



COLORADO

Water Quality
Control Commission

Department of Public Health & Environment

NOTICE OF WRITTEN-COMMENT-ONLY PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of adoption of revisions to Regulation #101, Water Quality Civil Penalty Inflation Adjustment Regulation (5 CCR 1002-101). Revisions proposed by the Water Quality Control Division, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, are attached to this notices as Exhibit 1.

In these attachments, proposed new language is shown with underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

At the time of public notice of this proposed revision to Regulation #101, the July 2022 United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for All Items and All Urban Consumers, has not yet been published. The July 2022 consumer price index will be published in July 2022, at:

<https://www.bls.gov/regions/mountain-plains/news-release/home.htm>.

The proposed revision to the regulation and the statement of basis do identify the method that will be used for providing the final calculated maximum daily penalty based on the consumer price index. A revised version of the regulation and statement of basis will be provided as part of the Water Quality Control Division’s prehearing statement that will include the July 2022 consumer province index, the calculation of the percent change in the price index from July 2021 to July 2022, and the final calculated revised maximum daily penalty.

SCHEDULE OF IMPORTANT DATES

Proponent’s Prehearing Statement Due	8/31/2022 5:00 pm	Additional information below
Responsive Comments Due	9/28/2022 5:00 pm	Additional information below
Rulemaking Deliberations	10/11/2022 9:00 am	Remote via Zoom Or Sabin Cleere Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Pursuant to section 21.3.C.5 and Section 21.3.D. of the commission's Procedural Rules, there shall be no party status for this rulemaking proceeding.

WRITTEN COMMENTS:

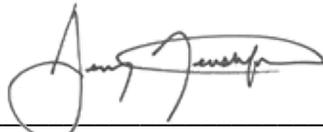
The commission encourages input from interested members of the public. Written comments should be emailed to cdphe.wqcc@state.co.us by 5:00 pm on 9/28/2022.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-1.5-202; 25-8-202(1)(n); and 25-8-401 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 13th day of June, 2022 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

A handwritten signature in black ink, appearing to read 'Jeremy Neustifter', is written over a horizontal line.

Jeremy Neustifter, Administrator

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

**REGULATION NO. 101 - WATER QUALITY CIVIL PENALTY INFLATION ADJUSTMENT
REGULATION**

5 CCR 1002-101

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

101.1 AUTHORITY

These regulations are promulgated pursuant to the Colorado Water Quality Control Act, sections 25-8-101 through 25-8-803, C.R.S. In particular, they are promulgated under sections 25-8-202 and 25-8-608(1), C.R.S.

101.2 PURPOSE

The purpose of these regulations is to annually adjust the amount of the maximum civil penalty applied to violations of the Colorado Water Quality Control Act, based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for All Items and All Urban Consumer, or its successor index.

101.3 REGULATIONS

- A. Beginning on January 1, 202~~3~~², the maximum civil penalty identified in 25-8-608(1), C.R.S., for a person who violates the Water Quality Control Act, a permit issued under the Act, a control regulation promulgated pursuant to the Act, or a final cease-and-desist order or clean-up order shall be not more than \$~~XX,XXX~~^{56,759} per day per violation.

101.4 DEFINITIONS

The following definitions are applicable within the intent of these regulations:

- A. "Colorado Water Quality Control Act" or "Act" means the Colorado Water Quality Control Act as from time to time amended, section 25-8-101, C.R.S., 1973, et seq.
- B. "Commission" means the water quality control commission created by section 25-8-201, C.R.S.
- C. "Division" means the Colorado Department of Public Health and Environment, Water Quality Control Division.
- D. "Person" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

101.5 – 101.9 RESERVED

**101.11 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE, ADOPTED
OCTOBER 10, 2022: EFFECTIVE JANUARY 1, 2023**

The provisions of Colorado Revised Statute Sections 25-8-608(1) provides the specific statutory authority for the Water Quality Civil Penalty Inflation Adjustment Regulation adopted by the Commission. The Commission has also adopted, in compliance with Colorado Revised Statute Section 24-4-103(4) C.R.S., the following Statement of Basis and Purpose.

BASIS AND PURPOSE

Section 25-8-608(1), C.R.S., directs that “the commission shall, by rule, annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for All Items and All Urban Consumers, or its successor index.” This revision to the regulation implements this statutory direction and provides for the new annually adjusted maximum civil penalty identified in 25-8-608(1) C.R.S., effective January 1, 2023.

The commission applied the first adjustment to the maximum civil penalty on January 1, 2022, which was based on the change between the July 2020 Consumer Price Index and the July 2021 Consumer Price Index and resulted in the maximum penalty amount of \$56,759 per day per violation.

The new maximum penalty is calculated by adjusting the previous maximum penalty by the percent change in the Consumer Price Index from July 2021 to July 2022. The July 2021 Consumer Price Index is 285.267. The July 2022 Consumer Price Index is XXX.XXX. This represents a XX.XXX% change.

The adjusted maximum penalty is therefore equal to the previous maximum penalty \$56,759 multiplied by $(1 + (XXX.XXX) - 285.267) / 285.267$.

PARTIES TO THE RULEMAKING HEARING

October 10, 2022

HEARING CHAIR: