermination, is eligible for the family's remaining months of Transitional Medical Assistance.

    b. An individual in the household who received Medical Assistance, but is no longer eligible for Medical Assistance based on a redetermination, is eligible for the family's remaining months of Transitional Medical Assistance

3. To become or remain eligible for Transitional Medical Assistance:

    a. The household must include a dependent child. If it is determined that the household no longer has a child living in the home, Transitional Medicaid Assistance shall discontinue at the end of the month in which the household does not include a dependent child.

    b. If health insurance is available from the employer to the employee, at no cost to the Medical Assistance recipient, the client shall enroll in the insurance program.

4. When Transitional Medical Assistance ends the case will be reassessed for all other categories of Medical Assistance for which the family members may be eligible. A new application shall not be required for this process.

5. Eligibility for Medical Assistance shall be extended for four months (beginning with the first month of ineligibility) for certain families who become ineligible for Medical Assistance due solely or partially to the receipt of support income, such as alimony. The extension shall be applied for a family which receives assistance under Medical Assistance in at least three of the six months immediately preceding the month in which the family becomes ineligible for assistance. To be eligible for the four month Medical Assistance extension, the family shall meet all other eligibility criteria for Medical Assistance before the alimony income is applied.

    a. Alimony received will be countable income only if the divorce or legal separation is executed on or before December 31, 2018. Alimony will not be countable income if the divorce or legal separation is modified or executed on or after January 1, 2019.

8.100.4.J. Express Lane Eligibility

Express Lane Eligibility shall allow for automatic initiation of Medical Assistance enrollment by using available data and findings from other programs as listed below.

1. Free/Reduced Lunch Program

    a. Recipients of the Free/Reduced Lunch Program who have submitted a Free/Reduced Lunch application at a participating school district-

        i) Families shall be given the option to opt into Medical Assistance coverage for their potentially eligible child.

        ii) Children who meet all necessary eligibility requirements as outlined in this volume shall be automatically enrolled.

iii) Children who meet all necessary eligibility requirements except verification of U.S. citizenship and identity shall receive 90days of eligibility while awaiting this verification.

iv) Any additionally required verification shall be requested from the client through CBMS prior to being automatically enrolled.

v) Eligibility is based on income declared on the Free/Reduced Lunch application as well as eligibility requirements outlined in this volume.

vi) If it would be found that a child does not satisfy an eligibility requirement for Medical Assistance, the child's eligibility will be evaluated using the Single Streamlined Application for Medical Assistance.

b. Recipients of the Free/Reduced Lunch Program who were not required to submit a Free/Reduced Lunch application at a participating school district-

i) Families who are automatically enrolled Free/Reduced Lunch recipient children shall not be forwarded to the Department for Express Lane Eligibility in compliance USDA confidentiality guidelines.

ii) These families must apply for Medical Assistance in order to give consent for request of benefits.

2. Direct Certification

a. Individuals who have submitted a Food Assistance or Colorado Works application

i) Families shall be given the option to opt into Medical Assistance coverage for their potentially eligible child.

ii) Children who meet all necessary eligibility requirements as outlined throughout 8.100.4 shall be automatically enrolled

iii) Children who meet all necessary eligibility requirements except verification of U.S. citizenship and identity will receive 90 days of eligibility while awaiting this verification.

iv) Any additionally required verification shall be requested from the client through CBMS prior to being automatically enrolled.

v) Eligibility is based on income declared on the Food Assistance or Colorado Works application as well as eligibility requirements outlined throughout this volume.

vi) If it would be found that a child does not satisfy an eligibility requirement for Medical Assistance, the child's eligibility shall be evaluated using the Single Streamlined Application for Medical Assistance.

vii) Individuals whose eligibility is not determined through Express Lane Eligibility can also submit a separate Single Streamlined Application for Medical Assistance to determine eligibility.

8.100.5. Aged, Blind, and Disabled, Long Term Care, and Medicare Savings Plan Medical Assistance General Eligibility

8.100.5.A. Application Requirements

1. When an individual applies for Medical Assistance on the basis of disability or blindness, the eligibility sites shall take the application and determine whether the individual is eligible for Long Term Care or any of the Aged, Blind, and Disabled categories of assistance described in section 8.100.6. If the applicant does not qualify for Medical Assistance on one of those bases, he/she shall be referred to the local Social Security office to apply for SSI.

    a. Applicants who apply for Long-Term Care Medical Assistance on the basis of disability or blindness, or who apply for the Medicaid Buy-In Program for Working Adults with Disabilities or the Medicaid Buy-In Program for Children with Disabilities without a current disability determination, shall complete a Medical Assistance disability determination application in addition to the required Single Streamlined Application. The disability determination application is not required for individuals that have already been determined disabled by the Social Security Administration.

    b. The Medical Assistance disability determination application shall be collected by a designated eligibility site representative and shall be forwarded to the state disability determination contractor upon completion. The state disability determination contractor shall conduct a client disability determination and shall forward the determination to the designated eligibility site representative.

    c. For the Medicaid Buy-In Program for Working Adults with Disabilities, if an individual does not meet the Social Security Administration definition of disability, the state disability determination contractor can review the individual's circumstances to determine if the individual meets limited disability.

    d. Due to the Coronavirus COVID-19 Public Health Emergency, if a person's existing disability determination has expired, the person shall remain enrolled in Medical Assistance until the emergency has ended and the state has processed the verification of eligibility, unless the individual requests a voluntary termination of eligibility.

2. Persons requesting Aged, Blind, and Disabled Medical Assistance need only to complete the Single Streamlined Application.

8.100.5.B. Verification Requirements

1. The particular circumstances of an applicant will dictate the appropriate documentation needed for a complete application. The following items shall be verified for individuals applying for Medical Assistance:

    a. Social Security Number: Each individual requesting assistance on the application shall provide a Social Security Number (SSN), or each shall submit proof of an application to obtain an SSN, unless they qualify for an exception listed in 8.100.3.I.1.b. Individuals who qualify for an exception must not be required to provide an SSN.

        i) Due to the Coronavirus COVID-19 Public Health Emergency, at application, self-attestation is acceptable for SSN criteria, with the exception of verification of citizenship and immigration status. At the end of the COVID-19 Public Health Emergency, verification for SSN eligibility criteria will be required.

            1) Applicants who meet the criteria for any categorical Medical Assistance programs, but do not meet the federal and state criteria of citizenship and immigration status are only eligible to receive emergency medical services.

b. Verification of citizenship and identity as outlined in the section 8.100.3.H under Citizenship and Identity Documentation Requirements.

c. Earned income may be self-declared by an individual and verified by the Income and Eligibility Verification System (IEVS). Individuals who provide self-declaration of earned income must also provide a Social Security Number for wage verification purposes. If a discrepancy occurs between self-declared income and IEVS wage data reports, IEVS wage data will be used to determine eligibility. An individual may dispute IEVS wage data by submitting all wage verification for all months in which there is a wage discrepancy.

When discrepancies arise between self-attested income and electronic data source results, the applicant shall receive every reasonable opportunity to establish his/her financial eligibility through the test for reasonable compatibility, by providing a reasonable explanation of the discrepancy, or by providing paper documentation in accordance with this section. For Reasonable Opportunity Period please see section 8.100.3.H.9.

Income information obtained through an electronic data source shall be considered reasonably compatible with income information provided by or on behalf of an applicant in the following circumstances:

i) If the amount attested by the applicant and the amount reported by an electronic data source are both below the applicable income standard for the requested program, that income shall be determined reasonably compatible and the applicant shall be determined eligible.

ii) If the amount attested by the applicant is below the applicable income standard for that program, but the amount reported by the electronic data source is above, and the difference is within the reasonable compatibility threshold percentage of 20%, the income shall be determined reasonably compatible and the applicant shall be determined eligible.

iii) If both amounts are above the applicable income standard for that program, the income shall be determined reasonably compatible, and the applicant shall continue to be determined eligible during the federal Coronavirus COVID-19 Public Health Emergency.

If income information provided by or on behalf of an applicant is not determined reasonably compatible with income information obtained through an electronic data source, a reasonable explanation of the discrepancy will not be requested during the federal COVID-19 Public Health Emergency. If the applicant does not provide the required documentation within the reasonable opportunity period, then the applicant's Medical Assistance benefits shall not be terminated during the federal Coronavirus COVID-19 Public Health Emergency. When the federal Public Health Emergency has ended, a reasonable opportunity period will be given to request proper documentation from the member.

iv) During the federal Coronavirus COVID-19 Public Health Emergency the Department may request paper documentation when the Department does not find income to be reasonably compatible. If the member does or does not provide paper documentation they will remain eligible during the public health emergency period.

If the applicant is self-employed, ledgers are sufficient for verification of earnings, if a ledger is not available, receipts are acceptable. The ledger included in the Medical Assistance application is sufficient verification of earnings, unless questionable. If an

individual cannot provide verification through self-declaration, income shall be verified by wage stubs, written documentation from the employer stating the employees' gross income or a telephone call to an employer. Applicants may request that communication with their employers be made in writing.

As of CBMS implementation, estimated earned income shall be used to determine eligibility if the applicant/client provides less than a full calendar month of wage stubs for the application month. A single recent wage stub shall be sufficient if the applicant's income is expected to be the same amount for the month of application. Written documentation from the employer stating the employees' gross income or a telephone call to an employer, if the applicant authorizes the telephone call shall also be acceptable verification of earned income. Verification of earned income received during the month prior to the month of application shall be acceptable if the application month verification is not yet available. Actual earned income shall be used to determine eligibility if the client provides verification for the full calendar month.

v) During the federal COVID-19 Public Health Emergency, all earned income and self-employment may be reported by self-attestation. At the end of the federal COVID-19 Public Health Emergency, proof of any unverified income shall be provided.

d. Verification of all unearned income shall be provided if the unearned income was received in the month for which eligibility is being determined or during the previous month. If available, information that exists in another case record or verification system shall be used to verify unearned income.

i) During the federal COVID-19 Public Health Emergency, all unearned income may be reported by self-attestation. At the end of the federal COVID-19 Public Health Emergency, proof of any unverified income shall be provided.

e. Verification of all resources shall be provided if the resources were available to the applicant in the month for which eligibility is being determined.

Resource information that is verified through an electronic data source, such as the Asset Verification Program, shall be a valid verification. Supplemental physical verifications for the same resource is not required unless further information is needed for clarification.

i) During the federal COVID-19 Public Health Emergency, all resources may be reported by self-attestation. At the end of the federal COVID-19 Public Health Emergency, proof of any unverified resources shall be provided.

f. Immigrant registration cards or papers, if applicable, to determine if the client is eligible for full Medical Assistance benefits. If an applicant does not provide this, he/she shall only be eligible for emergency Medical Assistance if they meet all other eligibility requirements.

g. Additional verification-If the requested verification is submitted by the applicant, no other additional verification shall be required unless the submitted verification is found to be questionable on the basis of fact.

h. The determination that information is questionable shall be documented in the applicant's case file and CBMS case comments.

8.100.5.C. Effective Date of Eligibility

1. Eligibility for the Aged, Blind and Disabled categories shall be approved effective on the later of:

    a. The first day of the month of the Single Streamlined Application for Medical Assistance; or

    b. The first day of the month the person becomes eligible for Medical Assistance.

2. The date that eligibility begins for Long-Term Care Medical Assistance is defined in section 8.100.7.A and B.

3. For the Medicaid Buy-In Program for Children with Disabilities, any child who is determined to be eligible for Medical Assistance at any time during a calendar month shall be eligible for benefits during the entire month.

4. Clients applying for Medical Assistance under the Aged, Blind and Disabled category shall be reviewed for retroactive eligibility as described at 8.100.3.E. When reviewing for retroactive eligibility for an individual who is SSI eligible or applied and became SSI eligible in each of the retroactive months, the applicant must:

    a. Be aged at least 65 years; or

    b. Meet the Social Security Administration definition of disability by:

        i) Being approved as eligible to receive either SSI or SSDI, on or prior to the date of a medical service; or

        ii) Having a disability onset date determined on or prior to the date of a medical service; and

    c. Meet the financial requirements as described at 8.100.5.E.

8.100.5.D. Medical Assistance Estate Recovery Program

1. The eligibility site shall provide written information from the Department to the following people explaining the provisions of the Medical Assistance Estate Recovery Program and how those provisions may pertain to the applicant/client:

    a. Applicants age 55 and older who are institutionalized.

    b. Applicants/clients who will turn age 55 before their next eligibility re-determination who are institutionalized.

    c. Clients age 55 and older who are approved for admittance to an institution

8.100.5.E. Availability of Resources and Income

Consistent with the legislative declaration outlined at C.R.S. § 25.5-4-300.4, Medicaid should be the payer of last resort for payment of medically necessary goods and services furnished to clients. All other sources of payment, including an individual's own countable income and resources, should be utilized to the fullest extent possible before Medicaid is accessed.

1. Income, which includes earned and unearned income, shall be calculated on a monthly basis regardless of whether it is received annually, semi-annually, quarterly or weekly.

2. For married couples, the income and resources of both spouses are counted in determining eligibility for either or both spouses. Refer to section 8.100.7.C for exceptions.

3. Resources and income shall be considered available when actually available; or, shall be deemed available when all of the following apply to the resources or income of the individual or individual's spouse:

    a. has any ownership interest in income or resources or equity value of a resource;

    b. has the right, authority, or power to convert the resource or income to cash or to cause the resource or income to be converted to cash; and

    c. is not legally restricted from using the resource or income for his or her support and maintenance.

4. Resources and income shall not be considered unavailable merely because the individual or individual's spouse may need to initiate legal proceedings to access the resources or income.

5. If the applicant or client demonstrates with clear and convincing evidence that appropriate steps are being taken to secure the resources, Medical Assistance shall not be delayed or terminated. Verification of efforts to secure the resources must be provided at regular intervals as requested by the Eligibility Site.

6. Resources will be considered available and Medical Assistance shall be denied or terminated if the applicant or client refuses or fails to make a reasonable effort to secure potential resources or income.

7. Timely and adequate notice must be given regarding a proposed action to deny, reduce, or terminate assistance due to failure to make reasonable efforts to secure resources or income. If upon receipt of the prior notice, the individual acts to secure the potential resource, the proposed action to deny, reduce, or terminate assistance must be withdrawn, and assistance must be approved or continued until the resource or income is, in fact, available.

8. If the resources or income has been transferred to a trust, the trust shall be submitted for review to the Department to determine the effect of the trust on eligibility in accordance with section 8.100.7.E.

9. A resource may not necessarily be unavailable by virtue that an individual may be unaware of his or her ownership of an asset. The Department will not treat the unknown asset as a resource during the period in which the individual was unaware of his/her ownership. However, the value of the previously unknown asset, including any monies such as interest that have accumulated on the asset through the month of discovery, is evaluated under regular income-counting rules in the month of discovery, and the asset is a resource subject to the resource-counting rules following the month of discovery.

    a. The burden is on the individual to prove by clear and convincing evidence that the asset was unavailable by virtue of being unknown by the recipient.

    b. Unknown assets shall not be deemed an overpayment pursuant to Section 8.065 of the Department's regulations where the asset was unknown through no fault of the individual.

    c. If the previously unknown asset causes the individual to be ineligible, the individual may repay the Department from the excess resources to retain Medicaid eligibility.

8.100.5.F. Income Requirements

1. This section reviews how income is looked at for the ABD and Long Term Care Medical Programs and determining premiums for the Medicaid Buy-In Program for Working Adults with Disabilities. For more general income information and income types refer to the Medical Assistance General Eligibility Requirements section 8.100.3.

2. Income for the ABD Medical Programs eligibility is income which is received by an individual or family in the month in which they are applying for or receiving Medical Assistance, or the previous month if income for the current month is not yet available to determine eligibility.

3. A self-declared common law spouse retains the same financial responsibility as a legally married spouse. Once self-declared as married under the common law, financial responsibility remains unless legal separation or divorce occurs. If two persons live together, but are not married to each other, neither one has the legal responsibility to support the other. This is not changed by the fact that the unmarried individuals may share a common child.

4. Earned income is countable as income in the month received and a countable resource the following month. Earned Income includes the following:

    a. Wages, which include salaries, commissions, bonuses, severance pay, and any other special payments received because of employment.

    b. Net earnings from self-employment

    c. Payments for services performed in a sheltered workshop or work activities center

    d. Certain Royalties and honoraria

5. Unearned income is the gross amount received in cash or kind that is not earned from employment or self-employment.

    Unearned income is countable as income in the month received and any unspent amount is a countable resource the following month. Unearned income includes, but is not limited to, the following:

    a. Death benefits, reduced by the cost of last illness and burial

    b. Prizes and awards

    c. Gifts and inheritances

    d. Interest payments on promissory notes established on or after March 1, 2007.

    e. Interest or dividend payments received from any resources

    f. Lump sum payments from workers' compensation, insurance settlements, etc.

    g. Dividends, royalties or other payments from mineral rights or other resources listed for sale within the resource limits

    h. Income from annuities that meet requirements for exclusion as a resource

    i. Pensions and other period payments, such as:

        i) Private pensions or disability benefits

ii) Social Security benefits (Retirement, survivors, and disability)

iii) Workers' Compensation payments

iv) Railroad retirement annuities

v) Unemployment insurance payments

vi) Veterans benefits other than Aid and Attendance (A&A) and Unusual Medical Expenses (UME).

vii) Alimony and support payments

j. Support and maintenance in kind - The support and maintenance in kind amount should not be greater than one third of the Federal Benefit Rate (FBR). Use the Presumed Maximum Value (PMV) of 1/3 of the recipient's portion of the rent to determine the support and maintenance in kind amount. Use one third of the FBR if an amount is not declared by the client.

6. For the purpose of determining eligibility for the Long Term Care and Aged, Blind, and Disabled Medical Assistance categories the following shall be exempt from consideration as either income or resources:

a. A bona fide loan. Bona fide loans are loans, either private or commercial, which have a repayment agreement. Declaration of such loans is sufficient verification.

b. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act.

c. Title XVI (SSI) or Title II (Retirement Survivors or Disability Insurance) retroactive payments (lump sum) for nine months following receipt and the remainder countable as a resource thereafter.

d. The value of supplemental food assistance received under the special food services program for children provided for in the National School Lunch Act and under the Child Nutrition Act, including benefits received from the special supplemental food program for women, infants and children (WIC).

e. Home produce utilized for personal consumption.

f. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act; relocation payments to a displaced homeowner toward the purchase of a replacement dwelling are considered exempt for up to 6 months.

g. The value of any assistance paid with respect to a dwelling unit is excluded from income and resources if paid under:

i) Experimental Housing Allowance Program (EHAP) payments made by HUD under section 23 of the U.S. Housing Act.

ii) The United States Housing Act of 1937 (§ 1437 et seq. of 42 U.S.C.)

iii) The National Housing Act (§ 1701 et seq. of 12 U.S.C.)

iv) Section 101 of the Housing and Urban Development Act of 1965 (§ 1701s of 12 U.S.C., § 1451 of 42 U.S.C.);

v) Title V of the Housing Act of 1949 (§ 1471 et seq. of 42 U.S.C.); or

vi) Section 202(h) of the Housing Act of 1959.

h. Payments made from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita; and initial purchases made with such funds. (Public Law No 98-64 and Public Law No. 97-458).

i. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) which are in the form of: cash payments up to an amount not to exceed $ 2000 per individual per calendar year; stock; a partnership interest; or an interest in a settlement trust. Cash payments, up to $ 2000, received by a client in one calendar year which is retained into subsequent years is excluded as income and resources; however, cash payments up to $ 2000 received in the subsequent year would be excluded from income in the month(s) received but counted as a resource if retained beyond that month(s).

j. Assistance from other agencies and organizations.

k. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided to states, local governments and disaster assistance organizations shall be exempt as income and resources in determining eligibility for Medical Assistance.

l. Payments received for providing foster care.

m. Payments to volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title I (VISTA) when the value of all such payments adjusted to reflect the number of hours such volunteers are serving is not equivalent to or greater than the minimum wage, and Title II and Title III of the Domestic Volunteer Services Act.

n. The benefits provided to eligible persons or households through the Low Income Energy Assistance (LEAP) Program.

o. Training allowances granted by the Workforce Investment Act (WIA) to enable any individual whether dependent child or caretaker relative, to participate in a training program

p. Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under the Youth Employment and Demonstration Project Act.

q. Social Security benefit payments and the accrued amount thereof to a client when an individual plan for self-care and/or self-support has been developed. In order to disregard such income and resources, it shall be determined that (1) SSI permits such disregard under such developed plan for self-care-support goal, and (2) assurance exists that the funds involved will not be for purposes other than those intended.

r. Monies received pursuant to the “Civil Liberties Act of 1988” P.L. No. 100-383, (by eligible persons of Japanese ancestry or certain specified survivors, and certain eligible Aleuts).

s. Payments made from the Agent Orange Settlement Fund or any fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No 381 (E.D.N.Y).

t. A child receiving subsidized adoption funds shall be excluded from the Medical Assistance budget unit and his income shall be exempt from consideration in determining eligibility, unless such exclusion results in ineligibility for the other members of the household.

u. The Earned Income Tax Credit (EIC). EIC shall also be exempt as resources for the month it is received and for the following month.

v. Any money received from the Radiation Exposure Compensation Trust Fund, Including the Energy Employees Occupational Illness Compensation Program Act, pursuant to P.L. No. 101-426 as amended by P.L. No. 101-510.

w. Reimbursement or restoration of out-of-pocket expenses. Out-of-pocket expenses are actual expenses for food, housing, medical items, clothing, transportation, or personal needs items.

x. Payments to individuals because of their status as victims of Nazi persecution pursuant to Public Law No. 103-286.

y. General Assistance, SSI, OAP-A and cash assistance under the Temporary Assistance to Needy Families (TANF) funds.

z. All wages paid by the United States Census Bureau for temporary employment related to the decennial Census.

aa. Any grant or loan to an undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education (Basic Education Opportunity Grants, Supplementary Education Opportunity Grants, National Direct Student Loans and Guaranteed Student Loans), Pell Grant Program, the PLUS Program, the BYRD Honor Scholarship programs and the College Work Study Program.

bb. Any portion of educational loans and grants obtained and used under conditions that preclude their use for current living cost (need-based).

cc. Financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act that is made available for attendance cost shall not be considered as income or resources. Attendance cost includes tuition, fees, rental or purchase of equipment, materials or supplies required of all students in the same course of study, books, supplies, transportation, dependent care and miscellaneous personal expenses of students attending the institution on at least a half-time basis, as determined by the institution.

dd. The additional unemployment compensation of $25 a week enacted through the American Recovery and Reinvestment Act of 2009.

8.100.5.G. Deeming Of Income And Resources For The OAP Program

1. All aliens who apply for OAP on or after April 16, 1988, for three years after the date of admission into the United States, shall have the income and resources of their sponsors other than relatives deemed for their care. Refer to the Medical Assistance General Eligibility Requirements section 8.100.3.K for specific information on deeming of income and resources.

8.100.5.H. Income Allocations and Disregards

1. The following income allocations and disregards are only applicable to SSI related, OAP, Medicare Savings Programs (MSP), and the Medicaid Buy-In Program for Working Adults with Disabilities.

   These allocations and disregards are not applicable to the HCBS waivers or the LTC programs.

   For the Medicaid Buy-In Program for Working Adults with Disabilities, the applicant's spouse's income does not count toward the applicant.

   a. Income of spouses living together is considered mutually available for SSI related, OAP, and Medicare Savings Programs (MSP).

   b. For a person living in the household of another and not paying shelter costs, one third of the Federal Benefit Rate (FBR) is counted as in-kind income and is added to the countable income. This does not apply to unemancipated children.

2. For the purposes of this rule, the following definitions apply:

   a. unemancipated child is:

      i) a child under age 18 who is living in the same household with a parent or spouse of a parent, or

      ii) a child under age 21 who is living in the same household with a parent or spouse of a parent, if the child is regularly attending a school, college, or university, or is receiving technical training designed to prepare the child for gainful employment.

   b. Ineligible child is a child who is not applying or eligible for SSI.

   c. Ineligible parent/spouse is a parent or spouse who is not applying or eligible for SSI.

3. Countable income is calculated by reducing the gross income by the following allocations and disregards.

   a. Income allocations are the part of the gross income that is allocated to individuals in the home who are not eligible for Supplemental Security Income or Old Age Pension. The allocation reduces the gross income that is deemed available to the applicant/client. The allocation is deducted from the gross income prior to applying the other disregards.

   The allocations are:

      i) An Ineligible Child Allocation is an amount equal to one half the current year's SSI FBR that is disregarded from the ineligible parents' gross income. This allocation is used to meet the needs of ineligible children in the household. This allocation is available for each ineligible child in the home. The amount of the allocation is reduced by any of the ineligible child's own income.

ii) An Ineligible Parent(s) Allocation is an amount equal to the current year's SSI FBR for a single individual or a couple, as applicable. This amount is used to meet the needs of the ineligible parent(s) in the home with an applicant/client child.

iii) No allocations are allowed for applicant/recipient spouses who do not have children in the home.

b. Allocations are applied to the income in the following manner:

i) Allocation disregards are deducted from unearned income before earned income.

ii) Ineligible child allocation disregards are deducted from parents' income before any standard disregards are applied.

iii) Ineligible parent(s) allocation disregards are deducted after any ineligible child allocation disregards and after the standard income disregards.

4. Income disregards

a. $20 General Income Disregard

If there is unearned income left after the Ineligible Child and Parent(s) Allocation Disregards are applied, a General Income Disregard of $20 shall be applied as follows:

i) The first $20 of total available unearned income (except for SSI income) must be disregarded. The remaining amount of unearned income is countable.

ii) If the client has less than $20 of unearned income, the difference between the gross unearned income and the $20 deduction shall be applied as an earned income disregard, if applicable.

iii) Only one $20 general income disregard is allowed per couple and is divided between the two spouses. If one of the spouses has no income the other spouse shall get the full $20 disregard.

b. $65 Plus One Half Remainder Earned Income Disregard

i) If there is earned income left after the Ineligible Child and Parent(s) Allocation Disregards are applied:

1) Deduct the first $65 of all earned income.

2) Divide the remaining income in half.

3) The result is the amount of earned income used for determining eligibility.

c. Child support received by an applicant/recipient child is reduced by one third of the total child support payment. This reduction does not apply to ineligible children when calculating the ineligible child allocation disregard.

d. The first $400 of the gross monthly earned income is exempt for a blind or disabled child who is a student that is regularly attending school. The exemption cannot exceed $1,620 in a calendar year.

e. Title 20 of the Code of Federal Regulations, § 416.1112 (2012) is hereby incorporated by reference into this rule. Such incorporation, however, excludes later amendments to or editions of the referenced material. These regulations are available for public inspection at the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.100.5.I. Determining Ownership of Income

1. If payment is made solely to one individual, the income shall be considered available income to that individual.

2. If payment is made to more than one individual, the income shall be considered available to each individual in proportion to their interests.

3. In case of a married couple in which there is no document establishing specific ownership interests, one-half of the income shall be considered available to each spouse.

4. Income from the Community Spouse's Monthly Income Allowance, as defined in the spousal protection rules in this volume at 8.100.7.R, is income to the community spouse.

8.100.5.J. Income-Producing Property

1. Net rental income from an exempt home or a life estate interest in an exempt home is countable after the following allowable deductions:

   a. Property taxes and insurance

   b. Necessary reasonable routine maintenance expenses

   c. Reasonable management fee for a professional property manager.

2. Non-business property that is necessary to produce goods or services essential to self- support is excluded up to $6,000.

3. Property used in a trade or business which is essential to self-support is excluded up to a limit of $6,000 if it produces 6% return of the $6,000 excluded value.

8.100.5.K. Department of Veterans Affairs (VA) Payments

The portion of the pension payments for Aid and Attendance (A&A) and Unusual Medical Expenses (UME), as determined by the VA, shall not be considered as income when determining eligibility.

1. The portion of the pension payments for Aid and Attendance (A&A) and Unusual Medical Expenses (UME), as determined by the VA, shall not be used as patient payment to the medical facility:

   a. for a veteran or surviving spouse of a veteran in a medical facility other than State Veterans Home; or

   b. for a veteran or surviving spouse of a veteran in a State Veterans Home with dependents.

2. For a veteran or surviving spouse of a veteran in a State Veterans Home with no dependents the portion of the pension payments for Aid and Attendance (A&A) and Unusual Medical Expenses (UME), as determined by the VA, shall be used as patient payment to the medical facility.

8.100.5.L. Reverse Mortgages

1. In accordance with C.R.S. § 11-38-110, reverse mortgages payments made to a borrower shall not be treated as income for eligibility purposes.

2. Funds remaining the following month after the payment is made will be countable as a resource.

3. Any payments from a reverse mortgage that are transferred to another individual without fair consideration shall be analyzed in accordance with the rules on transfers without fair consideration in the Long-Term Care section and may result in a penalty period of ineligibility.

8.100.5.M. Resource Requirements

1. Consideration of resources: Resources are defined as cash or other assets or any real or personal property that an individual or spouse owns. The resource limit for an individual is $2,000. For a married couple, the resource limit is $3,000. If one spouse is institutionalized, refer to Spousal Protection-Treatment of Income and Resources for Institutionalized Spouses. Effective January 1, 2011, the resource limits for the Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLMB), and Qualified Individuals 1 (QI-1) programs are $8,180 for a single individual and $13,020 for a married individual living with a spouse and no other dependents. The resource limits for the QMB, SLMB, and QI programs shall be adjusted annually by the Centers for Medicare and Medicaid Services on January 1 of each year. These resource limits are based upon the change in the annual consumer price index (CPI) as of September of the previous year. Resources are not counted for the Medicaid Buy-In Program for Working Adults with Disabilities or the Medicaid Buy-In Program for Children with Disabilities.

2. The following resources are exempt in determining eligibility:

    a. A home, which is any property in which an individual or spouse of an individual has an ownership interest and which serves as the individual's principal place of residence. The property includes the shelter in which an individual resides, the land on which the shelter is located and related outbuildings.

        i) Only one principal place of residence is excluded for a single individual or a married couple.

        ii) The individual's ownership interest in the home must have an equity value that:

            1) From January 1, 2006 thru December 31, 2010 is $500,000 or less, or;

            2) Is less than the amount that results from the year to year percentage increase to the $500,000 limit. The increase is based upon the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

        iii) If an individual or spouse of an individual owns a home of any value located outside Colorado, and if the individual intends to return to that home, then the individual does not meet the residency requirement for Colorado Medicaid eligibility.

        iv) If an individual or spouse of an individual owns a home of any value located outside Colorado, and if the individual does not intend to return to that home, then the home is a countable resource unless the individual's spouse or dependent relative lives in the home.

v) If an individual or spouse of an individual owns a home located inside Colorado with an equity value lower than the limit in subparagraph (1), above, and if the individual intends to return to that home, then the home is considered an exempt resource if:

1) The individual is institutionalized; and

2) The intent to return home is documented in writing.

vi) If an individual or spouse of an individual owns a home with an equity value greater than the limit that is located inside Colorado, and if the individual intends to return to that home, then the home is considered to be a countable resource unless spouse or dependent relative lives in the home.

vii) If an individual or spouse of an individual owns a home of any value located inside Colorado, and if the individual does not intend to return to that home, then the home is a countable resource unless spouse or dependent relative lives in the home.

viii) If an individual or spouse moves out of his or her home without the intent to return, the home becomes a countable resource because it is no longer the individual's principal place of residence.

ix) If an individual leaves his or her home to live in an institution, the home shall still be considered the principal place of residence, irrespective of the individual's intent to return as long as the individual's spouse or dependent relative continues to live there.

x) The individual's equity in the former home becomes a countable resource effective with the first day of the month following the month it is no longer his or her principal place of residence.

xi) The intent to return home applies to the home in which the individual or spouse of the individual was living prior to being institutionalized or to a replacement home as long as the individual’s spouse or dependent relative continues to live in the home.

xii) The intent to return home also applies if the individual is living in an assisted living facility or alternative care facility and receives HCBS while in that facility or transfers into a Long-Term Care institution to receive services.

xiii) For an individual in a Long-Term Care institution, receiving HCBS, or enrolled in PACE, the exemption for the principal place of residence does not apply to a residence which has been transferred to a trust or other entity, such as a partnership or corporation.

1) The exemption shall be regained if the residence is transferred back into the name of the individual.

xiv) The principal place of residence, which is subject to estate recovery, becomes a countable resource upon the execution and recording of a beneficiary deed.

The exemption can be regained if a revocation of the beneficiary deed is executed and recorded.

b. Excess property will not be included in countable resources as long as reasonable efforts to sell it have been unsuccessful. Reasonable efforts to sell means:

i.) The property is listed with a professional such as a real estate agent, broker, dealer, auction house, etc., at current market value.

ii) If owner listed, the property must be for sale at current market value, advertised and shown to the public.

iii) Any reasonable offer must be accepted.

iv) If an offer is received that is at least two-thirds of the current market value, that offer is presumed reasonable.

v) The client must continue reasonable efforts to sell and must submit verification of these efforts to the Eligibility Site on a quarterly basis. Reasonable effort is at Eligibility Site discretion.

vi) If the exemption is used to become eligible under the Spousal Protection rules, the property shall continue to be viewed according to 8.100.7.L while efforts to sell it are being made.

vii) Eligibility under this exemption is conditional. Once the property sells, the client shall be ineligible until the resources are below the prescribed limit.

c. One automobile is totally excluded regardless of its value if it is used for transportation for the individual or a member of the individual's household. An automobile includes, in addition to passenger cars, other vehicles used to provide necessary transportation.

d. Household goods are not counted as a resource to an individual (and spouse, if any) if they are:

i) Items of personal property, found in or near the home, that are used on a regular basis; or

ii) Items needed by the household for maintenance, use and occupancy of the premises as a home.

iii) Such items include but are not limited to: furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.

e. Personal effects are not counted as a resource to an individual (and spouse, if any) if they are:

i) Items of personal property ordinarily worn or carried by the individual; or

ii) Articles otherwise having an intimate relation to the individual.

iii) Such items include but are not limited to: personal jewelry including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments.

iv) Items of cultural or religious significance to the individual and items required because of an individual’s impairment are also not counted as a resource.

f. The cash surrender value of all life insurance policies owned by an individual and spouse, if any, is exempt if the total face value of all life insurance policies does not exceed $1,500 on any person. If the total face value of all the life insurance policies exceeds $1,500 on one person, the cash surrender value of those policies will be counted.

g. Term life insurance having no cash surrender value, and burial insurance, the proceeds of which can be used only for burial expenses, are not countable toward the resource limit.

h. The total value of burial spaces for the applicant/recipient, his/her spouse and any other members of his/her immediate family is exempt as a resource. If any interest is earned on the value of an agreement for the purchase of a burial space, such interest is also exempt.

i. An applicant or recipient may own burial funds through an irrevocable trust or other irrevocable arrangement which are available for burial and are held in an irrevocable burial contract, an irrevocable burial trust, or in an irrevocable trust which is specifically identified as available for burial expenses without such funds affecting the person's eligibility for assistance.

j. An applicant or recipient may also own up to $1,500 in burial funds through a revocable account, trust, or other arrangement for burial expenses, without such funds affecting the person's eligibility for assistance. This exclusion only applies if the funds set aside for burial expenses are kept separate from all other resources not intended for burial of the individual or spouse's burial expenses. Interest on the burial funds is also excluded if left to accumulate in the burial fund. For a married couple, a separate $1,500 exemption applies to each spouse.

   The $1,500 exemption is reduced by:

   i) the amount of any irrevocable burial funds such as are described in the preceding subparagraph, and

   ii) the face value of any life insurance policy whose cash surrender value is exempt.

k. Achieving a Better Life Experience (ABLE) Accounts.

3. Countable resources include the following:

a. Cash;

b. Funds held by a financial institution in a checking or savings account, certificate of deposit or money market account;

c. Current market value of stocks, bonds, and mutual funds;

d. All funds in a joint account are presumed to be a resource of the applicant or client. If there is more than one applicant or client account holder, it is presumed that the funds in the account belong to those individuals in equal shares. To rebut this presumption, evidence must be furnished that proves that some or all of the funds in a jointly held account do not belong to him or her. To rebut the sole ownership presumption, the following procedure must be followed:

i) Submit statements from all of the account holders regarding who owns the funds, why there is a joint account, who has made deposits and withdrawals, and how withdrawals have been spent.

ii) Submit account records showing deposits, withdrawals and interest in the months for which ownership of funds is at issue.

iii) Correct the account title and submit revised account records showing that the applicant or client is no longer an account holder or separate the funds to show they are solely owned by the individual within 45 days.

e. Any real property that is subject to a recorded beneficiary deed and on which an estate recovery claim can be made.

f. For applications filed on or after January 1, 2006, an individual's home if the individual's equity interest in the home exceeds the equity value limit described at 8.100.5.M.2.a.i)1).

g. Real property not exempt as the principal place of residence and not exempt as income producing property with a value of $6,000 or less, as described at 8.100.5.J.

h. When the applicant alleges that the sale of real property would cause undue hardship to the co-owner due to loss of housing, all of the following information must be obtained:

i) The applicant or client's signed statement to that effect.

ii) Verification of joint ownership.

iii) A statement from the co-owner verifying the following:

1) The property is used as his principal place of residence.

2) The co-owner would have to move if the property were sold.

3) The co-owner would be unable to buy the applicant or client's interest in the property.

4) There is no other readily available residence because there is no other affordable housing available or no other housing with the necessary modifications for the co-owner if he is a person with disabilities.

i. Personal property such as a mobile home or trailer or the like, that is not exempt as a principal place of residence or that is not income producing.

j. Personal effects acquired or held for their value or as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.

k. The equity value of all automobiles that are in addition to one exempt vehicle.

l. The cash surrender value of all life insurance policies owned by an individual and spouse is counted if the total face value of all the policies combined exceeds $1,500 on any person.

m. Promissory notes established before April 1, 2006 are treated as follows:

i) The fair market value of a promissory note, mortgage, installment contract or similar instrument is an available countable resource.

ii) In order to determine the fair market value, the applicant shall obtain three estimates of fair market value from a private note broker, who is engaged in the business of purchasing such notes. In order to obtain the estimates and locate willing buyers, the note shall be advertised in a newspaper with state wide circulation under business or investment opportunities.

iii) A note or similar instrument which transferred funds or assets for less than fair consideration shall be considered as a transfer for less than fair consideration and a period of ineligibility shall be imposed.

n. Promissory notes established on or after April 1, 2006 and before March 1, 2007 are treated as follows:

i) The value of a promissory note, loan or mortgage is an available countable resource unless the note, loan or mortgage:

1) Has a repayment term that is actuarially sound based on the individual's life expectancy, found in the tables at 8.100.7.J, for annuities purchased on or after February 8, 2006;

2) Provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

3) Prohibits the cancellation of the balance upon the death of the lender.

ii) The value of a promissory note, loan or mortgage which does not meet the criteria in outlined in 8.100.5.M.3.n.i)1)-3) is the outstanding balance due as of the date of the individual's application for HCBS, PACE or institutional services and is subject to the transfer of assets without fair consideration provisions as outlined in section 8.100.7.F.

o. Promissory notes established on or after March 1, 2007 are treated as follows:

i) The value of a promissory note, loan or mortgage is the outstanding balance due as of the date of the individual's application for HCBS, PACE or institutional services and is an available countable resource, and

ii) A promissory note, loan or mortgage which does not meet the following criteria shall be considered to be a transfer without fair consideration and shall be subject to the provisions outlined at 8.100.7.F.

1) Has a repayment term that is actuarially sound based on the individual's life expectancy as found in the tables in section 8.100.7.J for annuities purchased on or after February 8, 2006;

2) Provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

3) Prohibits the cancellation of the balance upon the death of the lender.

p. Mineral rights represent ownership interest in natural resources such as coal, oil, or natural gas, which normally are extracted from the ground.

i) Ownership of land and mineral rights. If the individual owns the land to which the mineral rights pertain, the current market value of the land generally includes the value of the mineral rights.

ii) If the individual does not own the land to which the mineral rights pertain, the individual should obtain a current market value estimate from a knowledgeable source. Such sources may include:

1) any mining company that holds leases;

2) the Bureau of Land Management;

3) the U.S. Geological Survey.

8.100.5.N. Treatment of Self-Funded Retirement Accounts

1. The following regulations apply to self-funded retirement accounts such as an Individual Retirement Account (IRA), Keogh Plan, 401(k), 403(b) and any other self-funded retirement account.

2. Self-funded retirement accounts in the name of the applicant are countable as a resource to the applicant.

3. Self-funded retirement accounts in the name of the applicant's spouse who is living with the applicant are exempt in determining eligibility for the applicant, except as set forth in 4. below.

4. Self-funded retirement accounts in the name of a community spouse who is married to an applicant who is applying for Long Term Care in a Long Term Care institution, HCBS or PACE, are countable as a resource to the applicant and may be included in the Community Spouse Resource Allowance (CSRA) up to the maximum amount allowable. The terms community spouse and CSRA are further defined in the regulations on Spousal Protection in this volume.

5. The value of a self-funded retirement account is determined as follows:

a. The gross value of the account, less any taxes due, is the amount that is countable as a resource, regardless of whether any monthly income is being received from the account.

b. If the applicant is not able to provide the amount of taxes that are due, the value shall be determined by deducting 20% from the gross value of the account.

8.100.5.O. Treatment of Inheritances

1. An inheritance is cash, other liquid resources, non-cash items, or any right in real or personal property received at the death of another.

2. If an Individual or individual’s spouse is the beneficiary of a will, the inheritance is presumed to be available at the conclusion of the probate process or within 6 months if the estate is not in probate.

3. If an individual or individual’s spouse is eligible for a family allowance in a probate proceeding, that allowance will be considered available three months after death or when actually available, whichever is sooner.

4. Evidence demonstrating that the inheritance is not available due to probate or other legal restrictions must be provided to rebut the presumption.

8.100.5.P. Treatment of Proceeds from Disposition of Resources

Treatment of proceeds from disposition of resources is determined as follows:

1. The net proceeds from the sale of exempt or non-exempt resources are considered available resources.

2. The net proceeds are the selling price less any valid encumbrances and costs of sale.

3. After deducting any amount necessary to raise the individual's and spouse's resources to the applicable limits, the balance of the net proceeds, in excess of the resource limits, shall be considered available resources. In lieu of terminating eligibility due to excess resources, the client may request that the proceeds be used to reimburse the Medical Assistance Program for previous payments for Medical Assistance.

4. The proceeds from the sale of an exempt home will be excluded to the extent they are intended to be used and are, in fact, used to purchase another home in which the individual, a spouse or dependent child resides, within three months of the date of the sale of the home.

8.100.6 Aged, Blind, and Disabled Medical Assistance Eligibility

8.100.6.A. Aged, Blind, and Disabled (ABD) General Information

1. Medical Assistance for ABD includes SSI eligible individuals, OAP recipients, and the Medicare Savings Program (MSP) individuals. Refer to section 8.100.5 of this volume for income and resource criteria for these categories of assistance.

8.100.6.B. Disability Determinations

1. Beginning on July 1, 2001, the Department or its contractor shall determine whether the client is disabled or blind in accordance with the requirements and procedures set forth elsewhere in this volume and according to Federal regulations regarding disability determinations.

2. A client who disagrees with the decision on disability or blindness shall have the right to appeal that decision to a state-level fair hearing in accordance with the procedures at 8.057.

8.100.6.C. SSI Eligibles

1. Benefits of the Colorado Medical Assistance Program must be provided to the following:

    a. persons receiving financial assistance under SSI;

    b. persons who are eligible for financial assistance under SSI, but are not receiving SSI;

    c. persons receiving SSI payments based on presumptive eligibility for SSI pending final determination of disability or blindness; and persons receiving SSI payments based on conditional eligibility for SSI pending disposal of excess resources.

2. The Department has entered into an agreement with SSA in which SSA shall determine Medical Assistance for all SSI applicants. Medical Assistance shall be provided to all individuals receiving SSI benefits as determined by SSA to be eligible for Medical Assistance.

3. The eligibility sites shall have access to a weekly unmatched listing of all individuals newly approved and a weekly SSI-Cases Denied or Discontinued listing. These lists shall include the necessary information for the eligibility site to authorize Medical Assistance.

4. Medical Assistance shall not be delayed due to the necessity to contact the SSI recipient and obtain third party medical resources.

5. Notification shall be sent to the SSI recipient advising him/her of the approval of Medical Assistance.

6. The SISC Code for this type of assistance is B.

7. Denied or terminated Medical Assistance based on a denial or termination of SSI which is later overturned, must be approved from the original SSI eligibility date.

8. Individuals who remain eligible as SSI recipients but are not receiving SSI payments shall receive Medical Assistance benefits. This group includes persons whose SSI payments are being withheld as a means of recovering an overpayment, whose checks are undeliverable due to change of address or representative payee, and persons who lost SSI financial assistance due to earned income.

9. If the eligibility site obtains information affecting the eligibility of these SSI recipients, they shall forward such information to the local Social Security office.

10. For individuals under 21 years of age who are eligible for or who are receiving SSI, the effective date of Medicaid eligibility shall be the date on which the individual applied for SSI or the date on which the individual became eligible for SSI, whichever is later.

    a. Special Provisions for Infants

        i) For an infant who is eligible for or who is receiving SSI, the effective date of Medicaid eligibility shall be the infant's date of birth if:

            1) the infant was born in a hospital;

            2) the disability onset date, as reported by the Social Security Administration, occurred during the infant's hospital stay; and

            3) the infant's date of birth is within three (3) months of the date on which the infant became eligible for SSI

8.100.6.D. Pickle Amendment

1. Beginning July 1977, Medical Assistance must be provided to an individual if their countable income is below the current years SSI standard after a cost of living adjustment (COLA) disregard is applied to their OASDI (excluding Railroad Retirement Benefits) and they meet all other eligibility criteria. This is referred to as Pickle Disregard.

2. The Pickle Disregard applies to an individual who:

a. lost SSI and/or OAP because of a cost of living adjustment to his/her own OASDI benefits.

b. lost SSI and/or OAP because a cost of living adjustment to OASDI income deemed from a parent or spouse.

c. lost OAP and/or SSI due to the receipt of, or increase to, OASDI, and would be eligible for OAP and/or SSI if all COLA'S on the amount that caused them to lose eligibility is disregarded from their current OASDI amount.

8.100.6.E. Pickle Determination

1. To determine eligibility of Medical Assistance recipients to whom the Pickle disregards apply, the eligibility site must:

   a. establish whether the person was eligible for SSI or OAP and, for the same month, was entitled to OASDI;

   b. determine the previous amount of the OASDI that caused them to lose SSI and/or OAP;

   c. determine the current OASDI income;

   d. subtract the previous OASDI income from the current OASDI income to find the cumulative OASDI COLAs since SSI and/or OAP was lost. This is the Pickle Disregard amount;

   e. subtract the Pickle Disregard amount from the current OASDI income to get the countable OASDI income.

2. If the countable OASDI income and all other countable income is less than the current SSI or OAP standard, and the individual meets all other eligibility criteria then medical eligibility must continue or be reinstated.

3. This disregard must also be applied to any OASDI cost of living increases paid to any financially responsible individual such as a parent or spouse whose income is considered in determining the person's continued eligibility for Medical Assistance.

4. The cost of living increase disregard specified in the preceding action must continue to be applied at each eligibility redetermination.

5. An SSI medical only individual who loses SSI due to an OASDI cost-of-living increase shall be contacted by the eligibility site to determine if the individual would continue to remain eligible for Medical Assistance under the provisions for SSI related cases. The individual must complete an application for assistance to continue receiving benefits.

8.100.6.F. 1972 Disregard Individuals

1. Medical Assistance must be provided to a person who was receiving financial assistance under AND or Aid to the Blind (AB) for August 1972 and who – except for the October 1972 Social Security (includes RRB) 20% increase amount would currently be eligible for financial assistance. This disregard must also be applied to a person receiving Medical Assistance in August 1972 who was eligible for financial assistance but was not receiving the money payment and to a person receiving Medical Assistance as a resident in a medical institution in August 1972.

2. To redetermine the eligibility of Medical Assistance recipients to whom the 1972 disregard applies, the eligibility site must:

   a. review the case against the current applicable program definitions and requirements;

   b. apply the resource and income criteria specified in section 8.100.5;

   c. subtract the 1972 disregard amount from the income;

   d. consider the remainder against the current appropriate SSI benefit level.

8.100.6.G. Individuals Eligible in 1973

1. Medical Assistance must be provided to ABD persons who are receiving mandatory state supplementary payments (SSP). Such persons are those with income below their December 1973 minimum income level (MIL).

2. Medical Assistance must be provided to a person who was eligible for Medical Assistance in December 1973 as an inpatient of a medical facility, who continues to meet the December 1973 eligibility criteria for institutionalized persons and who remains institutionalized.

3. Medical Assistance must be provided to a person who was eligible for Medical Assistance in December 1973 as an “essential spouse” of an AND or AB financial assistance recipient, and who continues to be in the grant and continues to meet the December 1973 eligibility criteria. Except for such persons who were grandfathered-in for continued assistance, essential spouses included in assistance grants after December 1973 are not eligible for Medical Assistance.

8.100.6.H. Eligibility for Certain Disabled Widow(er)s

1. Medical Assistance shall be provided retroactive to July 1, 1986, to qualified disabled widow(er)s who lost SSI and/or state supplementation due to the 1983 change in the actuarial reduction formula prescribed in section 134 of P.L. No. 98 21.

   In order for these widow(er)s to qualify, these individuals must:

   a. have been continuously entitled to Title II benefits since December 1983;

   b. have been disabled widow(er)s in January 1984;

   c. have established entitlement to Title II benefits prior to age 60;

   d. have been eligible for SSI/SSP benefits prior to application of the revised actuarial reduction formula;

   e. have subsequently lost eligibility for SSI/SSP as a result of the change in the actuarial table; and

   f. reapply for assistance prior to July 1, 1987.

8.100.6.I. Eligibility for Disabled Widow(er)s

1. Effective January 1, 1991, Medical Assistance shall be provided to disabled widow(er)s age 50 through 64 who lost SSI and/or OAP due to the receipt of Social Security benefits as a disabled widow(er). The individual shall remain eligible for Medical Assistance until he/she becomes eligible for Part A of Medicare (hospital insurance).

To qualify these individuals must:

a. be a widow(er);

b. have received SSI in the past;

c. be at least 50 years old but not 65 years old;

d. no longer receive SSI payments because of Social Security payments;

e. not have hospital insurance under Medicare; and,

f. meet all other Medical Assistance requirements.

8.100.6.J. Disabled Adult Children

1. Medical Assistance shall be provided to an individual aged 18 or older who loses SSI due to the receipt of OASDI drawn from his/her parents' Social Security Number; and:

   a. who was determined disabled prior to the age of 22; and

   b. who is currently receiving OASDI income as a Disabled Adult Child; and

   c. who would continue to be eligible for SSI if:

      i) the current OASDI income of the applicant is disregarded; and

      ii) the resources are below the applicable limit as listed at 8.100.5.M; and

      iii) other countable income is below the current years SSI FBR.

2. Disabled Adult Children are identified by the OASDI Beneficiary Identification Code (BIC) of “C”.

8.100.6.K. Old Age Pension (OAP) Eligibles

1. Individuals that are 65 and over are defined as the OAP-A category. Individuals who attain the age of 60 but not yet 65 are defined as the OAP-B category.

2. Medical Assistance must be provided to persons receiving OAP-A or OAP-B and SSI (SISC B).

3. Medical Assistance must be provided to all OAP-A and OAP-B persons who also meet SSI eligibility criteria but are not receiving a money payment (SISC-B).

4. Medical Assistance must be provided to all OAP-A and OAP-B persons who also meet SSI eligibility criteria except for the level of their income (SISC-B).

5. Medical Assistance must be provided to persons in a facility eligible for Medical Assistance reimbursement whose income is under 300% of the SSI benefit level and who, but for the level of their income, would be eligible for OAP “A” or OAP “B” and SSI financial assistance. This group includes persons 65 years of age or older receiving active treatment as inpatients in a psychiatric facility eligible for Medical Assistance reimbursement (SISC A). This population is referenced as Psych >65.

6. The OAP B individual included in AFDC assistance unit shall receive Medical Assistance as a member of the AFDC household (SISC B).

7. The OAP State Only Medical Assistance Program provides Medical Assistance to OAP-A, OAP-B or OAP Refugees who lost their OAP financial assistance because of a cost of living adjustment other than OASDI. Examples of other sources of income are VA, RRB, PERA, etc. (SISC C).

8. For the purpose of identifying the proper SISC code for persons receiving assistance under OAP "A" or OAP "B", if the person:

   a. receives an SSI payment (SISC B);

   b. does not receive an SSI payment but is receiving assistance under OAP "A", a second evaluation of resources must be made using the same resource criteria as specified in section 8.100.5.M for those who meet this criteria the SISC code is B for money payment and "disregard" case, A for institutional cases;

   c. does not receive an SSI payment and does not otherwise qualify under SISC code B or A as described in item b. above (SISC C).

8.100.6.L. Qualified Medicare Beneficiaries (QMB)

1. Medical Assistance coverage for QMB clients is payment of Medicare part B premiums, co-insurance and deductibles.

2. Effective July 1, 1989, a Qualified Medicare Beneficiary is an individual who:

   a. is entitled to Part A Medicare; and

   b. resources may not exceed the standard for an individual or couple who have resources, as described in section 8.100.5.M; and

   c. has income at or below the percentage of the federal poverty level for the size family as mandated for QMB by federal regulations. Poverty level is established by the Executive Office of Management and Budget.

3. For QMB purposes, couples shall have their income compared against the federal poverty level couples income maximum. This procedure shall be applied whether one or both members apply for QMB.

4. For QMB purposes, income of the applicant and/or the spouse shall be determined as described under Income Requirements in section 8.100.5. If two or more individuals have earned income, the income of all the individuals shall be added together and the $65 plus one half remainder earned income disregard shall be applied to the total amount of earned income.

5. Medicare cost sharing expenses must be provided to qualified Medicare beneficiaries. This limited Medical Assistance package of Medicare cost sharing expenses only includes:

   a. payment of Part A Medicare premiums where applicable;

   b. payment of Part B Medicare premiums; and

   c. payment of coinsurance and deductibles for Medicare services whether or not a benefit of Medical Assistance up to the full Medicare rate or reasonable rates as established in the State Plan.

6. Individuals may be QMB recipients only or the individual may be classified as a dual eligible. A dual eligible is a Medicare recipient who is otherwise eligible for Medical Assistance.

7. A QMB-only recipient is an individual who is not eligible for other categorical assistance program due to their income and/or resources but who meets the eligibility criteria for QMB described above.

8. Individuals who apply for QMB assistance have the right to have their eligibility determined under all categories of assistance for which they may qualify.

9. All other general non-financial requirements or conditions of eligibility must also be met such as age, citizenship, residency requirements as well as reporting and redetermination requirements. These criteria are defined in section 8.100.3 of this volume.

10. Eligibility for QMB benefits shall be effective the month following the month of determination. Beneficiaries who submit and complete an application within the 45-day standard shall be eligible for benefits no later than the first of the month following the 45th day of application. Administrative delays shall not postpone the effective date of eligibility.

11. QMB benefits are not retroactive and the three month retroactive Medical Assistance rule does not apply to QMB benefits.

12. Clients who would lose their QMB entitlement due to annual social security COLA will remain eligible for QMB coverage under Medical Assistance, as income disregard cases, until the next year's federal poverty guidelines are published.

8.100.6.M. Specified Low Income Medicare Beneficiaries

1. Medical Assistance coverage for SLMB clients is limited to payment of monthly Medicare Part B (Supplemental Medical Insurance Benefits) premiums.

2. Effective January 1, 1993, a Specified Low Income Medicare Beneficiary (SLMB) is an individual who:

    a. is entitled to Medicare Part A;

    b. resources may not exceed the standard for an individual or couple who has resources as described in section 8.100.5.M of this volume.

    c. has income at or below a percentage of the federal poverty level for the family size as mandated by federal regulations for SLMB. Income limits have been defined through CY 1995, as follows: CY 1993 and 1994 100-110% of FPL, CY 1995 100-120% of FPL.

3. For SLMB purposes, couples shall have their income compared against the federal poverty level couples income maximum. This procedure shall be applied whether one or both members apply for SLMB.

4. For SLMB purposes, income of the applicant and/or the spouse shall be determined as described under Income Requirements in section 8.100.5. If two or more individuals have earned income, the income of all the individuals shall be added together and the $65 plus one half remainder earned income disregard shall be applied to the total amount of earned income.

5. SLMB eligibility starts on the date of application or up to three month prior to the application date for retroactive Medical Assistance.

6. Eligibility may be made retroactive up to 90 days, but may not be effective prior to 1/1/93.

7. Clients who would lose their SLMB entitlement due to annual SSA COLA will remain eligible for SLMB coverage, as income disregard cases, through the month following the month in which the annual federal poverty levels (FPL) update is published.

8.100.6.N. Medicare Qualifying Individuals 1 (QI1)

1. Medical Assistance coverage is limited to monthly payment of Medicare Part B premiums. Payment of the premium shall be made by the Department on behalf of the individual.

2. Eligibility for this benefit is limited by the availability of the allocation set by CMS. Once the state allocation is met, no further benefits under this category shall be paid and a waiting list of eligible individuals shall be maintained.

3. Eligibility for QI1 benefits shall be effective the month in which application is made and the individual is eligible for benefits. Eligibility may be retroactive up to three months from the date of application, but not prior to January 1, 1998.

4. In order to qualify as a Medicare Qualifying Individual 1, the individual must meet the following:

    a. be entitled to Part A of Medicare,

    b. income of at least 120%, but less than 135% of the FPL.

    c. resources may not exceed the standard as described in section 8.100.5.M, and

    d. he/she cannot otherwise be eligible for Medical Assistance.

5. For QI1 purposes, income of the applicant and/or the spouse shall be determined as described under Income Requirements in section 8.100.5. If two or more individuals have earned income, the income of all the individuals shall be added together and the $65 plus one half remainder earned income disregard shall be applied to the total amount of earned income.

6. Clients who would lose QI-1 entitlement due to annual social security COLA will remain eligible for QI-1 coverage under Medical Assistance, as an income disregard case, until the next year’s federal poverty guidelines are published.

8.100.6.O. Qualified Disabled And Working Individuals

1. Medical Assistance coverage is limited to monthly payment of Medicare Part A premiums, and any other Medicare cost sharing expenses determined necessary by CMS.

2. Effective July 1, 1990, a Qualified Disabled and Working Individual (QDWI) is an individual who:

    a. was a recipient of federal Social Security Disability Insurance (SSDI) benefits, who continues to be disabled but lost SSDI entitlement due to earned income in excess of the Social Security Administration's Substantial Gainful Activity (SGA) threshold, and;

    b. has exhausted SSA's allowed extension of “premium free” Medicare Part A coverage under SSDI, and;

    c. has resources at or below twice the SSI resource limit as described in section 8.100.5., and;

    d. has income less than 200% of FPL.

3. For QDWI purposes, income of the applicant and/or the spouse shall be determined as described under Income Requirements in section 8.100.5. If two or more individuals have earned income, the income of all the individuals shall be added together and the $65 plus one half remainder earned income disregard shall be applied to the total amount of earned income.

4. An individual may be eligible under this section only if he/she is not otherwise eligible under another Medical Assistance category of eligibility.

5. Eligibility for QDWI benefits shall be effective the month of determination of entitlement.

6. Eligibility may be retroactive only to the date as of which SSA approves an individual's application for coverage as a “Qualified Disabled and Working Individual”. However, eligibility may not begin prior to 07/01/90.

8.100.6.P. Medicaid Buy-In Program for Working Adults with Disabilities.

1. To be eligible for the Medicaid Buy-In Program for Working Adults with Disabilities:

   a. Applicants must be at least age 16 but less than 65 years of age.

   b. Income must be less than or equal to 450% of FPL after income allocations and disregards. See 8.100.5.F for Income Requirements and 8.100.5.H for Income allocations and disregards. Only the applicant’s income will be considered.

   c. Resources are not counted in determining eligibility.

   d. Individuals must have a disability as defined by Social Security Administration medical listing or a limited disability as determined by a state contractor.

   e. Individuals must be employed. Please see Verification Requirements at 8.100.5.B.1.c.

      i) Due to the federal COVID-19 Public Health Emergency, and required by the Federal CARES Act for the Maintenance of Effort (MOE), members who had a loss of employment will remain in the Buy-In program until the end of the federal Public Health Emergency. At the end of the federal Public Health Emergency, members will be redetermined based on their current employment status. New applicants enrolled will still need to meet the work requirement.

   f. Individuals will be required to pay monthly premiums on a sliding scale based on income.

      i) The amount of premiums cannot exceed 7.5% of the individual’s income.

      ii) Premiums are charged beginning the month after determination of eligibility. Any premiums for the months prior to the determination of eligibility will be waived.

      iii) Premium amounts are as follows:

         1) There is no monthly premium for individuals with income at or below 40% FPL.

         2) A monthly premium of $25 is applied to individuals with income above 40% of FPL but at or below 133% of FPL.

3) A monthly premium of $90 is applied to individuals with income above 133% of FPL but at or below 200% of FPL.

4) A monthly premium of $130 is applied to individuals with income above 200% of FPL but at or below 300% of FPL.

5) A monthly premium of $200 is applied to individuals with income above 300% of FPL but at or below 450% of FPL./

iv) The premium amounts will be updated at the beginning of each State fiscal year based on the annually revised FPL if the revised FPL would cause the premium amount (based on percentage of income) to increase by $10 or more.

v) A change in client net income may impact the monthly premium amount due. Failure to pay premium payments in full within 60 days from the premium due date will result in client's assistance being terminated prospectively. The effective date of the termination will be the last day of the month following the 60 days from the date on which the premium became past due.

vi) Due to the federal COVID-19 Public Health Emergency, the Department will waive premiums for the Medicaid Buy-In for Working Adults with Disability Program during the federal COVID-19 emergency declaration. Once the federal emergency declaration has concluded, the Department will notify all members as to when required premiums will resume.

2. Retroactive coverage is available according to 8.100.3.E, however is not available prior to program implementation

3. Individuals have the option to request to be disenrolled if they have been enrolled into the Medicaid Buy-In Program for Working Adults with Disabilities. This is also called "opt out."

8.100.6.Q. Medicaid Buy-In Program for Children with Disabilities

1. To be eligible for the Medicaid Buy-In Program for Children with Disabilities:

a. Applicants must be age 18 or younger.

b. Household income will be considered and must be less than or equal to 300% of FPL after income disregards. The following rules apply:

i) 8.100.4.E - MAGI Household Requirements

ii) 8.100.5.F - Income Requirements

iii) 8.100.5.F.6 - Income Exemptions

iv) An earned income of $90 shall be disregarded from the gross wages of each individual who is employed

v) A disregard of a 33% (.3333) reduction will be applied to the household's net income.

c. Resources are not counted in determining eligibility.

d. Individuals must have a disability as defined by Social Security Administration medical listing.

e. Children age 16 through 18 cannot be employed. If employed, children age 16 through 18 shall be determined for eligibility through the Medicaid Buy-In Program for Working Adults with Disabilities.

f. Families will be required to pay monthly premiums on a sliding scale based on household size and income.

i) For families whose income does not exceed 200% of FPL, the amount of premiums and cost-sharing charges cannot exceed 5% of the family's adjusted gross income. For families whose income exceeds 200% of FPL but does not exceed 300% of FPL, the amount of premiums and cost-sharing charges cannot exceed 7.5% of the family's adjusted gross income.

ii) Premiums are charged beginning the month after determination of eligibility. Any premiums for the months prior to the determination of eligibility will be waived.

iii) For households with two or more children eligible for the Medicaid Buy-In Program for Children with Disabilities, the total premium shall be the amount due for one eligible child.

iv) Premium amounts are as follows:

1) There is no monthly premium for households with income at or below 133% of FPL.

2) A monthly premium of $70 is applied to households with income above 133% of FPL but at or below 185% of FPL.

3) A monthly premium of $90 is applied to individuals with income above 185% of FPL but at or below 250% of FPL.

4) A monthly premium of $120 is applied to individuals with income above 250% of FPL but at or below 300% of FPL.

v) The premium amounts will be updated at the beginning of each State fiscal year based on the annually revised FPL if the revised FPL would cause the premium amount (based on percentage of income) to increase by $10 or more.

vi) A change in household net income may impact the monthly premium amount due. Failure to pay premium payments in full within 60 days from the premium due date will result in client's assistance being terminated prospectively. The effective date of the termination will be the last day of the month following the 60 days from the date on which the premium became past due.

vii) Due to the federal COVID-19 Public Health Emergency, the Department will waive premiums for the Department's Children with Disabilities Program during the federal emergency declaration. Once the federal emergency declaration has concluded, the Department will notify all members as to when required premiums will resume.

2. Retroactive coverage is available according to 8.100.3.E, however is not available prior to program implementation.

3. Verification requirements will follow the MAGI Category Verification Requirements found at 8.100.4.B.

4, Individuals have the option to request to be disenrolled if they have been enrolled into the Medicaid Buy-In Program for Children with Disabilities. This is also called “opt out.”

8.100.7 Long-Term Care Medical Assistance Eligibility

8.100.7.A. Persons in Long-Term Care Institutions or Other Residential Placement

1. For Long-Term Care services to be covered in a Long-Term Care institution, a client must be determined eligible under the 300% Institutionalized Special Income category. If the client is already Medicaid eligible, a new application is not required but the client must be determined to meet the eligibility criteria.

   For a client entering a Long-Term Care Institution from the community, the Eligibility Site must notify the Single Entry Point/Case Management Agency, upon receipt of the application or client request, to schedule the institutional level of care assessment. This is not applicable to a client being discharged from a hospital, nursing facility or Long-Term Home Health.

   For purposes of applying the special income standard for the aged, disabled or blind persons in Long-Term Care Institutions, gross income means income before application of deductions, exemptions or disregards appropriate to the SSI program.

   Medical Assistance will be provided beginning the first day of the month following the month during which a child under the age of 18 ceases to live with his or her parent(s). Once determined to meet the institutional requirement, parental income and resources will cease to be deemed available to the child because the child is institutionalized and not living in the parents' home.

2. Eligibility under the 300% Institutionalized Special Income category will be provided to applicants who:

   a. Have attained the age of 65 years or;

   b. Have met the requirements according to the definition of disability or blindness applicable to the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)

   c. Have been institutionalized for at least 30 consecutive full days in a Long-Term Care institution. The 30 consecutive full day stay may be a combination of days in a hospital, Long-Term Care institution, or receiving services from a Home and Community Based Services (HCBS) program or Program of All Inclusive Care for the Elderly (PACE).

      Supporting documentation must be provided which verifies the 30 consecutive full days. This documentation shall include the ULTC 100.2 and/or medical records which must be verified by a physician or case manager.

      If a client dies prior to the 30th consecutive full day, the client shall be determined to have met the 30 consecutive full day requirement if:

      i) There is a statement from a physician, or case manager that declares if the client had not died, he/she would have been institutionalized for 30 consecutive full days, and;

ii) The statement is verified by supporting documentation from the beginning of the institutionalized period, which is the first 15 days, or prior to the death of the client, whichever is earliest.

iii) Once the 30 consecutive days of institutionalization requirement has been met, Medical Assistance benefits start as of the first day when institutionalization began if all other eligibility requirements were met as of that date.

d. Are in a facility eligible for Medical Assistance Program reimbursement if the individual is in a hospital or Long-Term Care institution; and

e. Have gross income that does not exceed 300% of the current individual SSI benefit level or;

Are in a Long-Term Care institution (excluding hospital) whose gross income exceeds the 300% level and who establishes an income trust in accordance with the rules on income trusts in section 8.100.7 of this volume;

i) This special income standard must be applied for:

1) A person 65 years of age or older, or disabled or blind receiving care in a hospital, nursing facility; or

2) A person who is not SSI eligible needing Long-Term Care from HCBS or PACE; or

3) A person 65 years of age or older receiving active treatment as an inpatient in a psychiatric facility eligible for Medical Assistance reimbursement; and

f. Have resources that conform with the regulations regarding resource limits and exemptions set forth in section 8.100.5 of this volume; and

g. If married, Income and resources conform to rules set forth at 8.100.7.C and 8.100.7.K; and

h. Have not transferred assets without fair consideration on or after the look-back date defined in section 8.100.7.F.2.d. which would incur a penalty period of ineligibility in accordance with the regulations on transfers without fair consideration in section 8.100.7 of this volume; and

i. Have submitted trust documents to the Department if the individual or the individual's spouse has transferred assets into a trust or is a beneficiary of trust. The Department shall determine the effect of the trust on Medical Assistance Program eligibility.

j. Have submitted documents verifying that an annuity conforms to the regulations regarding Annuities at 8.100.7.I.

3. An appeal process is available to children identified by C.R.S. 27-10.3-101 to 108, The Child Mental Health Treatment Act, who are denied residential treatment. The appeal process is outlined in the Income Maintenance Staff Manual of the Department of Human Services (9 CCR 2503-1). A determination made in connection with this appeal shall not be the final agency action with regard to Medical Assistance eligibility

8.100.7.B. Persons Requesting Long-term Care through Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE)

1. HCBS or PACE shall be provided to persons who have been assessed by the Single Entry Point/Case Management Agency to have met the functional level of care and will remain in the community by receiving HCBS or PACE; and

    a. are SSI (including 1619b) or OAP Medicaid eligible; or

    b. are eligible under the Institutionalized 300% Special Income category described at 8.100.7.A; or

    c. are eligible under the Medicaid Buy-In Program for Working Adults with Disabilities described at 8.100.6.P. For this group, access to HCBS:

        i) Is limited to the Elderly, Blind and Disabled (EBD), Community Mental Health Supports (CMHS), Brain Injury (BI), Spinal Cord Injury (SCI) and Supported Living Services (SLS) waivers; and

        ii) Is contingent on the Department receiving all necessary federal approval for the waiver amendments that extend access to HCBS to the Working Adults with Disabilities population described at 8.100.6.P.

2. A client who is already Medicaid eligible does not need to submit a new application. The client must request the need for Long-Term Care services and the Eligibility Site must redetermine the client's eligibility.

    a. All individuals applying for or requesting Long-Term Care services must disclose and provide documentation of:

        i) any transfer of assets without fair consideration as described at 8.100.7.F; and

        ii) any interest in an annuity as described at 8.100.7.I; and

        iii) any interest in a trust as described at 8.100.7.E.

    b. Failure to disclose and provide documentation of the assets described at 8.100.7.B.2.a may result in the denial of Long-Term Care services.

    c. The requirements at 8.100.7.B.2.a and 8.100.7.B.2.b do not apply to individuals who have been determined eligible under the Medicaid Buy-In Program for Working Adults with Disabilities described at 8.100.6.P.

3. For individuals served in Alternative Care Facilities (ACF), income in excess of the personal needs allowance and room and board amount for the ACF shall be applied to the Medical Assistance charges for ACF services. The total amount allowed for personal need and room and board cannot exceed the State's Old Age Pension Standard.

8.100.7.C. Treatment of Income and Resources for Married Couples

1. The income of a community spouse is not deemed to the institutionalized spouse in determining eligibility. If both spouses are institutionalized, their individual income is counted in determining their own eligibility. The income of one institutionalized spouse is not deemed to the other institutionalized spouse when determining eligibility.

2. The income and resources of both spouses are counted in determining eligibility for either or both spouses with the following exceptions:

   a. If spouses share the same room in an institution, the income of the individual spouse is counted in determining his or her eligibility, and each spouse is allowed the $2000 limit for resources.

   b. Beginning the first month following the month the couple ceases to live together, only the income of the individual spouse is counted in determining his or her eligibility.

   c. If one spouse is applying for Long-Term Care in a Long-Term Care institution or Home and Community Based Services (HCBS), refer to the rules on Treatment of Income and Resources for Institutionalized Spouses.

3. Long term care insurance benefits are not countable as income, but are payable as part of the patient payment to the Long-Term Care institution.

4. For living expense purposes, income and resources of spouses living in the same household for a full calendar month or more must be considered as available to each other, whether or not they are actually contributed, and must be evaluated in accordance with rules contained in 8.100.7.Q.

Long-Term Care

8.100.7.D. Other Medical Assistance Clients Requesting Long-Term Care in an Institution or through HCBS or PACE

Clients who need Long-Term Care services who are eligible for the State Only Health Care Program shall submit an application because they are not already Medicaid eligible.

8.100.7.E Consideration of Trusts in Determining Medical Assistance Eligibility

1. Trusts established before August 11, 1993:

   a. Medical Assistance Qualifying Trust (MQT)

      i) In the case of a Medical Assistance qualifying trust, as defined in 42 U.S.C. Sec. 1396a(k), the amount of the trust property that is considered available to the applicant/recipient who established the trust (or whose spouse established the trust) is the maximum amount that the trustee(s) is permitted under the trust to distribute to the individual assuming the full exercise of discretion by the trustee(s) for the distribution of the maximum amount to the applicant/recipient. This amount of property is deemed available resources to the individual, whether or not is actually received.

      ii) 42 U.S.C. Sec. 1396a(k) was repealed in 1993 and is reprinted here exclusively for purposes of trusts established before August 11, 1993. 42 U.S.C. Sec. 1396a(k) defines a Medical Assistance qualifying trust as “a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.”

b. This provision does not apply to any trust or initial decrees established before April 7, 1986, solely for the benefit of a developmentally disabled individual who resides in an Long Term Care Institution for the developmentally disabled.

c. This provision does not apply to individuals who are receiving SSI.

2. Trusts established on or after July 1, 1994:

Assets include all income and resources of the individual and the individual's spouse, including all income and resources which the individual or the individual's spouse is entitled to but does not receive because of action by any of the following:

a. The individual or the individual's spouse,

b. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse, or

c. Any person court or administrative body acting at the direction of or upon the request of the individual or the individual's spouse.

3. In determining an individual's eligibility for Medical Assistance, the following regulations apply to a trust established by an individual:

a. An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust, and if any of the following individuals established the trust, other than by will:

i) The individual or the individual's spouse

ii) A person, including a court or administrative body, with legal authority to act in place of, or on the behalf of, the individual or the individual's spouse;

iii) A person, including a court or administrative body acting at the direction or upon the request of the individual or the individual's spouse.

b. In the case of a trust, the corpus of which includes assets of an individual and the assets of any other person(s), this regulation shall apply to the portion of the trust attributable to the assets of the individual.

c. These regulations apply without regard to the following:

i) The purposes for which a trust is established;

ii) Whether the trustees have or exercise any discretion under the trust;

iii) Any restrictions on when or whether distributions may be made from the trust; or

iv) Any restrictions on the use of distributions from the trust.

4. Revocable Trusts are considered as follows:

a. The corpus of the trust shall be considered resources available to the individual.

b. Payments from the trust to or for the benefit of the individual shall be considered income to the individual, and

c. Any other payments from the trust shall be considered assets transferred by the individual for less than fair market value and are subject to a 60 month look back period and a penalty period of ineligibility as set forth in the regulations on transfers without fair consideration in this volume.

5. Irrevocable Trusts

If there are any circumstances under which payments from the trust could be made to or for the benefit of the individual, the following shall apply:

a) The portion of the corpus of the trust, or the income on the corpus, from which payment to the individual could be made, shall be considered as resources available to the individual.

b) Payments from that portion of the corpus, or income to or for the benefit of the individual, shall be considered income to the individual.

c) Payments from that portion of the corpus or income for any other purpose shall be considered as a transfer of assets by the individual for less than fair market value and are subject to a 60 month look back period and a penalty period of ineligibility as set forth in the regulations on transfers without fair consideration in this volume.

d) Any portion of the trust from which, or any income on the corpus from which no payment could be made to the individual under any circumstances, shall be considered as a transfer of assets for less than fair market value and shall be subject to a 60 month look back period and penalty period of ineligibility as set forth in the regulations on transfers without fair consideration in this volume. The transfer will be effective as of the date of the establishment of the trust, or the date on which payment to the individual from the trust was foreclosed, if later. The value of the trust shall be determined by including the amount of any payments made from such portion of the trust after such date.

6. The preceding regulations for trusts established on or after July 1, 1994, do not apply to the following:

a. Income Trusts

i) A trust consisting only of the individual's pension income, social security income and other monthly income that is established for the purpose of establishing income eligibility for Long Term Care institution care or Home and Community Based Services (HCBS). To be valid, the trust must meet the following criteria:

a) The individual's gross monthly income must be above the 300%-SSI limit but below the average cost of private Long Term Care institution care in the geographic region in which the individual resides and intends to remain. The Colorado Department of Health Care Policy and Financing shall calculate the average rates for such regions on an annual, calendar-year basis. The geographic regions which are used for calculating the average private pay rate for Long Term Care institution care shall be based on the Bureau of Economic Analysis Regions and consist of the following counties:

REGION I: (Adams, Arapahoe, Boulder, Broomfield, Denver, Jefferson)

REGION II: (Cheyenne, Clear Creek, Douglas, Elbert, Gilpin, Grand, Jackson, Kit Carson, Larimer, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington, Weld, Yuma)

REGION III: (Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, El Paso, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Pueblo, Rio Grande, Saguache, Teller)

REGION IV: (Archuleta, Delta, Dolores, Eagle, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel)

b) For Long Term Care institution clients, each month the trustee shall distribute the entire amount of income which is transferred into the trust. An amount not to exceed $20.00 may be retained for trust expenses such as bank charges if such charges are expected to be incurred by the trust.

c) The only deductions from the monthly trust distribution to the Long Term Care institution are the allowable deductions which are permitted for Medical Assistance-eligible persons who do not have income trusts. Allowable deductions include only the following:

i) Personal need allowance

ii) Spousal income payments

iii) Approved PETI payments

d) Any funds remaining after the allowable deductions shall be paid solely to the cost of the Long Term Care institution care in an amount not to exceed the Medical Assistance reimbursement rate. Any excess income which is not distributed shall accumulate in the trust.

e) No other deductions or expenses may be paid from the trust. Expenses which cannot be paid from the trust include, but are not limited to, trustee fees, attorney fees and costs (including attorney fees and costs incurred in establishing the trust), accountant fees, court fees and costs, fees for guardians ad litem, funeral expenses, past-due medical bills and other debts. Trustee fees which were ordered prior to April 1, 1996 may continue until the trust terminates.

f) For HCBS clients, the amount distributed each month shall be limited to the 300% of the SSI limit. Any monthly income above that amount shall remain in the trust. An amount not to exceed $20.00 may be retained for trust expenses such as bank charges if such charges are expected to be incurred by the trust. No other trust expenses or deductions may be paid from the trust. For the purpose of calculating Individual Cost Containment or client payment (PETI), the client's monthly income will be 300% of the SSI limit. Upon termination, the funds which have accumulated in the trust shall be paid to the Department up to the total amount of Medical Assistance paid on behalf of the individual.

g) For a court-approved trust, notice of the time and place of the hearing, with the petition and trust attached, shall be given to the eligibility site and the Department in the manner prescribed by law.

h) The sole beneficiaries of the trust are the individual for whose benefit the trust is established and the Department. The trust terminates upon the death of the individual or if the trust is not required for Medical Assistance eligibility in Colorado.

i) The trust must provide that upon the death of the individual or termination of the trust, whichever occurs sooner, the Department shall receive all amounts remaining in the trust up to the total amount of Medical Assistance paid on behalf of the individual.

j) The trust must include the name and mailing address of the trustee. The trustee must notify the Department of any trustee address changes or change of trustee(s) within 30 calendar days.

k) The trust must provide that an annual accounting of trust income and expenditures and an annual statement of trust assets shall be submitted to the eligibility site or to the Department upon reasonable request or upon any change of trustee.

l) The amount remaining in the trust and an accounting of the trust shall be due to the Department within three months after the death of the individual or termination of the trust, whichever is sooner. An extension of time may be granted by the Department if a written request is submitted within two months of the termination of the trust.

m) The regulations in this section for income trusts shall also apply to income trusts established after January 1, 1992, under the undue hardship provisions in 26-4-506.3(3),C.R.S. and 15-14-412.5,C.R.S.

b. Disability Trusts

i) A trust that is established solely for the benefit of a disabled individual under the age of 65, which consists of the assets of the individual, and is established for the purpose or with the effect of establishing or maintaining the individual's resource eligibility for Medical Assistance and which meets the following criteria:

a) The individual for whom the trust is established must meet the disability criteria of Social Security.

b) The only assets used to fund the trust are (1) the proceeds from any personal injury case brought on behalf of the disabled individual, or (2) retroactive payments of SSI benefits under Sullivan v. Zebley. (This provision is applicable to disability trusts established from July 1, 1994 to December 31, 2000.)

c) The trust is established solely for the benefit of the disabled individual by the individual, the individual’s parent, the individual’s grandparent, the individual’s legal guardian, or by the court.

d) The sole lifetime beneficiaries of the trust are the individual for whose benefit the trust is established and the Colorado Department of Health Care Policy and Financing

e) The trust terminates upon the death of the individual or if the trust is no longer required for Medical Assistance eligibility in Colorado.

f) Any statutory lien pursuant to section 25.5-4-301(5), C.R.S. must be satisfied prior to funding of the trust and approval of the trust.

g) If the trust is funded with an annuity or other periodic payments, the Department shall be named on the contract or settlement as the remainder beneficiary up to the amount of Medical Assistance paid on behalf of the individual.

h) The trust shall provide that, upon the death of the beneficiary or termination of the trust, the Department shall receive all amounts remaining in the trust up to the amount of total Medical Assistance paid on behalf of the individual.

i) No expenditures may be made after the death of the beneficiary, except for federal and state taxes. However, prior to the death of the individual beneficiary, trust funds may be used to purchase a burial fund for the beneficiary.

j) The amount remaining in the trust and an accounting of the trust shall be due to the Department within three months after the death of the individual or termination of the trust, whichever is sooner. An extension of time may be granted by the Department if a written request is submitted within two months of the termination of the trust.

k) The trust fund shall not be considered as a countable resource in determining eligibility for Medical Assistance.

l) [Rule 8.110.52 B 5. b. 1) l), adopted or amended on or after November 1, 2000 and before November 1, 2001 was not extended by HB 02-1203, and therefore expired May 15, 2002.]

m) Distributions from the trust may be made only to or for the benefit of the individual beneficiary. Cash distributions from the trust shall be considered income to the individual. Distributions for food or shelter are considered in-kind income and are countable toward income eligibility.

n) If exempt resources are purchased with trust funds, those resources continue to be exempt. If non-exempt resources are purchased, those resources are countable toward eligibility.

o) The trust must include the name and mailing address of the trustee. The Department must be notified of any trustee address changes or change of trustee(s) within 30 calendar days.

p) The trust must provide that an annual accounting of trust income and expenditures and an annual statement of trust assets shall be submitted to the eligibility site or to the Department upon reasonable request or upon any change of trustee.

q) Prior to the establishment or funding of a disability trust, the trust shall be submitted for review to the Department, along with proof that the individual beneficiary is disabled according to Social Security criteria. No disability trust shall be valid unless the Department has reviewed the trust and determined that the trust conforms to the requirements of 15-14-412.8,C.R.S., as amended, and any rules adopted by the Medical Services Board.

c. Pooled Trusts

i) A trust consisting of individual accounts established for disabled individuals for the purpose of establishing resource eligibility for Medical Assistance. A valid pooled trust shall meet the following criteria:

a) The individual for whom the trust is established must meet the disability criteria of Social Security.

b) The trust is established and managed by a non-profit association which has been approved by the Internal Revenue Service.

c) A separate account is maintained for each beneficiary; however, the trust pools the accounts for the purposes of investment and management of the funds.

d) The sole lifetime beneficiaries of each trust account are the individual for whom the trust is established and the Department.

e) If the trust is funded with an annuity or other periodic payments, the Department or the pooled trust shall be named as remainder beneficiary.

f) The trust account shall be established by the disabled individual, parent, grandparent, legal guardian, or the court.

g) The only assets used to fund each trust account are (1) the proceeds from any personal injury case brought on behalf of the disabled individual, or (2) retroactive payments of SSI benefits under Sullivan v. Zeblev . (This provision is applicable to pooled trusts established from July 1, 1994 to December 31, 2000.)

h) Any statutory lien pursuant to section 25.5-4-301(5), C.R.S. must be satisfied prior to funding of the individual's trust account and approval of the joinder agreement.

i) Following the disabled individual's death or termination of the trust account, whichever occurs sooner, to the extent that the remaining funds in the trust account are not retained by the pooled trust, the Department shall receive any amount remaining in the individual's trust account up to the total amount of Medical Assistance paid on behalf of the individual.

j) The pooled trust account shall not be considered as a countable resource in determining Medical Assistance eligibility.

k) Distributions from the trust account may be made only to or for the benefit of the individual. Cash distributions to the individual from the trust shall be considered as income to the individual. Distributions for food or

shelter are considered in-kind income and are countable toward income eligibility.

l) If exempt resources are purchased with trust funds, those resources continue to be exempt. If non-exempt resources are purchased, those resources are countable toward resource eligibility.

ii) If an institutionalized individual for whom a pooled trust is established is 65 years of age or older, the transfer of assets into the pooled trust creates a rebuttable resumption that the assets were transferred without fair consideration and shall be analyzed in accordance with the rules on transfers without fair consideration in this volume. This regulation is effective for transfers to pooled trusts after January 1, 2001.

iii) When the individual beneficiary of an income, disability or pooled trust dies or the trust is terminated, the trustee shall promptly notify the eligibility site and the Department. To the extent required by these rules the trustee shall promptly forward the remainder of the trust property to the Department, up to the amount of Medical Assistance paid on behalf of the individual beneficiary.

d. Third Party Trusts

i) Third party trusts are trusts which are established with assets which are contributed by individuals other than the applicant or the applicant's spouse for the benefit of an applicant or client

ii) The terms of the trust will determine whether the trust fund is countable as a resource or income for Medical Assistance eligibility.

iii) Trusts which limit distributions to non-support or supplemental needs will not be considered as a countable resource. If distributions are made for income or resources, such distributions are countable as such for eligibility.

iv) If the trust requires income distributions, the amount of the income shall be countable as income in determining eligibility.

v) If the trust requires principal distributions, that amount shall be considered as a countable resource.

vi) If the trustee may exercise discretion in distributing income or resources, the income or resources are not countable in determining eligibility. If distributions are made for income or resources, such distributions are countable as such for eligibility.

e. Federally Approved Trusts

i) If an SSI recipient has a trust which has been approved by the Social Security Administration, eligibility for Medical Assistance cannot be delayed or denied. Individuals on SSI are automatically eligible for Medical Assistance despite the existence of a federally approved trust.

ii) If the eligibility site has a copy of a federally approved trust, the eligibility site must send a copy to the Department.

7. Submission of Trust Documents and Records

a. The trustee of a trust which was established by or which benefits a Medical Assistance Applicant or client shall submit trust documents and records to the eligibility site and to the Department.

b. This requirement includes documents and records for income trusts, disability trusts and the joinder agreement for each pooled trust account.

c. The eligibility site shall submit any trust which is submitted with an application or at redetermination to The Department. The eligibility site shall determine Medical Assistance eligibility based on the determination of The Department as to the effect of the trust on eligibility.

8.100.7.F. Transfers of Assets Without Fair Consideration

1. Definitions. The following definitions apply to transfers of assets without fair considerations:

a. “Assets” include all income and resources of the individual and such individual's spouse, including any interest in income or a resource as well as all income or resources which the individual or such individual's spouse is entitled to but does not receive because of action by any of the following:

i) The individual or such individual's spouse,

ii) A person, a court, or administrative body with legal authority to act on behalf of the individual or such individual's spouse, or

iii) Any person, court or administrative body acting at the direction of or upon the request of the individual or such individual's spouse.

b. “Fair market value” is the value of the asset if sold at the prevailing price at the time it was transferred.

c. “Fair consideration” is the amount the individual receives in exchange for the asset that is transferred, which is equal to or greater than the value of the transferred asset.

d. “Look-back period” means the number of months prior to the month of application for long-term care services that the Department will consider for transfer of assets.

e. “Penalty period” means a period of time for which an applicant or client will not be eligible to receive long-term care services.

f. “Uncompensated value” shall mean the fair market value of an asset at the time of the transfer minus the value of compensation the individual receives in exchange for the asset.

g. “Valuable consideration” shall mean what an individual receives in exchange for his or her right or interest in an asset which has a tangible and/or intrinsic value to the individual that is equivalent to or greater than the value of the transferred asset.

2. General Provisions

If an institutionalized individual or the spouse of such individual disposes of assets without fair consideration on or after the look-back period, the individual shall be subject to a period of ineligibility for Long-Term Care services, including Long-Term Care institution care, Home and

Community Based Services (HCBS), and the Program of All Inclusive Care for the Elderly (PACE).

a. For transfers made before February 8, 2006, the look-back period is 36 months prior to the date of application. For transfers made on or after February 8, 2006, the look-back date is 60 months prior to the date of application.

b. An institutionalized individual is one who is institutionalized in a medical facility, a Long-Term Care institution, or applying for or receiving Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE).

c. If an institutionalized individual or such individual's spouse transfers assets without fair consideration on or after the look-back period, the transfer shall be evaluated as follows:

    i) The fair market value of the transferred asset, less the actual amount received, if any, shall be divided by the average of the regions, defined at 8.100.7.E, monthly private pay cost for Long-Term Care institution care in the state of Colorado at the time of application.

    ii) The resulting number is the number of months that the individual shall be ineligible for Medical Assistance. For transfers made before February 8, 2006, the period of ineligibility shall begin with the first day of the month following the month in which the transfer occurred. For transfers made on or after February 8, 2006, the period of ineligibility shall begin on the later of the following dates:

        a) The first day of the month following the month in which the transfer occurred or is discovered. For transfers discovered after the date the transfer occurred, the date of transfer shall be the discovery date.

        Or;

        b) The date on which the individual would initially be eligible for HCBS, PACE or institutional services based on an approved application for such assistance that were it not for the imposition of the penalty period, would be covered by Medical Assistance;

        And;

        c) Which does not occur during any other period of ineligibility for services by reason of a transfer of assets penalty.

d. The period of ineligibility shall also include partial months, which shall be calculated by multiplying 30 days by the decimal fractional share of the partial month. The result is the number of days of ineligibility. For transfers occurring on or after April 1, 2006, the result shall be rounded up to the nearest whole number.

e. There is no maximum period of ineligibility.

f. For transfers prior to February 8, 2006, the total amount of all of the transfers are added together and the period of ineligibility begins the first day of the month following the month in which the resources are transferred.

    i) If the previous penalty period has completely expired, the transfers are not added together.

ii) If the previous penalty period has not completely expired and the first day of the month following the month in which the resources are transferred is part of a prior penalty period, the new penalty period begins the first day after the prior penalty period expires.

g. For transfers on or after February 8, 2006, the total amounts of all of the transfers are added together and the penalty period is assessed as outlined in section 8.100.7.F.2.c-dabove.

i) If the previous penalty period has completely expired, the transfers are not added together.

ii) If the previous penalty period has not completely expired and the first day of the month following the month in which the resources are transferred is part of a prior penalty period, the new penalty period begins the first day after the prior penalty period expires.

h. The institutionalized individual may continue to be eligible for Supplemental Security Income (SSI) and basic Medical Assistance services, but shall not be eligible for Medical Assistance for Long-Term Care institution services, Home and Community Based Services or the Program of All Inclusive Care for the Elderly due to the transfer without fair consideration.

i. If a transfer without fair consideration is made during a period of eligibility, a period of ineligibility shall be assessed in the same manner as stated above.

j. Actions that prevent income or resources from being received, or reduce an individual’s ownership, right or interest in an asset such that the individual does not receive valuable consideration as set forth on the following list, which is not exclusive, shall create a rebuttable presumption that the transfer was without fair consideration:

i) Waiving pension income.

ii) Waiving a right to receive an inheritance.

iii) Preventing access to assets to which an individual is entitled by diverting them to a trust or similar device. This is not applicable to valid income trusts, disability trusts and pooled trusts for individuals under the age of 65 years.

iv) Failure of a surviving spouse to elect a share of a spouse's estate or failure to open an estate within 6 months after a spouse’s death.

v) Failure to obtain a family allowance or exempt property allowance from an estate of a deceased spouse or parent. Such allowances are presumed to be available 3 months after death.

vi) Not accepting or accessing a personal injury settlement.

vii) Transferring assets into an irrevocable private annuity which was not purchased from a commercial company.

viii) Transferring assets into an irrevocable entity such as a Family Limited Partnership which eliminates or restricts the individual's access to the assets.

ix) Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony, if the benefit outweighs the cost.

x) Failure to exercise rights in a Dissolution of Marriage case, which insure an equitable distribution of marital property and income.

xi) Purchasing a single-premium life insurance policy, endowment policy or similar instrument within the look-back period, which has no cash value, and for which the individual receives no valuable consideration shall be considered an uncompensated transfer. The total amount of the purchase price shall be considered a transfer without fair consideration.

8.100.7.G. Treatment of Certain Assets as Transfers Without Fair Consideration

1. Promissory notes established before April 1, 2006:

   a. The fair market value of promissory notes is a countable resource and must be evaluated in accordance with the regulations on consideration of resources in this volume.

   b. Promissory notes with one or more of the following provisions, indicating they have little or no market value, shall create a rebuttable presumption of a transfer without fair consideration:

      i) An interest rate lower than the prevailing market rate.

      ii) A term for repayment longer than the life expectancy of the holder of the note, as determined by the tables at 8.100.7.J.for annuities purchased on or after February 8, 2006.

      iii) Low payments.

      iv) Cancellation at the death of the note holder.

   c. Promissory notes which have been appraised by a note broker as having little or no value shall create a rebuttable presumption of a transfer without fair consideration.

2. Promissory notes established on or after April 1, 2006 but before March 1, 2007

   a. Subject to the look-back date described in section 8.100.7.F.2.b for the purpose of calculating the penalty period of ineligibility for a transfer without fair consideration, the value of a promissory note, loan or mortgage which does not meet the criteria in section 8.100.5.M.3.n. is the outstanding balance due as of the date of the individual's application for Medical Assistance for services, described in section 8.100.7.F.2.c.

3. Promissory notes established on or after March 1, 2007

   a. Subject to the look-back date described in section 8.100.7.F.2.b, for the purpose of calculating the penalty period of ineligibility for a transfer without fair consideration, the value of a promissory note, loan or mortgage which does not meet the criteria in section 8.100.5.M.3.o. is the outstanding balance due as of the date of the individual's application for Medical Assistance for services, described in section 8.100.7.F.2.c..

4. Personal care services

a. Effective for agreements that were signed and notarized prior to March 1, 2007, family members who provide assistance or services are presumed to do so for love and affection, and compensation for past assistance or services shall create a rebuttable presumption of a transfer without fair consideration unless the compensation is in accordance with the following:

   i) A written agreement must be executed prior to the delivery of services.

   ii) The agreement must be signed by the applicant, or a legally authorized representative, such as agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative may not be a beneficiary of the agreement.

   iii) The agreement must be dated and the signature must be notarized; and

   iv) Compensation for services rendered must be comparable to what is received in the open market.

b. Effective for agreements that are signed and notarized on or after March 1, 2007, compensation under personal service agreements will be deemed to be a transfer without fair consideration unless the following requirements are met:

   i) A written agreement was executed prior to the delivery of services; and

      a) The agreement must be signed by the applicant, or a legally authorized representative, such as agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative may not be a beneficiary of the agreement; and

      b) The legally authorized representative, agent, guardian, conservator, or other representative of the applicant's estate may not be a beneficiary of a care agreement; and

      c) The agreement specifies the type, frequency and time to be spent providing the services agreed to in exchange for the payment or transferred item; and

      d) The agreement provides for payment of services on a regular basis, no less frequently than monthly, while the services are being provided; and

   ii) Compensation for services rendered must be comparable to what is received in the open market. The burden is on the applicant to prove that the compensation is reasonable and comparable; and

   iii) A record or log is provided which details the actual services rendered. The services cannot be services that duplicate services that another party is being paid to provide or which another party is responsible to provide.

c. Payment for services, which were rendered previously and for which no compensation was made, shall be considered as a transfer without fair consideration.

d. Assets transferred in exchange for a contract for personal services for future assistance after the date of application are considered available resources.

e. A care agreement must be entered into, signed, and notarized prior to providing any services for which a beneficiary will be compensated.

5. Transfers of real property into joint tenancy without fair consideration

a. If real property is transferred into joint tenancy with right of survivorship with one or more joint tenants, the amount transferred depends on the number of joint tenants to whom the property is transferred. The following are examples:

i) If the transfer is to one joint tenant, the amount transferred is equal to one-half of the value of the property at the time of the transfer.

ii) If the transfer is to two joint tenants, the amount transferred is equal to two-thirds of the value.

iii) If the transfer is to three joint tenants, the amount transferred is equal to three-fourths of the value of the property at the time of the transfer.

b. If the transfer is completed with two deeds or transactions, the first of which transfers a fractional share of the property into tenancy in common, and the second into joint tenancy, the amount transferred shall be determined in the same manner as set forth above.

6. No period of ineligibility will be imposed if the individual transferred the assets under any of following circumstances:

a. The asset transferred was a home and title to the home was transferred to:

i) The spouse of such individual;

ii) A child of such individual who is either

1) Under the age of 21 years, or

2) Is blind or totally and permanently disabled as determined by the Social Security Administration.

iii) A brother or sister

1) Who has an equity interest in the home and

2) Who was residing in such individual's home for at least one year immediately before the date that the individual becomes institutionalized.

iv) A son or a daughter of such individual

1) Who was residing in the home for a period of at least two years immediately before the date the individual becomes institutionalized and

2) Who provided care to such individual by objective evidence, that permitted such individual to reside at home rather than in an institution.

3) Documentation shall be submitted proving that the son or daughter's sole residence was the home of the parent. The parent's attending physician(s) or professional health provider(s) during the past two years

must substantiate in writing that the care was provided, and that the care prevented the parent from requiring placement in a Long-Term Care institution.

b. The assets were transferred:

i) To the individual's spouse or to another for the sole benefit of the individual's spouse.

ii) From the individual's spouse to another for the sole benefit of the individual's spouse.

iii) To a trust which is established solely for benefit of the individual's child who is determined to be blind or totally disabled by the Social Security Administration or to that child directly for the sole benefit of the child.

iv) To a trust established solely for the benefit of an individual under 65 years of age who is determined to be blind or totally disabled by the Social Security Administration.

c. Definition of the term “for the sole benefit of,” as used in the preceding exceptions to the transfer penalty rules:

i). A transfer or a trust is considered to be for the sole benefit of the spouse, blind or disabled child, or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

ii). To insure that the asset transferred is for the sole benefit of the spouse, blind or disabled child or disabled individual, the following criteria must be met:

1) The transfer must be accomplished by a written instrument which legally binds the parties to a specified course of action and sets forth:

a) The conditions under which the transfer was made, and

b) A statement as to whom can benefit from the transfer.

2) The written instrument must provide for the spending of funds or use of the transferred assets for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual.

3) Disability trusts and income trusts, which designate the Colorado Department of Health Care Policy and Financing as the remainder beneficiary up to the amount of Medical Assistance paid on behalf of the individual, are exempt from this requirement.

4) A community spouse to whom a Community Spouse Resource Allowance has been transferred does not have to provide a written document or comply with the requirement that the transfer is actuarially sound. However, the Community Spouse Resource Allowance must be for the sole benefit of the community spouse to whom it is transferred. Upon the death of the community spouse, those resources shall be made

available to the surviving spouse, at least up to the amount of the elective share of the augmented estate, the family allowance and the exempt property allowance.

7. There is a rebuttable presumption the transfer without fair consideration was made for purposes of Medical Assistance eligibility or avoiding the medical assistance estate recovery program.

   a. The presumption that an asset was transferred to establish or maintain Medicaid eligibility or to avoid the medical assistance estate recovery program is rebutted only if the individual or individual's spouse demonstrates by providing convincing evidence that the asset was transferred exclusively for some other purpose and the reason for the transfer did not include Medical Assistance eligibility or avoidance of medical assistance estate recovery..

   b. A subjective statement of intent or ignorance of the transfer penalty or verbal assurances that the individual was not considering Medical Assistance eligibility when the transfer was made are not sufficient.

   c. There is a rebuttable presumption that transfers without fair consideration were made for the purpose of Medical Assistance eligibility in the following cases:

      i) In any case in which the individual's assets and the assets of the individual's spouse remaining after the transfer total an amount insufficient to meet all living expenses and medical expenses reasonably expected to be incurred by the individual or the individual's spouse in the sixty (60) months following the transfer. Medical expenses include the cost of Long-Term Care unless the future necessity of such care could have been absolutely precluded because of the particular circumstances.

      ii) In any case where:

         1) the transfer was made on behalf of the individual or the individual's spouse;

         2) the transfer was made by:

            a) the individual or individual's spouse

            b) a guardian,

            c) a conservator, or

            d) agent under a power of attorney; and

         3) the transfer was made to:

            a) anyone related to the individual or individual's spouse by birth, adoption or marriage, other than between the individual and the individual's spouse; or to

            b) anyone related to the guardian, conservator, or agent under a power of attorney by birth, adoption or marriage.

   d. Convincing evidence may include, but is not limited to, verification which establishes:

i) That at the time of the transfer the individual could not have anticipated needing long term Medical Assistance due to the existence of other circumstances which would have precluded the need.

ii) Other assets were available at the time of the transfer to meet current and future needs of the individual, including the cost of Long-Term Care institution or other institutionalized care for a period of sixty (60) months.

iii) The specific purpose for which the assets were transferred and the reason the transfer was necessary and the reason there was no alternative but to transfer the assets without fair consideration.

8. Apportionment of penalty period between spouses

a. If a transfer results in a period of ineligibility for an individual, and the individual's spouse becomes institutionalized and is otherwise eligible for Medical Assistance, the period of ineligibility shall be apportioned equally between the spouses.

b. If one spouse dies or is no longer institutionalized, any months remaining in the period of ineligibility shall be assigned to the spouse who remains institutionalized.

9. If the individual or the individual's spouse has transferred assets into a trust or is a beneficiary of a trust, the trust document shall be submitted to the Colorado Department of Health Care Policy and Financing to determine the effect of the trust on Medical Assistance eligibility.

10. Notice

a. The Colorado Department of Health Care Policy and Financing is an interested person according to 15-14-406, C.R.S. or a successor statute.

b. As an interested party, the department shall be given notice of a hearing in cases in which Medical Assistance planning or Medical Assistance eligibility is set forth in the petition as a factor for requesting court authority to transfer property.

11. Undue Hardship

a. The period of ineligibility resulting from the imposition of the transfer or the trust provisions may be waived if denial of eligibility would create an undue hardship for an individual who is otherwise eligible. Undue hardship can be established if application of the transfer penalty would:

i) deprive the individual of medical care such that the individual’s health or life would be endangered; or

ii) deprive the individual of food, clothing, shelter or other necessities of life.

b. Undue hardship shall not exist when the application of the trust or transfer rules merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him or her at risk of serious deprivation.

c. Notice of an undue hardship exception shall be given to the applicant or client. The Eligibility Site shall make a determination on the request within 15 working days from when the request is received. The Eligibility Site shall issue a notice of action on the determination of hardship. An adverse determination may be appealed in accordance with the appeal process as described at Section 8.057 of this volume.

d. The facility in which an institutionalized individual is residing may file an undue hardship waiver application on behalf of the individual with the individual's or his or her personal representative's consent. Where the individual is unable to give consent and where the personal representative of the individual has a conflict of interest concerning the particular circumstance giving rise to the period of ineligibility, the facility may request an undue hardship on behalf of the individual. An example of such a conflict of interest would be a situation where the personal representative who is also an agent under a power of attorney transfers property to himself or herself. The facility shall submit the undue hardship request to the Eligibility Site and give sufficient detail of the circumstance surrounding the conflict of interest and the information required below to the Eligibility Site. These provisions are not intended to change the Department's requirements under Section 8.057 of the Department's regulations as to who has standing to file an appeal.

e. An individual or representative may request that the Eligibility Site waive a transfer penalty on the basis of undue hardship. The request shall be made in writing to the applicant's or client's Eligibility Site case worker. The individual making the request has the burden of proof and must provide clear and convincing evidence to substantiate the circumstances surrounding the transfer, attempts to recover the assets, and the impact of the denial of Medicaid payments for Long-Term Care services. The request and documentation shall include all of the following:

i) the reason(s) for the transfer including the individual's participation in the transfer or grant of legal authority to another that gave rise to the transfer, and the relationship between the transferor and transferee;

ii) evidence to prove that the assets have been irretrievably lost and that all reasonable attempts made to recover the asset(s), including any legal actions and the results of the attempts, including but not limited to a request for an adult protection investigation (such as in a case of financial exploitation), filing a police report, or filing a civil action have been exhausted or have been or are being pursued; and,

iii) documentation such as a notice of discharge or pending discharge from the facility and a physician's statement detailing how the inability to receive nursing facility or community based services would result in the individual's inability to obtain life-sustaining medical care or that the individual would not be able to obtain food, clothing or shelter.

f. To the extent that the transferred assets are recovered pursuant to the attempts in (e)(ii) above, the individual shall reimburse Medicaid for the funds expended as a result of an approved undue hardship request.

g. If the transferee and the transferor of the assets for which the transfer penalty is being imposed are related parties there shall be a rebuttable presumption that the transferred assets are not irretrievably lost as required under (e)(ii) above. Related parties are described in Section 8.100.7.G.7.c.ii of these regulations.

12. No period of ineligibility shall be assessed in any of the following circumstances:

a. Convincing and objective evidence is provided that the individual intended to dispose of the resources either at fair market value or for other fair consideration.

b. Convincing and objective evidence is presented proving that the resources were transferred exclusively for a purpose other than to qualify or remain eligible for Medical Assistance.

c. All of the resources transferred without fair consideration have been returned to the individual.

d. For assets transferred before February 8, 2006, the assets were transferred more than 36 months prior to the date of application.

e. For assets transferred before February 8, 2006, the penalty period has expired based on the following formula: The fair market value of the transferred asset is divided by the average cost of Long Term Care institution care in the state at the time of application and the resulting number of months of ineligibility has ended prior to the date of application.

8.100.7.H. Life Estates

1. Definitions

a. “Fair Market Value” means the amount for which a property or interest in a property could reasonably be expected to sell on the open market.

b. “Life Estate.” A life estate conveys upon a grantee certain rights in property measured by the life of the life estate holder or of some other person. The owner of a life estate has the right to possess the property, the right to use the property, the right to obtain profits from the property, and the right to sell the life estate interest in the property. The establishment of a life estate on a property results in the creation of two interests: a life estate interest and a remainder interest.

c. “Remainder Interest” means an interest in property created at the time a life estate is established which gives the holder of the interest the right to ownership of the property upon the death of the life estate holder. An individual holding a remainder interest is free to sell his or her interest in the property unless the sale is restricted by the terms of the instrument which established the remainder interest.

2. General Provisions

a. Life Estates Established before July 1, 1995

i) Transfer without fair consideration Treatment

1) The establishment of a life estate before July 1, 1995 by an individual or individual’s spouse shall not be considered a transfer without fair consideration.

ii) Resource Treatment

1) A life estate owned by an individual or individual’s spouse that was established on exempt property shall be considered to be an exempt resource.

2) A life estate owned by an individual or individual’s spouse that was established on countable property shall be considered a countable resource.

i) The value of the life estate shall be determined by using the methodology described at 8.100.7.H.3.

3) A remainder interest held by an individual or individual's spouse on exempt property shall be considered an exempt resource.

4) A remainder interest held by an individual or individual's spouse on countable property shall be considered a countable resource

i) The value of the remainder interest shall be determined by using the methodology described at 8.100.7.H.4.a.

b. Life Estates Established on or after July 1, 1995

i) Transfer without fair consideration Treatment

1) The establishment of a life estate on or after July 1, 1995 on property owned by an individual or individual's spouse shall be considered a transfer without fair consideration if the life estate was established within the look-back period described at 8.100.7.F.2.b.

a) For the purpose of determining the transfer without fair consideration penalty period, the amount of the transfer shall be based on the value of the remainder interest, as calculated using the methodology described at 8.100.7.H.4.a.

2) The purchase of a life estate interest in a home not owned by an individual or individual's spouse on or after April 1, 2006 within the look-back period described at 8.100.7.F.2.b. shall be considered a transfer without fair consideration unless the purchaser lives in the home for a period of at least twelve (12) consecutive months after the date of the purchase.

a) For the purpose of determining the transfer without fair consideration penalty period, the amount of the transfer shall be the entire amount used to purchase the life estate.

b) If the payment for the life estate exceeds the value of the life estate, as calculated using the methodology described at 8.100.7.H.3, then the difference between the amount paid and the value of the life estate shall be considered to be a transfer without fair consideration.

ii) Resource Treatment

1) A life estate owned by an individual or individual's spouse that was established on exempt property shall be considered an exempt resource.

2) A life estate owned by an individual or individual's spouse that was established on countable property shall be considered a countable resource.

a) The value of the life estate shall be determined by using the methodology described at 8.100.7.H.3.a.

3) A remainder interest held by an individual or individual's spouse on exempt property shall be considered an exempt resource.

5) A remainder interest held by an individual or individual's spouse on countable property shall be considered a countable resource

a) The value of the remainder interest shall be determined by using the methodology described at 8.100.7.H.4.

3. Determining the Value of a Life Estate

a. The value of a life estate interest is calculated using the following method:

i) Determine the fair market value of the property on which the life estate was established. The fair market value shall be obtained by using the most recent actual value reported by the county assessor or from the most recent property assessment notice. If the actual value is not shown on the property assessment notice, the assessed value shall be divided by the appropriate property assessment rate to obtain the market value.

ii) Multiply the fair market value of the property by the "Life Estate" factor in Column 1 from the Life Estate Table at 8.100.7.H.5, in this section, that corresponds to the life estate holder's age as of his or her last birthday. The result is the value of the life estate interest.

b. If a life estate was established on property held by spouses in joint tenancy, then the age of the youngest individual shall be used to calculate the value of the life estate.

4. Determining the Value of a Remainder Interest

a. The value of a remainder interest is calculated using the following method:

i) Determine the fair market value of the property on which the remainder interest was established. The fair market value shall be obtained by using the most recent actual value reported by the county assessor or from the most recent property assessment notice. If the market value is not shown on the property assessment notice, the assessed value shall be divided by the appropriate property assessment rate to obtain the market value.

ii) Multiply the fair market value of the property by the "Remainder" factor in Column 2 from the Life Estate Table at 8.100.7.H.5, in this section, that corresponds to the life estate holder's age as of his or her last birthday. The result is the value of the remainder interest.

b. If a life estate was established on property held by spouses in joint tenancy, then the age of the youngest individual shall be used to calculate the value of the remainder interest.

5. Life Estate Table

This rule incorporates by reference the Social Security life estate and remainder interest table effective April 1999 to the present. The incorporation of the table excludes later amendments, or editions of, the referenced material.

The Social Security life estate and remainder interest tables are available at http://policy.ssa.gov/poms.nsf/lnx/0501140120

Pursuant to § 24-4-103 (12.5), C.R.S., the Department maintains copies of the incorporated text in its entirety, available for public inspection during regular business hours at: Colorado

Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.100.7.I. Annuities

1. DEFINITIONS

a. “Annuity” means a contract between an individual and a commercial company in which the individual invests funds and in return receives installments for life or for a specified number of years.

b. “Annuitant” means an individual who is entitled to receive payments from an annuity.

c. “Annuitization Period” means the period of time during which an annuity makes payments to an annuitant.

d. “Annuitized” means an annuity that has become irrevocable and is making payments to an annuitant.

e. “Assignable” means an annuity that can have its owner and/or annuitant changed.

f. “Balloon Payment” means a lump sum equal to the initial annuity premium less any distributions paid out before the end of an annuitization period.

g. “Beneficiary” means an individual or individuals entitled to receive any remaining payments from an annuity upon the death of the annuitant.

h. “Department” means the Department of Health Care Policy and Financing, its successor(s), or its designee(s).

i. “Irrevocable” means an annuity that cannot be canceled, revoked, terminated, or surrendered under any circumstances.

j. “Non-assignable” means an annuity that cannot have its owner and/or annuitant changed under any circumstances.

k. “Owner” means the person who may exercise the rights provided in an annuity contract during the life of the annuitant. An owner can generally name himself or herself or another person as the annuitant.

l. “Revocable” means an annuity that can be canceled, revoked, terminated, or surrendered.

m. “Transaction” means:

i) The purchase of an annuity;

ii) The addition of principal to an annuity;

iii) Elective withdrawals from an annuity;

iv) Requests to change the distributions from an annuity;

v) Elections to annuitize an annuity contract; or

vi) Any other action taken by an individual that changes the course of payments made by an annuity or the treatment of income or principal of an annuity.

2. Annuities purchased on or before June 30, 1995

a. A revocable or irrevocable annuity established on or before June 30, 1995 is not a countable resource if it is annuitized and regular returns are being received by the annuitant.

i) Payments from the annuity to the individual or individual's spouse are income in the month received.

b. A revocable or irrevocable annuity established on or before June 30, 1995 is a countable resource if it has not been annuitized.

3. Annuities Established on or after July 1, 1995 but before February 8, 2006

a. The purchase of an annuity shall be considered to be a transfer without fair consideration unless the following criteria are met:

i) The annuity is purchased from a life insurance company or other commercial company that sells annuities as part of its normal course of business;

ii) The annuity is annuitized for the individual or individual's spouse;

iii) The annuity is purchased on the life of the individual or individual's spouse; and

iv) The annuity provides payments for a period not exceeding the annuitant's projected life expectancy based on life expectancy tables described at 8.100.7.J.

b. To determine if a transfer without fair consideration has occurred in the purchase of an annuity, the Eligibility Site shall:

i) Determine the date on which the annuity was purchased;

ii) Determine the amount of money used to purchase the annuity and the length of the annuitization period;

iii) Determine the age of the annuitant at the time the annuity was purchased; and

iv) Determine the life expectancy of the annuitant at the time the annuity was purchased using the appropriate life expectancy table described at 8.100.7.J.

1) If the length of the annuitization period exceeds the annuitant's life expectancy, then a transfer without fair consideration exists for the portion of the annuitization period that exceeds the annuitant's life expectancy.

2) If the total value of the annuity's payments during the annuitization period is less than the original purchase price of the annuity, then the difference shall be considered to be a transfer without fair consideration.

3) If the total value of the annuity's payments during the annuitization period is equal to or greater than the original purchase price of the annuity, then the purchase of the annuity shall not be considered to be a transfer

without fair consideration. However, any payments made by the annuity shall be considered to be countable income in the month received.

4) If the annuity was purchased more than 36 months before the date of application for Medicaid, then there is no transfer without fair consideration penalty period. However, any payments made by the annuity shall be considered to be countable income in the month received.

4. Annuities Established on or after April 1, 1998 but before February 8, 2006

a. The Eligibility Site shall determine the Minimum Monthly Maintenance Needs Allowance (MMMNA) of the community spouse, if applicable.

i) If the monthly payment amount provided by the annuity to the community spouse exceeds the MMMNA, then the amount of the annuity which causes the monthly annuity payment to exceed the MMMNA shall be considered to be a transfer without fair consideration in determining the institutionalized spouse's eligibility. This applies only to the extent that the transferred amount causes the Community Spouse Resource Allowance to exceed the maximum.

b. The Eligibility Site shall determine if the Individual is receiving substantially equal installments from the annuity for the annuitization period of the annuity.

i) If the annuity is not paid in substantially equal installments, then the original purchase price of the annuity shall be considered to be a transfer without fair consideration.

c. If the annuity was purchased more than 36 months before the date of application for Medicaid, then there is no transfer without fair consideration penalty period.

i) Any payments made by the annuity shall be considered to be countable income in the month received.

5. Annuities Purchased on or after February 8, 2006

a. As a condition of Medicaid eligibility, at the time of application or redetermination, an applicant or his or her spouse for Medicaid Long-Term Care services shall disclose any interest that the Medicaid applicant or his or her spouse has in an annuity.

i) A complete copy of the annuity contract, including the most recent beneficiary designation, shall be provided to the eligibility site.

b. By providing Medicaid Long-Term Care services, the Department shall be a remainder beneficiary of any annuity in which an individual or individual's spouse has an interest. The purchase of the annuity shall not be considered to be a transfer without fair consideration if:

i) The Department is named as the remainder beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual; or

ii) The Department is named as the remainder beneficiary in the next position after the community spouse or minor or disabled child.

iii) This provision shall not apply to annuities that are revocable and/or assignable.

c. The Eligibility Site shall notify the issuer of the annuity that the Department is a preferred remainder beneficiary in the annuity for medical assistance provided to the institutionalized individual. This notice shall include a statement requiring the issuer to notify the Eligibility Site of any changes in the amount of income or principal that is being withdrawn from the annuity or any other transactions, as defined at 8.100.7.I.1., regardless of when the annuity was purchased.

d. If the Department is not named on the annuity as a remainder beneficiary, then the value of funds used to purchase the annuity shall be deemed a transfer without fair consideration and shall be subject to the penalty period provisions described at 8.100.7.F.

i) This provision shall not apply to annuities that are revocable and/or assignable.

e. Revocable Annuities

i) A revocable annuity is a countable resource. The value of the annuity is the total value of the annuity principal plus any accumulated interest.

a) If the annuity includes a surrender charge or other financial penalty (other than tax withholding or a tax penalty) for withdrawing funds from the annuity, then the value of the annuity is the net amount the individual would receive upon full surrender of the annuity.

ii) Payments from a revocable annuity are not countable as income.

f. Irrevocable Assignable Annuities

i) An irrevocable assignable annuity is a countable resource. The value of the annuity is presumed to be the total value of the annuity principal plus any accumulated interest.

a) An individual or individual's spouse can rebut the presumption by providing documented offers from at least three companies who are active in the market for buying and selling annuities an annuity income streams. The value of the annuity shall then be the highest of the offers.

b) Any payments from an irrevocable assignable annuity that is considered to be a countable resource are not considered to be countable income.

ii) An individual or individual's spouse can rebut the presumption that an irrevocable assignable annuity is not a countable resource by providing documented offers from at least three companies who are active in the market for buying and selling annuities and annuity income streams stating their unwillingness or inability to purchase the annuity or annuity income stream.

a) Any payments from an irrevocable assignable annuity that is not considered to be a countable resource are considered to be countable income in the month received.

g. Irrevocable Non-Assignable Annuities

i) An irrevocable non-assignable annuity is not considered to be a countable resource.

ii) Payments from an irrevocable non-assignable annuity are considered countable income in the month received.

iii) An irrevocable non-assignable annuity purchased by or for the benefit of a community spouse shall not be considered to be a transfer without fair consideration if:

1) The Department is named as the remainder beneficiary in the first position for the total amount of medical assistance paid on behalf of the institutionalized individual; or

2) The Department is named as the remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder without fair consideration.

iv) An irrevocable non-assignable annuity purchased by or for the benefit of an institutionalized individual shall not be considered to be a transfer without fair consideration if:

1) The Department is named as the remainder beneficiary in the first position for the total amount of medical assistance paid on behalf of the institutionalized individual; or

2) The Department is named as the remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder without fair consideration.

v) In addition to the requirements listed at 8.100.7.I.5.g.iv) for naming the Department as remainder beneficiary, an irrevocable non-assignable annuity purchased by or for the benefit of an institutionalized individual shall not be considered to be a transfer without fair consideration if the annuity meets any one of the following conditions:

1) The annuity is considered either:

a) An Individual Retirement Annuity as described in Section 408(b) of the Internal Revenue Code of 1986; or

b) A deemed Individual Retirement Account under a qualified employer plan described in Section 408(q) of the Internal Revenue Code of 1986; or

2) The annuity is purchased with proceeds from one of the following:

a) An Individual Retirement Account as described in Section 408(a) of the Internal Revenue Code of 1986; or

b) An account established by an employer or association of employers as described in Section 408(c) of the Internal Revenue Code of 1986; or

c) A simple retirement account as described in Section 408(p) of the Internal Revenue Code of 1986; or

d) A simplified employee pension plan as described in Section 408(k) of the Internal Revenue Code of 1986; or

e) A Roth IRA as described in Section 408A of the Internal Revenue Code of 1986; or

3) The annuity meets all of the following requirements:

a) The annuity is irrevocable and non-assignable; and

b) The annuity is actuarially sound based on the life expectancy tables described at 8.100.7.J.; and

c) The annuity provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

vi) If an irrevocable non-assignable annuity is considered to be a transfer without fair consideration, then, for the purpose of calculating the transfer without fair consideration penalty period, the value that was transferred shall be the amount of funds used to purchase the annuity.

h. Annuity Transactions

i) If an Individual or individual's spouse undertakes any transaction, as defined at 8.100.7.I.1. which has the effect of changing the course of payments to be made by an annuity or the treatment of income or principal of the annuity, such a transaction shall be deemed to be a transfer without fair consideration, regardless of when the annuity was originally purchased. For the purpose of calculating the transfer without fair consideration penalty period, the value that was transferred shall be the amount used to purchase the annuity.

a) Routine changes such as a notification of an address change or death or divorce of a remainder beneficiary are excluded from treatment as a transfer without fair consideration.

b) Changes which occur based on the terms of the annuity which existed before February 8, 2006 and which do not require a decision, election, or action to take effect are excluded from treatment as a transfer without fair consideration.

c) Changes which are beyond the control of the individual, such as a change in law, a change in the policies of the annuity issuer, or a change in terms based on other factors, such as the annuity issuer's financial condition, are excluded from treatment as a transfer without fair consideration.

8.100.7.J. Life Expectancy Tables

This rule incorporates by reference the Social Security Office of the Chief Actuary Period Life Table 2011 for both males and females. The incorporation of the table excludes later amendments, or editions of, the referenced material.

The Social Security Office of the Chief Actuary Period Life Table 2011 is available at www.ssa.gov/oact/STATS/table4c6.html.

Pursuant to § 24-4-103 (12.5), C.R.S., the Department maintains copies of the incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

8.100.7.K. Spousal Protection - Treatment of Income and Resources for Institutionalized Spouses

1. The spousal protection regulations apply to married couples where one spouse is institutionalized or likely to be institutionalized for at least 30 consecutive days and the other spouse remains in the community. Being a community spouse does not prohibit Medicaid eligibility if all criteria are met. The community spouse resource allowance does not supersede the Medicaid eligibility criteria.

2. For purposes of spousal protection, an institutionalized spouse is an individual who:

   a. Begins a stay in a medical institution or nursing facility on or after September 30, 1989, or

   b. Is first enrolled as a Medical Assistance client in the Program of All Inclusive Care for the Elderly (PACE) on or after October 10, 1997, or

   c. Receives Home and Community Based Services on or after July 1, 1999; and

   d. Is married to a spouse who is not in a medical institution or nursing facility; but does not include any such individual who is not likely to meet the requirements of subparagraphs 8.100.7.K.2.a thru c for at least 30 consecutive days.

3. A community spouse is defined as the spouse of an institutionalized spouse.

8.100.7.L. Assessment and Documentation of The Couple's Resources

An assessment of the total value of the couple’s resources shall be completed at the time of initial Medical Assistance application or when requested by either spouse of a married couple. All non-exempt resources owned by a married couple are counted, whether owned jointly or individually. There are no exceptions for legal separation, pre-nuptial, or post-nuptial agreements. Once the applicant is approved, the Community Spouses’ resources are not reviewed again unless the Community Spouse applies for Medical Assistance.

8.100.7.M. Calculation of the Community Spouse Resource Allowance

1. A Community Spouse Resource Allowance (CSRA) shall be allocated based on the total resources owned by the couple as of the time of Medical Assistance application. The CSRA is established at intake only, and; once approved the community spouse’s resources are not considered again until the community spouse applies for Medical Assistance. This is true even if the community spouse becomes institutionalized but does not apply for Medical Assistance. In calculating the amount of the CSRA, resources shall not be attributed to the community spouse based upon state laws relating to community property or the division of marital property.

For persons whose Medical Assistance application is for an individual who meets the definition of an institutionalized spouse, the CSRA is the largest of the following amounts:

a. The total resources of the couple but no more than the current maximum allowance which, changes each year beginning January 1st.; or

b. The increased CSRA calculated pursuant to section 8.100.7.S; or

c. The amount a court has ordered the institutionalized spouse to transfer to the community spouse for monthly support of the community spouse or a dependent family member.

2. The resources allotted to the community spouse as the CSRA shall be transferred into the name of the community spouse and shall not be considered available to the institutionalized spouse. After the transfer of the CSRA to the community spouse, the income from these resources shall be attributed to the community spouse.

3. The transfer of the CSRA shall be completed as soon as possible, but no later than the next redetermination when the community spouse becomes institutionalizes; whichever is earlier. If the transfer is not completed within this time period, the resources shall be attributed to the institutionalized spouse and shall affect his/her Medical Assistance eligibility. Verification of the transfer of assets to the community spouse shall be provided to the eligibility site.

   The institutionalized spouse may transfer the resources allotted to the community spouse as the CSRA to another person for the sole benefit of the community spouse.

4. If the community spouse is in control of resources attributed to the institutionalized spouse, but fails to make such resources available for his/her cost of care, this fact shall not make the institutionalized spouse ineligible for Medical Assistance, where:

   a. The institutionalized spouse has assigned The Department any rights to support from the community spouse; or

   b. The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but The Department has the right to bring a support proceeding against the community spouse without such assignment; or

   c. The eligibility site determines that the denial of eligibility would work an undue hardship upon the institutionalized spouse. For the purposes of this subparagraph, undue hardship means that an institutionalized spouse, who meets all the Medical Assistance eligibility criteria except for resource eligibility, has no alternative living arrangement other than the medical institution or Long Term Care institution.

8.100.7.N. Treatment of the Home and Other Exempt Resources

The CSRA shall not include the value of exempt resources including the home. It is not necessary for the home to be transferred to the community spouse. The rules regarding countable and exempt resources can be found in the section 8.100.5. However, for Spousal Protection there is no limit to the value of household goods and personal effects and one automobile.

8.100.7.O. Determination of the Institutionalized Spouse's Income and Resource Eligibility

1. The institutionalized spouse is resource eligible for Medical Assistance when the total resources owned by the couple are at or below the amount of the Community Spouse Resource Allowance plus the Medical Assistance resource allowance for an individual of $2,000.

2. The eligibility site shall determine whether the institutionalized spouse is income eligible for Medical Assistance. The institutionalized spouse shall be income eligible if his/her gross income is at or below the Medical Assistance income limit for recipients of long-term care. If an income trust is used the trust must be established before the MIA is calculated.

8.100.7.P. Attribution of Income

During any month in which a spouse is institutionalized, the income of the community spouse shall not be deemed available to the institutionalized spouse except as follows:

1. If payment of income from resources is made solely in the name of either the institutionalized spouse or the community spouse, the income shall be considered available only to the named spouse.

2. If payment of income from resources is made in the names of both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each spouse.

3. If payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest.

4. The above regulations of attribution of income are superseded if the institutionalized spouse can establish by a preponderance of the evidence that the ownership interests in the income are other than that provided in the regulations.

8.100.7.Q. Calculating the Community Spouse's Monthly Income Needs

1. The community spouse's total minimum monthly needs shall be determined as follows:

    a. The current minimum monthly maintenance needs allowance (MMMNA), which is equal to 150% of the federal poverty level for a family of two and is adjusted in July of each year;

    b. An excess shelter allowance, in cases where the community spouse's expenses for shelter exceed 30% of the MMMNA. The excess shelter allowance is computed by adding (a) and (b) together:

        i) The community spouse's expenses for rent or mortgage payment including principal and interest, taxes and insurance, and, in the case of a condominium or cooperative, any required maintenance fee, for the community spouse's principal residence; and

        ii) The larger of the following amounts: the standard utility allowance used by Colorado under U.S.C. 2014(e) of Title 7; or the community spouse's actual, verified, utility expenses. A utility allowance shall not be allowed if the utility expenses are included in the rent or maintenance charge, which is paid by the community spouse.

        iii) The excess shelter allowance is the amount, if any, that exceeds 30% of the MMMNA.

2. An additional amount may be approved for the following expenses:

    a. Medical expenses of the community spouse or dependent family member for necessary medical or remedial care. Each medical or remedial care expense claimed for deduction

must be documented in a manner that describes the service, the date of the service, the amount of the cost incurred, and the name of the service provider. An expense may be deducted only if it is:

i) Provided by a medical practitioner licensed to furnish the care;

ii) Not subject to payment by any third party, including Medical Assistance and Medicare;

b. The cost of Medicare, Long Term Care insurance, and health insurance premiums. A health insurance premium may be allowed in the month the premium is paid or may be prorated and allowed for the months the premium covers. This allowance does not include payments made for coverage which is:

i) Limited to disability or income protection coverage;

ii) Automobile medical payment coverage;

iii) Supplemental to liability insurance;

iv) Designed solely to provide payments on a per diem basis, daily indemnity or non-expense-incurred basis; or

v) Credit life and/or accident and health insurance.

3. If either spouse establishes that the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance due to exceptional circumstances, which result in significant financial duress, such as loss of home and possessions due to fire, flood, or tornado, an additional amount may be substituted for the MMMNA if established through a fair hearing.

4. The total that results from adding the current MMMNA and the excess shelter allowance shall not exceed the current maximum MMMNA which is $2,175.00 for the year 2001 and is adjusted by the Health Care Financing Administration in January of each year.

8.100.7.R. Calculating the Amount of Income to be Contributed by the Institutionalized Spouse for the Community Spouse's Monthly Needs

1. The Monthly Income Allowance (MIA) is the amount of money necessary to raise the community spouse's income to the level of his/her monthly needs, and shall be obtained from the monthly income of the institutionalized spouse. For individuals who become institutionalized on or after February 8, 2006, all income of the institutionalized spouse that could be made available to the community spouse must be considered to have been made available to the community spouse before an MIA is allocated to the community spouse.

2. The MIA shall be the amount by which the community spouse's minimum monthly needs, which is the MMMNA, exceed his/her income from sources other than the institutionalized spouse. The community spouse’s income shall be calculated by using the gross income less mandatory deduct ions for FICA and Medicare tax.

3. If a court has entered an order against the institutionalized spouse for monthly support of the community spouse, the MIA shall not be less than the monthly amount ordered by the court.

4. The eligibility site shall make adjustments to the MMMNA and/or the MIA on a monthly basis for any continuing change in circumstances that exceeds $50 a month. Continuing changes of less than $50 in a month, and any infrequent or irregular changes, shall be considered at redetermination.

8.100.7.S. Increasing the Community Spouse Resource Allowance

1. The CSRA shall be increased above the maximum amount if additional resources are needed to raise the community spouse's monthly income to the level of the Minimum Monthly Maintenance Needs Allowance (MMMNA). In making this determination the items listed below are calculated in the following order:

    a. The community spouse's MMMNA;

    b. The community spouse's own income; and

    c. The Monthly Income Allowance (MIA) contribution that the community spouse is eligible to receive from the institutionalized spouse.

    d. If the community spouse's own income, and the Monthly Income Allowance contribution from the institutionalized spouse's income is less than the Minimum Monthly Maintenance Needs Allowance, additional available resources shall be shifted to the community spouse to bring his/her income up to the level of the MMMNA. The additional resources necessary to raise the community spouse's monthly income to the level of the MMMNA shall be based upon the cost of a single-premium lifetime annuity with monthly payments equal to the difference between the MMMNA and the community spouse's income. The following steps shall be followed to determine the amount of resources to be shifted:

        i) The applicant shall obtain three estimates of the cost of an annuity that would generate enough income to make up the difference between the MMMNA and the combined community spouse's income as described above.

        ii) The amount of the lowest estimate shall be used as the amount of resources to increase the CSRA.

        iii) The applicant shall not be required to purchase the annuity in order to have the CSRA increased.

    e. The CSRA shall not be increased if the institutionalized spouse refuses to make the monthly income allowance (MIA) available to the community spouse.

8.100.7.T. Deductions from Monthly Income of the Institutionalized Spouse

1. During each month after the institutionalized spouse becomes Medical Assistance eligible, deductions shall be made from the institutionalized spouse's monthly income in the following order.

    a. A personal needs allowance or the client maintenance allowance as allowed by program eligibility.

    b. A Monthly Income Allowance (MIA) for the community spouse, but only to the extent that income of the institutionalized spouse is actually made available to, or for the benefit of, the community spouse;

c. A family allowance for each dependent family member who lives with the community spouse.

i) The allowance for each dependent family member shall be equal to one third of the amount of the MMMNA and shall be reduced by the monthly income of that family member.

ii) Family member means dependent children (minor or adult), dependent parents or dependent siblings of either spouse that are residing with the community spouse and can be claimed by either the institutionalized or community spouse as a dependent for federal income tax purposes.

d. Allowable deductions identified in section 8.100.7.V.

e. If the institutionalized spouse fails to make his/her income available to the community spouse or eligible dependent family members in accordance with these regulations, that income shall be applied to the cost of care for the institutionalized spouse.

f. No other deductions shall be allowed.

8.100.7.U. Right to Appeal

1. Both spouses shall be informed of the following:

a. The amount and method by which the eligibility site calculated the community spouse resource allowance (CSRA), community spouse monthly income allowance (MIA), and any family allowance;

b. The spouses' right to a fair hearing concerning these calculations;

c. The eligibility site conclusions with respect to the spouses' ownership and availability of income and resources, and the spouses' right to a fair hearing concerning these conclusions.

2. If either spouse establishes that the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance due to exceptional circumstances, which result in significant financial duress, such as loss of home and possessions due to fire, flood, or tornado, an additional amount may be substituted for the MMMNA if established through a fair hearing.

3. Appeals from decisions made by the eligibility site shall be governed by the provisions under Recipient Appeals Protocols/Process at 8.058.

8.100.7.V. Long-Term Care Institution Recipient Income

1. Determination of Income and Communication between the Long-Term Care institution and the Eligibility Site Using the AP-5615 Form for Patient Payment

a. Sections I, II and IV of the AP-5615 form are to be completed by the Long-Term Care institution for all admissions, readmissions, transfers to and from another payer source, including private pay and Medicare, discharges, deaths, changes in income and/or patient payment, medical leaves of absence and non-medical/programmatic leave in excess of 42 days combined per calendar year.

b. The initial determination of resident income for patient payment shall be made by the Eligibility Site. The Eligibility Site shall notify the Long-Term Care institution of current resident income.

c. On receipt of AP-5615 form, the Eligibility Site will, within five working days:

i) For an admission, a readmission or a transfer from/to private pay, Medicare, or another payer source:

1) Verify and correct, if necessary, data entered by the Long-Term Care institution.

2) List and/or verify the resident's monthly income adjustments and/or Long-Term Care Insurance benefit payments; and compute patient payment. Provide the completed AP-5615 to the Long-Term Care institution.

3) Correct the automated system to indicate the Long-Term Care institution name and provider number and to reflect the current distribution of income. Submit the AP-5615 form to the Department.

d. For change in patient payment with respect to changes in resident income:

i) Verify changes in resident income, and correct if necessary. All such corrections must be initialed,

ii) Compute patient payment and provide the completed AP-5615 to the Long-Term Care institution.

e. For change in patient payment with respect to the post-eligibility treatment of income, the Eligibility Site shall:

i) Review the AP-5615 form for Medicare part B premium deduction allowances for the first two months of admission.

ii) If client is already on the Medicare Buy-In program for Medicare part B, do not adjust patient payment on AP-5615 form for the Medicare premium deduction. If client is not on the Buy-In program, adjust AP-5615 form for the Medicare premium deduction for the first two months of Long-Term Care institution eligibility.

iii) If the client has a Medicare D premium, the Eligibility Site shall use the amount as an income adjustment/deduction in the patient payment calculation and complete the AP-5615 form.

f. For resident leave of absence:

i) Non-Medical/Programmatic Leave. When combined non-medical/programmatic days in excess of 42 days are reported, verify adherence to the restrictions and conditions of section 8.482.44.

ii) Medical Leave/Hospitalization. Verify that the patient payment is apportioned correctly between the nursing facility and the hospital so that no Medicaid payment is requested for the period. See also section 8.482.43.

iii) The nursing facility may wait until the end of the month to complete the AP-5615 form for an ongoing hospitalization.

g. For change in payer status:

i) If Medicare or insurance is a primary payer during the month, verify the nursing facility's calculation of the patient payment.

ii) Complete and provide the AP-5615 to the nursing facility.

h. For discharge or death of resident:

i) Verify the date of death or discharge, and verify the correct patient payment including the resident's monthly income for the discharged month, and the amount calculated by per diem. All corrections must be initialed.

ii) Note if the resident entered another Long-Term Care institution and, if so, enter the name of the new Long-Term Care institution in the system.

iii) In the event the resident may return to the same facility, the AP-5615 form may be completed at the end of the month for discharges due to hospitalization.

i. For discontinuation of Long-Term Care eligibility:

i) Initiate and send an AP-5615 form to the Long-Term Care institution within 5 working days of the date of determination that the client's eligibility will be discontinued. Indicate the date the discontinuation will be effective.

j. Failure to provide a correct and timely AP-5615 to the Long-Term Care institution may result in the refusal of the Department to reimburse such Long-Term Care institution care. The AP-5615 form is required in order for a Prior Authorization Request (PAR) to be issued for Long-Term Care institution claim reimbursement.

k. General Instructions:

i) The AP-5615 form must be verified and a signed AP-5615 form returned to the Long-Term Care institution.

ii) The AP-5615 form must be signed and dated by the director of the Eligibility Site or by his/her designee.

iii) AP-5615 forms may be initiated by either the Long-Term Care institution or Eligibility Site. If the Eligibility Site is aware of information requiring a change in financial arrangements of a resident, and a new AP-5615 form is not forthcoming from the Long-Term Care institution, the Eligibility Site may initiate the revision to the AP-5615 form. In such case, one copy of the AP-5615 form showing the changes will be sent to the Long-Term Care institution.

l. The Department may deduct excess payments from the Eligibility Site administrative reimbursement as stated in the Colorado Department of Human Services Finance Staff Manual, Volume 5 if the Eligibility Site fails to:

i) Perform the duties as detailed in this section; or

ii) Adhere to the limitations on a reduced patient payment; as detailed in section 8.100.7.V.4; or

iii) Notify the Long-Term Care institution within 5 working days of any changes in resident income, provided the Long-Term Care institution is not authorized to receive the resident's income; and excessive Medicaid funds are paid to the Long-Term Care institution as a result of this negligence.

2. Collection of Patient Payment

a. It shall be the responsibility of the Long-Term Care institution to collect from the client, or from the client's family, conservator or administrator, the patient payment, which is to be applied to the cost of client care. The Department is not responsible for any deficiency in patient payment accounts, due to failure of the Long-Term Care institution to collect such income.

b. If, however, the Long-Term Care institution is unable to collect such funds, through refusal of the resident or the resident's family, conservator, administrator or responsible party to release such income, the Long-Term Care institution shall immediately notify the Eligibility Site.

c. When notified by the Long-Term Care institution of the refusal of the client or the client's family, conservator administrator or responsible party to pay the patient payment due, the Eligibility Site shall immediately contact the refusing party. If, after such contact, the party still refuses to release such income, the action shall be deemed a failure to cooperate, and the Eligibility Site shall proceed to discontinue Medicaid benefits for the resident.

3. Calculation of Patient Payment

a. Specific instructions for computing the patient payment amount are contained in this volume under The “Status of Long-Term Care institution Care” Form, AP-5615

b. Once an applicant for Nursing Facility Medical Assistance has been determined eligible for Medical Assistance, the Eligibility Site shall determine the patient payment due to the Nursing Facility which is to be applied to the Medicaid reimbursement for the cost of care. That patient payment is calculated by:

i) Determining all applicable income of the recipient

ii) Deducting all applicable allowable monthly income adjustments, which include:

1) Personal Needs Allowance

2) If applicable, Monthly Income Allowance for the community spouse.

3) If applicable, Family Dependent Allowance

4) If applicable, Home Maintenance Allowance

5) If applicable, Trustee/Maintenance Fees: actual fees, with a maximum of $20 per month

6) If applicable, Mandatory Income Tax Withheld

7) Mandatory garnishments repaying Federal assistance overpayment

8) Medical or remedial care expenses that are not subject to payment by a third party:

a) Medicare Part B Premium expenses, if applicable, are deductible only for the first and second month in the Nursing Facility.

b) Medicare Part D Premium expenses, if applicable, are ongoing deductions.

c) Other medical and remedial expenses covered under the Nursing Facility PETI (NF PETI) program are not deductible. NF PETI-approved expenses are allowed only for residents with a patient payment, but do not change the patient payment amount. For NF PETI, see the Section 8.482.33 in this volume “Post Eligibility Treatment of Income”.

c. Long-Term Care Insurance

Long-Term Care insurance payments are not counted as income for eligibility purposes. However, they are income available for a patient payment. The patient payment shall include the client’s income after the allowable deductions and any Long-Term Care insurance payments for the month. In the event that the patient payment is greater than the cost of care, the Long-Term Care insurance payment shall be applied before the client’s income.

i) If Long-Term Care insurance is received for the month, and:

1) If, after all deductions, the client has income available for a patient payment, add this to the amount of the Long-Term Care insurance to determine the total patient payment.

a) If the total amount is greater that the allowable cost of care, the Long-Term Care insurance is applied before the client’s income, or;

b If after all deductions, the client does not have income available for the patient payment, only the Long-Term Care insurance payment is used.

d. Personal Needs Allowances

i) Non-Veteran related personal needs allowance

1) Prior to January 1, 2015 the personal needs allowance base amount is $50 per month.

2) Effective January 1, 2015 the personal needs allowance base amount is $75 per month and will be adjusted annually at the same rate as the statewide average of the nursing facility per diem rate net of patient payment pursuant to C.R.S. § 25.5-6-202(9)(b)(I). Each yearly adjustment will set a new base amount.

a) The first annual rate adjustment to the new $75 base amount will occur on January 1, 2015.

ii) Veterans-related personal needs allowance

Effective 07/01/91, the personal needs allowance shall be $90 per month for a veteran in a Long-Term Care institution who has no spouse or dependent child and who receives a non-service connected disability pension from the U.S. Veterans Administration. The personal needs allowance shall also be $90 per month for the widow(er) of a veteran with no dependent children.

1) Public Law requires that a veteran, without a spouse or dependent child, who enters a Long-Term Care institution have their veteran's pension reduced to $90 which is to be reserved for their personal needs. This reduction in pension is not applicable to veteran's who reside in a State Veteran's Nursing facility. If a veteran, who does not reside in a State Veteran's Nursing facility, receives a pension reduction of $90 he/she is allowed to apply this $90 to his/her personal needs allowance. It is not considered income toward the patient payment. The same regulation applies to a widow of a veteran without any dependent children.

2) To verify if those veterans residing in State Veteran's Nursing facilities are receiving a non-service connected pension you may request their award letter from the Department of Veterans Affairs or call the Department of Veterans Affairs and verify through contact. If they are receiving any amount in a non-service connected pension they are entitled to a $90 personal needs allowance so long as they do not have a spouse or dependent child. The same regulation applies to a widow of a veteran without any dependent children.

iii) For aged, disabled, or blind Long-Term Care institution recipients engaged in income-producing activities, an additional amount of $65 per month plus one-half of the remaining gross income may be retained by the individual.

iv) Effective September 15, 1994, aged, disabled, or blind Long-Term Care institution residents, HCBS or PACE recipients with mandatory withholdings from earned or unearned income to cover federal state, and local taxes may have an additional amount included as a deduction from the patient payment. The patient payment deduction must be for a specific accounting period when the taxes are owed and expected to be withheld from income or paid by the individual in the accounting period. The Eligibility Site must verify that the taxes were withheld. If the taxes are not paid, the Eligibility Site must establish a recovery. The deduction is also applicable for any Federal pensions with mandated tax withholdings from unearned income despite the individual earner being institutionalized. All other pensions will discontinue the tax withholding once notified that the recipient is receiving institutionalized care through Medicaid, thus signifying that the withholding was not mandatory. This deduction does not apply to individuals who have elected to have taxes withheld from their earnings as a means to receiving a greater tax refund.

e. The reserve specified in section 8.100.7.V.3.d.iii. of this volume shall apply to Long-Term Care institution residents who are engaged in income-producing activities on a regular basis. Types of income-producing activities include:

i) work in a sheltered workshop or work activity center;

ii) “protected employment” which means the employer gives special privileges to the individual;

iii) an activity that produced income in connection with a course of vocational rehabilitation;

iv) employment training sessions;

v) activities within the facility such as crafts products and facility employment.

f. In determining the personal needs reserve amount for Long-Term Care institution residents engaged in income-producing activities:

i) The personal needs allowance is reserved from earned income only when the person has insufficient unearned income to meet this need;

ii) In determining countable earned income of a Long-Term Care institution resident, the following rules shall apply:

1) $65 shall be subtracted from the gross earned income.

2) The result shall be divided in half.

3) The remaining income is the countable earned income and shall be considered in determining the patient payment.

iii) When the personal needs allowance is reserved from unearned income, the additional reserve is computed based on the total gross earned income.

g. Other Deductions Reserved from Recipient's Income:

i) In the case of a married, long-term care recipient who is institutionalized in a Long-Term Care institution and who has a spouse (and, in some cases, other dependent family members) living in the community, there are “spousal protection” rules which permit the contribution of the institutionalized spouse's income toward their living expenses. See section 8.100.7.K.

ii) For a Long-Term Care institution recipient with no family at home, an amount in addition to the personal needs allowance may be reserved for maintenance of the recipient's home for a temporary period, not to exceed 6 months, if a physician has certified that the person is likely to return to his/her home within that period.

This additional reserve from recipient income is referred to as Home Maintenance Allowance and the amount of the deduction must be based on actual and verified shelter expenses such as mortgage payments, taxes, utilities to prevent freeze, etc.

The Home Maintenance Allowance:

1) Prior to July 1, 2018 shall not exceed the total of the current shelter and utilities components of the applicable standard of assistance (OAP for aged recipients; AND/SSI-CS or AB/SSI-CS for disabled or blind recipients).

2) Beginning July 1, 2018

a) The Home Maintenance Allowance shall not exceed the Home Maintenance Allowance Maximum described in this section.

Claimable utility costs will be limited to the lessor of the following amounts:

The standard utility allowance used by Colorado under 7 U.S.C. 2014(e) (2018), which is hereby incorporated by reference.

The incorporation of 7 U.S.C. 2014(e) (2018) excludes later amendments to, or editions of, the referenced material. Pursuant to § 24-4-103(12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver CO 80203. Certified copies of incorporated materials are provided at cost upon request.

Or;

The individual's actual, verified, utility expenses.

b) The Maximum Home Maintenance Allowance is The Individual Needs Standard minus 105% Federal Poverty Limit (FPL) for a household of 1, rounded to the nearest whole dollar, and is determined as follows:

(1) The Department will calculate the Individual Needs Standard by dividing the Federal Minimum Monthly Maintenance Needs Allowance maximum by the Federal Minimum Monthly Maintenance Needs Allowance (MMMNA), described at 8.100.7.Q, which is in place on January 1st of each calendar year. The result of this division will be multiplied by 150% of FPL for a household of 1.

(2) The Home Maintenance Maximum is determined by subtracting 150% FPL for a household of 1 from the Individual Needs Standard and adding 30% of 150% FPL for a household of 1. The result will be rounded to the nearest whole dollar.

h. The necessity for the deduction from a recipient's income specified in section 8.100.7.V.3 shall be fully explained in the case record. Such additional reserve amount must be entered on the eligibility reporting form.

i. As of July 1, 1988, an SSI cash recipient may continue to receive SSI benefits when he/she is expected to be institutionalized for three months or less. This provision is

intended to allow temporarily institutionalized recipients to pay the necessary expenses to maintain the principal place of residence.

i) Payments made under this continued benefit provision are not considered over-payments of SSI benefits if the recipient's stay is more than 90 days.

ii) The amount of Supplemental Security Income (SSI) benefit paid to an institutionalized individual is deducted from gross income when computing the patient payment.

j. When a nursing facility resident's SSI is reduced due to institutionalization, the difference between the reduced SSI payment and the personal needs allowance amount shall be provided through the Adult Financial program so that the resident receives the full personal needs allowance.

4. Reduction of the Patient Payment

a. Patient payment may be reduced only under the following conditions:

i) A resident's income is equal to or less than the personal needs allowance and there is no long term care insurance payment, in which case the patient payment is zero; or

ii) A resident's income is equal to or less than the sum of all allowable and appropriate deductions, and there is no long term care insurance payment; or

iii) A resident is admitted to the Long Term Care institution from his/her home and the resident's funds are committed elsewhere for that month; or

iv) The resident is admitted from his/her home, where his/her funds were previously committed, to the hospital, and subsequently to the Long Term Care institution, in the same calendar month; or

v) The resident is discharged to his/her home, and the Eligibility Site determines that the income is necessary for living expenses; or

vi) The resident is admitted from another Long Term Care institution or from private pay within the facility and has committed the entire patient payment for the month for payment of care already provided in the month of admission.

vii) Medicare assesses a co-insurance payment for a QMB recipient; the recipient's patient payment cannot be used for payment of Medicare co-insurance.

b. Patient payment may not be waived in the following instances:

i) Transfers between nursing facilities, except that the patient payment for the receiving facility may be waived if the patient payment has already been committed to the former nursing facility; or

ii) Discharges from nursing facility to a hospital or other medical institution when Medicaid is paying for services in the medical institution; or

iii) Changes from private pay within the facility and the patient payment is not already committed for care provided under private pay status; or

iv) The death of the resident.

c. The Eligibility Site shall verify and approve partial month patient payments due to transfers, discharges or death when calculated by the nursing facility based upon the nursing facility's per diem rate.

d. The amount of SSI benefits received by a person who is institutionalized is not considered when calculating patient payment.

5. Responsibilities of the Eligibility Site Regarding the Personal Needs Fund

a. It shall be the responsibility of the Eligibility Site to explain to the resident the various options for handling the personal needs monies, as well as the resident's rights to such funds. The resident has the option to allow the Long Term Care institution to hold such funds in trust.

b. It shall be the responsibility of the Eligibility Site to assure that the Long Term Care institution properly transfers or disposes of the resident's personal needs funds within 30 days of discharge from the Long Term Care institution, or transfer to another Long Term Care institution.

c. The Eligibility Site shall notify the State Department if they become aware that a Long Term Care institution has retained personal needs funds more than 30 days after the death of a resident.

6. For rules regarding post eligibility treatment of income, see the section in this volume titled "Post Eligibility Treatment of Income"

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOVEMBER 2021 EMERGENCY JUSTIFICATION FOR MEDICAL ASSISTANCE RULES ADOPTED AT THE NOVEMBER 2021, 2021 EMERGENCY MEDICAL SERVICES BOARD MEETING

MSB 21-11-03-A, Revision to the Medical Assistance Act Rule concerning Novel Corona Virus Disease (COVID-19) Rules, Section 8.6000

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. The temporary changes to regulatory requirements in order to provide enhanced flexibility, reduction to programmatic limitations, and alignment with existing federal guidance related to processes under the COVID-19 pandemic is imperatively necessary for the preservation of public health safety, and welfare.

MSB 21-11-03-B, Revision to the Medical Assistance Rule concerning Provider Enrollment, Sections 8.125.11, 8.125.12, 8.125.13

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. The purpose of this emergency rule is to temporarily change regulatory requirements for Department of Health Care Policy and Financing rules to provide enhanced flexibility, reduction to programmatic limitations, and alignment with existing federal guidance related to processes under the COVID-19 pandemic. The temporary changes to regulatory requirements in order to provide enhanced flexibility, reduction to programmatic limitations, and alignment with existing federal guidance related to processes under the COVID-19 pandemic is imperatively necessary fo the preservation of public health safety, and welfare.

MSB 21-11-04-A, Revision to the Medical Assistance Act Rule concerning Emergency Medical Transportation, Sections 8.018.1.F. and 8.018.4.D.1

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. Under the Department's current rule, ambulance trips may only be taken to a limited set of medical facilities, the "closest, most

appropriate Facility." CMS recently issued an expanded list of allowable destinations for ambulance trips that qualify for Medicare reimbursement during the COVID-19 public health emergency. This rule will align the Department with that new CMS Medicare guidance by expanding our definition of Facility. The goal is to allow EMT providers to take members to a wider range of medical facilities that are appropriate to the member's condition but that are not necessarily hospitals. This will help prevent hospital overcrowding while also getting members the most appropriate medical care, and will allow utilization of temporary and alternative care sites.
The second change relates to interfacility transportation, which is ambulance transportation from one facility to another, provided the member requires basic or advanced life support en route. This revision suspends the life support requirement. This will allow for members to be moved from one facility to another if they need continued COVID-19-related care, but do not require life support en route. This is imperatively necessary for the preservation of public health safety, and welfare.

MSB 21-11-04-B, Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. Permitting NEMT trips to non-covered places of service will prevent hospital overcrowding while ensuring that members receive treatment for COVID-19. The change allows flexibility and takes advantage of newly established alternative care sites that may be temporary in nature and thus not enrolled in the Colorado Medical Assistance Program. If members with COVID-19 can only receive care at covered places of service, those sites may become overcrowded and may see a shortage of available beds.
Suspending multi-loading will ensure compliance with social distancing guidelines by limiting a vehicle's occupants. It is imperatively necessary for the preservation of public health safety, and welfare.

MSB 21-11-05-B, Revision to the Medical Assistance Act Rule concerning Nursing Facility Immunization Administration, Sections 8.443 and 8.815

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. This rule revision will allow the Department to reimburse pharmacies for administration of the COVID-19 vaccine in Long-term Care Facilities through the Centers for Disease Control and Prevention's (CDC's) Pharmacy Partnership for Long-term Care Program or other partnership between an LTC and a pharmacy. These revisions are required to facilitate administration of the forthcoming COVID-19 vaccine to nursing home facility residents and is imperatively necessary for the preservation of public health safety, and welfare.

MSB 21-11-07-A, Revision to the Medical Assistance Rule concerning Medical Assistance program rule updates, Sections 8.100.1,8100.3, 8.100.4, 8.100.5 and 8.100.6

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. The proposed rule change will amend 10 CCR 2505-10 sections 8.100.1,8.100.3, 8.100.4, 8.100.5 and 8.100.6 based on the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (FFCRA) and the Affordable Care Act(ACA), which includes the Maintenance of Effort (MOE) provision. All policy revisions will align with federal regulations for the state to be in compliance during the federal Coronavirus (COVID-19) Public Health Emergency. These changes will impact all Medical Assistance categories and these policy changes will stay in place until the end of the federal Coronavirus (COVID-19) Public Health Emergency. The following policy changes are: Self-attestation for most verifications will be acceptable to be in compliance with the Maintenance of Effort (MOE) provision to ensure the continuance of health coverage for all eligible members. When a member is not reasonable compatible based off income a member self-attests, documentation will not be required, and the member will remain eligible for Medical Assistance. Self-attestation of resources will be acceptable for Non-MAGI programs. Premiums for the Buy-In program will be waived. Required through the Federal CARES Act for the Maintenance of Effort (MOE), members who had a loss of employment will remain in the Buy-In program. Newly enrolled members will still need to meet the work requirements. For applicants who are not eligible for Medical Assistance but have been exposed or who are potentially infected by the COVID-19, will be eligible for Medical Assistance for related COVID testing. The economic stimulus relief package designed to provide direct assistance to individuals to help offset the financial impacts of the COVID-19 Public Health Emergency will be exempt for MAGI and Non-MAGI eligibility determinations. The economic stimulus will not be a countable resource for 12 months for any Non-MAGI financial eligibility determinations that include a resource test. Lastly, the Federal Pandemic Unemployment Compensation (FPUC) program which provides an extra $600.00 a week is not countable unearned income for Medical Assistance categories. This rule change is crucial for the preservation of public health, safety, and welfare.

MSB 21-10-28-A, Revision to the Medical Assistance Act Rule Concerning Preferred Drug List (PDL) and New Drug Determinations, Section 8.800.16.B

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. The proposed rule change will ensure that members will receive medications that are new to the market in a timely manner. This rule change is crucial for the preservation of public health, safety, and welfare.

MSB 21-10-22-A, Revision to the Medical Assistance Eligibility Rules concerning General and Citizenship Eligibility Requirements, Section 8.100.3.G

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. The Extending Government Funding and Delivering Emergency Assistance Act (HR 5305) was signed into law on September 30, 2021, and changes are required to align state rules with the continuing resolution. Additionally, several hundred individuals that would potentially be categorized and covered based on their

Afghan Humanitarian Parolee status have already arrived in Colorado and need access to health coverage for urgent health needs. This rule change is crucial for the preservation of public health, safety, and welfare.

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Office of the Attorney General

Tracking number: 2021-00739

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

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 11/12/2021

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

The above-referenced rules were submitted to this office on 11/17/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 24, 2021 13:54:14

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

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/03/2021

Department

Department of Revenue

Agency

Division of Motor Vehicles

Stakeholder Virtual Workshop Notification of Future Rule Promulgation

Concerning Rule 1 CCR 204-10 Rule 25

PERSONS WITH DISABILITIES PARKING PRIVILEGES

There will be a virtual workshop held for discussion of the above rule on:

DMV VSS Workshop 1 CCR 204-10 Rule 25 PERSONS WITH DISABILITIES PARKING PRIVILEGES

Tuesday, January 4, 2022 · 11:00am – 12:00pm

Google Meet joining info

Video call link: https://meet.google.com/obp-fbik-tdu

Or dial: (US) +1 317-967-2033 PIN: 721 271 413#

More phone numbers: https://tel.meet/obp-fbik-tdu?pin=8399189727415

Calendar of Hearings

Hearing Date/Time	Agency	Location
01/10/2022 11:00 AM	Division of Motor Vehicles	Virtual Hearing
01/12/2022 09:00 AM	Colorado State Board of Education	201 E. Colfax, State Board Room or Webinar
01/12/2022 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
01/12/2022 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
01/12/2022 08:00 AM	Colorado Parks and Wildlife (405 Series, Parks)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
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01/12/2022 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
01/12/2022 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
01/12/2022 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
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01/12/2022 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
01/12/2022 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
01/12/2022 08:00 AM	Colorado Parks and Wildlife (406 Series, Wildlife)	Virtual Meeting, please refer to the Parks and Wildlife Commission website: https://cpw.state.co.us/aboutus/Pages/CommissionMeetings.aspx
01/04/2022 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver CO 80202
01/04/2022 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver CO 80202
01/04/2022 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver CO 80202
01/04/2022 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver CO 80202
01/11/2022 01:00 PM	Public Utilities Commission	By video conference using Zoom at a link provided in the calendar of events posted on the Commissions website: https://puc.colorado.gov/
01/06/2022 05:00 PM	Division of Family and Medical Leave Insurance	Virtual over Zoom
01/06/2022 01:00 PM	Secretary of State	Register for the webinar rulemaking hearing at: https://attendee.gotowebinar.com/register/6210479698245127179.
01/07/2022 08:30 AM	Income Maintenance (Volume 3)	Location Pending State's response to COVID-19. Anticipated to be held entirely online.
01/07/2022 08:30 AM	Income Maintenance (Volume 3)	Location Pending State's response to COVID-19. Anticipated to be held entirely online
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01/07/2022 08:30 AM	Income Maintenance (Volume 3)	Location Pending State's response to COVID-19. Anticipated to be held entirely online
01/14/2022 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	(VIRTUAL) 303 East 17th Avenue, 11th Floor, Denver, CO 80203
01/07/2022 08:30 AM	Food Assistance Program (Volume 4B)	Location Pending State's response to COVID-19. Anticipated to be held entirely online
01/07/2022 08:30 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	Location Pending State's Response to COVID-19. Anticipated to be held entirely online.
01/07/2022 08:30 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	Location Pending State's Response to COVID-19. Anticipated to be held entirely online

Calendar of Hearings

Hearing Date/Time	Agency	Location
01/07/2022 08:30 AM	Adult Protective Services	Location Pending State's response to COVID-19. Anticipated to be held entirely online
01/07/2022 08:30 AM	Adult Protective Services	Location Pending State's response to COVID-19. Anticipated to be held entirely online