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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

2021-00802

Department

200 - Department of Revenue

Agency

205 - Motor Vehicle Dealer Board

CCR number

1 CCR 205-1

Rule title

DEALING IN MOTOR VEHICLES

Rulemaking Hearing

Date

01/18/2022

Time

09:00 AM

Location

Webex Virtual Meeting

Subjects and issues involved

Regulation 44-20-121(3)(i). Advertising, Rule 3. The proposed amendments and/or additions to this rule are designed to bring clarity to what is misleading or inaccurate advertising.

Statutory authority

The Board promulgates the amendments to these rules pursuant to the authority granted in subsections Colorado motor vehicle dealer board regulation law, 44-20-104(3)(a) of the Colorado Revised Statutes and section 24-4-103, C.R.S., of the Administrative Procedure Act.

Contact information

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NOTICE OF RULEMAKING HEARING

Department of Revenue
Motor Dealer Vehicle Board

The Motor Vehicle Dealer Board of the Colorado Department of Revenue, ("Board"), will consider the promulgation of amendments to its Rules and Regulations as authorized by the Colorado Motor Vehicle Dealer Board Code, 1 CCR 205-1, section 44-20-104(3)(a) and For specific information and language concerning the proposed changes and new rules, please refer to the contents of this Notice and to the proposed rules that are set forth following this notice and are available on the Board's website, https://sbg.colorado.gov/motor-vehicle-dealer-board.

STATUTORY AUTHORITY FOR RULEMAKING

The Board promulgates the amendments to these rules pursuant to the authority granted in subsections Colorado motor vehicle dealer board regulation law, 44-20-104(3)(a) of the Colorado Revised Statutes and section 24-4-103, C.R.S., of the Administrative Procedure Act.

SUBJECT OF RULEMAKING

The proposed rules and relevant information are posted on the Board's website, https://sbg.colorado.gov/motor-vehicle-dealer-board. In addition, the proposed rules attached to this Notice are fully incorporated herein.

The Board will consider the promulgation of the following list of existing rules with proposed changes. For specific information and language concerning the proposed changes, please refer to the proposed rules that are set forth with this Notice, posted on the Board's website, and posted on the Colorado Secretary of State's website.

RULES TO BE CONSIDERED FOR AMENDMENT OR ADOPTION

The Rule to be considered for amendment or adoption is described as follows:

1 CCR 205-1, Motor Vehicles

Regulation 44-20-121(3)(i), Advertising, Rule 3

RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of the rulemaking hearing to be held on January 18, 2022, will include any written comments or oral testimony submitted or presented.
2. Written Comments. The Board encourages interested parties to submit written comments on the proposed rules, including alternate proposals, by December 21, 2021, so that the Board can review comments prior to the rulemaking hearing. Written comments will also be accepted after that date. The deadline to submit written comments is 5:00 P.M. on December 30, 2021. Written comments may be emailed to: dor_dealerboardrules@state.co.us. In addition, you may submit written comments to:

   Colorado Motor Vehicle Dealer Board
   Attn: Rulemaking
   1707 Cole Boulevard, Suite 300
   Golden, Colorado 80401

3. Oral Comments. At the Board's discretion, they may afford interested parties an opportunity to make brief oral presentations at the rulemaking hearing. If allowed, oral presentations will likely be limited to two minutes or less per person. Individuals will not be allowed to cede their time to another person (for instance, one person speaking on behalf of five people will not be given ten minutes to speak). Organized groups of individuals are urged to identify one spokesperson and to be concise. The Board encourages interested parties to avoid duplicating material and testimony previously submitted in connection with the Prior Hearing.

HEARING SCHEDULE

Date: January 18, 2022

Time: 9:00 a.m.

Location: Due to the ongoing nature of the COVID-19 pandemic, this hearing will be held virtually through Webex. The Access link for the rulemaking hearing will be posted on the Board's website and the Secretary of State's website.

The hearing may be continued at such place and time as the Board may announce.

The Board shall deliberate upon the rulemaking record, including oral testimony and written submissions presented, as well as applicable legal provisions and any related matters properly submitted before the hearing record is closed. Pursuant to said hearing, in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the Board will adopt such rules as in its judgment are justified by the rulemaking record and applicable legal provisions.

Dated this 9th day of December, 2021.

DEPARTMENT OF REVENUE

Motor Vehicle Dealer Board

DEALING IN MOTOR VEHICLES

1 CCR 205-1

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

Statement of Basis: The statutory basis for the regulations is 44-20-104(3)(a), C.R.S.

1 CCR 205-1, Regulation 44-20-121(3)(i)

Rule 3. Advertising a specific motor vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model, and dealer stock number.

a. ~~Such~~ Motor vehicles shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of ~~five~~ three days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. ~~If a specific number of motor vehicles is advertised, such vehicles must have been invoiced to the dealer.~~

b. If a motor vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the motor vehicle's availability, such as it is in transit, on order, or otherwise in a specified location, and that it is not in stock.

c. Utility trailers, as defined by section 42-1-102(111), C.R.S., do not need to include the year if the trailer is less than three model years old.

d. Utility trailers, as defined by section 42-1-102(111), C.R.S., may use a stock keeping unit (SKU) in lieu of a dealer stock number. For the purposes of this regulation the material particulars of all trailers advertised under the same SKU will be the same except the year of manufacture (see 1 CCR 205-10 Regulation 44-20-121(3)(h) for the definition of Material Particular).

e. Any motor vehicle may use a complete 17-digit VIN number in lieu of a dealer stock number.

Notice of Proposed Rulemaking

Tracking number

2021-00803

Department

200 - Department of Revenue

Agency

205 - Motor Vehicle Dealer Board

CCR number

1 CCR 205-2

Rule title

DEALING IN POWERSPORTS VEHICLES

Rulemaking Hearing

Date

01/18/2022

Time

09:00 AM

Location

Webex Virtual Meeting

Subjects and issues involved

Regulation 44-20-420(3)(i). Advertising, Rule 3. The proposed amendments and/or additions to this rule are designed to bring clarity to what is misleading or inaccurate advertising.

Statutory authority

The Board promulgates the amendments to these rules pursuant to the authority granted in subsections Colorado motor vehicle dealer board regulation law, 44-20-404(1)(a), of the Colorado Revised Statutes and section 24-4-103, C.R.S., of the Administrative Procedure Act.

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NOTICE OF RULEMAKING HEARING

Department of Revenue
Motor Dealer Vehicle Board

The Motor Vehicle Dealer Board of the Colorado Department of Revenue, ("Board"), will consider the promulgation of amendments to its Rules and Regulations as authorized by the Colorado Motor Vehicle Dealer Board Code, 1 CCR 205-2, section 44-20-404(1)(a), C.R.S. For specific information and language concerning the proposed changes and new rules, please refer to the contents of this Notice and to the proposed rules that are set forth following this notice and are available on the Board's website, https://sbg.colorado.gov/motor-vehicle-dealer-board.

STATUTORY AUTHORITY FOR RULEMAKING

The Board promulgates the amendments to these rules pursuant to the authority granted in subsections Colorado motor vehicle dealer board regulation law, 44-20-404(1)(a), of the Colorado Revised Statutes and section 24-4-103, C.R.S., of the Administrative Procedure Act.

SUBJECT OF RULEMAKING

The proposed rules and relevant information are posted on the Board's website, https://sbg.colorado.gov/motor-vehicle-dealer-board. In addition, the proposed rules attached to this Notice are fully incorporated herein.

The Board will consider the promulgation of the following list of existing rules with proposed changes. For specific information and language concerning the proposed changes, please refer to the proposed rules that are set forth with this Notice, posted on the Board's website, and posted on the Colorado Secretary of State's website.

RULES TO BE CONSIDERED FOR AMENDMENT OR ADOPTION

The Rule to be considered for amendment or adoption is described as follows:

1 CCR 205-2, Powersports Vehicles

Regulation 44-20-420(3)(i), Advertising, Rule 3

RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of the rulemaking hearing to be held on January 18, 2022, will include any written comments or oral testimony submitted or presented.
2. Written Comments. The Board encourages interested parties to submit written comments on the proposed rules, including alternate proposals, by December 21, 2021, so that the Board can review comments prior to the rulemaking hearing. Written comments will also be accepted after that date. The deadline to submit written comments is 5:00 P.M. on December 30, 2021. Written comments may be emailed to: dor_dealerboardrules@state.co.us. In addition, you may submit written comments to:

   Colorado Motor Vehicle Dealer Board
   Attn: Rulemaking
   1707 Cole Boulevard, Suite 300
   Golden, Colorado 80401

3. Oral Comments. At the Board's discretion, they may afford interested parties an opportunity to make brief oral presentations at the rulemaking hearing. If allowed, oral presentations will likely be limited to two minutes or less per person. Individuals will not be allowed to cede their time to another person (for instance, one person speaking on behalf of five people will not be given ten minutes to speak). Organized groups of individuals are urged to identify one spokesperson and to be concise. The Board encourages interested parties to avoid duplicating material and testimony previously submitted in connection with the Prior Hearing.

HEARING SCHEDULE

Date: January 18, 2022

Time: 9:00 a.m.

Location: Due to the ongoing nature of the COVID-19 pandemic, this hearing will be held virtually through Webex. Access link for the rulemaking hearing will be posted on the Board's website and the Secretary of State's website.

The hearing may be continued at such place and time as the Board may announce.

The Board shall deliberate upon the rulemaking record, including oral testimony and written submissions presented, as well as applicable legal provisions and any related matters properly submitted before the hearing record is closed. Pursuant to said hearing, in the above- entitled matter at the time and place aforesaid, or at any adjourned meeting, the Board will adopt such rules as in its judgment are justified by the rulemaking record and applicable legal provisions.

Dated this 15th day of December, 2021.

DEPARTMENT OF REVENUE

Motor Vehicle Dealer Board

DEALING IN POWERSPORTS VEHICLES

1 CCR 205-2

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

Statement of Basis: The statutory basis for the regulations is 44-20-404(1)(a), C.R.S.

REGULATION 44-20-420(3)(i)

Rule 3. Advertising a specific powersports vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model, and dealer stock number.

a. ~~Such~~ Powersports vehicles shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of ~~five~~ three days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. ~~If a specific number of powersports vehicles are advertised, such vehicles must have been invoiced to the dealer.~~

b. If a powersports vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the powersports vehicle's availability, such as it is in transit, on order, or otherwise in a specified location, and that it is not in stock.

c. Any powersports vehicle may use a complete 17-digit VIN number in lieu of a dealer stock number.

Notice of Proposed Rulemaking

Tracking number

2021-00807

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

GAMING REGULATIONS

Rulemaking Hearing

Date

01/20/2022

Time

09:15 AM

Location

video conference only

Subjects and issues involved

Amendments to Regulations 30-1099.44 WPT Heads Up Hold Em, and 30-1099.51 Cajun Stud, at the request of the game owner who is adding a progressive wagering option to both games. Amendment to Regulation 30-1401 Gaming and Device Taxes, to update the address of the Dept. of Revenue's Deposit Control Manager. Amendment to Regulation 30-2505 Keno Procedures, to correct a typo.

Statutory authority

Sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-602, C.R.S., 44-30-604, C.R.S., 44-30-816, C.R.S., and 44-30-818, C.R.S.

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BASIS AND PURPOSE FOR RULE 10

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

RULE 10 RULES FOR POKER

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

(4) At their option, players may also place an additional wager on the five-card linked progressive wager, provided the wager is of the required fixed amount posted on the tablevision display. Once the progressive wager(s) are placed on the sensors, the sensors will flash, indicating a wager is present.

(5) Once all wagers are placed, and, if any five-card linked progressive wagers have been made, the dealer will lock in those wagers by pressing the dealer button. The dealer will ensure that all sensors with wagers, that were previously flashing, are now continuously lit, while sensors without any wagers remain unlit. The dealer then collects all progressive wagers, as they are paid on a "for 1" basis.

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

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

(b) The five-card linked progressive wager may be evaluated by forming a five-card hand with the player's two-card hand and three additional five-card linked progressive community cards that are not used within the base game.

(~~4~~7) Immediately prior to each round of play, the dealer shall shuffle the cards. Following the shuffle and cut, the dealer will deal two cards (player hole cards) to each player and to him/herself (dealer hole cards) one at a time face down starting with the player to his/her left. These two cards also represent both the player's and the dealer's two-card hand. The dealer will then deal five community board cards, face down, on the layout. Players are not allowed to exchange information about their hands.

(8) If the five-card linked progressive is configured to be evaluated using three additional five-card linked progressive community cards that do not impact the base game, the dealer must now deal three cards face-down to the designated area for the additional community cards. They should be dealt face-down so as to not give a player additional information when making decisions on other wagers.

(~~5~~9) An incorrect number of cards dealt to a player constitutes a misdeal to that player only and that player retains his/her Ante, Odds and any other bets. Exposed cards dealt to a player do not constitute a misdeal. The dealer will turn the card(s) over and continue to deal. An incorrect number of cards and/or exposed cards dealt to the dealer constitutes a misdeal for the hand, and all players retain their Ante, Odds and any other bets. If a player's card falls from the table, that player's hand is dead and the player's wagers are void.

(610) Players will then examine their cards. Players will then have the option to either make a Raise wager equal to their Ante, twice their Ante, three times their Ante or to check. Players who have made a tip bet on their ante wager may also place a tip bet on their Raise wagers.

(711) The dealer will then reveal the flop by turning over the first three community cards.

(812) Players who have not made a Raise wager may now make a Raise wager equal to their Ante, twice their Ante or they may check.

(13) The dealer will then turn over the last two community cards (the turn and the river). If the five-card linked progressive is configured to be evaluated using three additional five-card linked progressive community cards, the dealer will now expose those face-down additional community cards.

(914) The dealer will then turn over the last two community cards (the turn and the river).

(1005) Players who have not yet made a Raise wager now must either make a Raise wager equal to their Ante wager or fold their hand and forfeit both their Ante and Odds wagers. If a player who has folded has made the optional Pocket Bonus wager and it is a winning combination, the player will tuck his/her cards under the Pocket Bonus wager until the end of the game when the dealer pays out according to the posted pay table.

(1116) After all players have acted, the dealer will then turn over the dealer cards and create the best five card poker hand from the dealer's two cards and the five community cards and will announce the dealer's hand to the players. The dealer must have at least a pair or better to qualify.

(1227) The Pocket Bonus and the Trips Plus wagers.

(c) Players win the five-card linked progressive wager if their five-card hand (formed in the manner determined by the chosen configuration) is one of the hand rankings depicted on the pay table posted on the tablevision display on the table.

(i) Certain five-card linked progressive pay tables are configured with an envy payout. To qualify for an envy pay, at least one player must win a qualifying progressive award. All other players who have placed a progressive wager in that round will receive the listed envy pay. Players can receive multiple envy pays, but cannot receive an envy pay on their own hand.

(1338) The dealer will reconcile the Pocket Bonus and Trips Plus wagers at the same time he/she is reconciling the Ante, Raises and Odds wagers.

Five-card linked progressive pay tables

Outcome	**PT-BJS-5CL-01**	**PT-BJS-5CL-02**	**PT-BJS-5CL-03**	**PT-BJS-5CL-04**	**PT-BJS-5CL-05**	**PT-BJS-5CL-09**	**PT-BJS-5CL-10**
Royal flush	100%	100%	100%	100%	100%	100%	100%
Straight flush	$1,500	$2,500	$1,000	$2,000	100%	$1,500	100%
Four of a kind	$250	$250	$200	$250	$250	$250	$200
Full house	$100	$100	$100	$75	$75	$75	$75
Flush	$50	$50	$75	$50	$50	$50	$50
Straight	$25	$25	$20	$20	$20	$20	$30
Three of a kind	$5	$5	$5	$5	$5	$10	$5
Two pair	Loss	Loss	Loss	Loss	$3	Loss	$3

Outcome	PT-BJS-5CL-06	PT-BJS-5CL-07	PT-BJS-5CL-08	PT-BJS-5CL-11
5-card Royal Flush	100%	100%	100%	100%
5-card Straight Flush	$500	$1,000	$2,500	$500
4-card Straight Flush	$200	$200	$150	$200
5-card Flush	$50	$50	$75	$75
4-card Flush	$5	$5	$5	$5

Outcome	PT-BJS-5CL-E01		PT-BJS-5CL-E02		PT-BJS-5CL-E03	
	Pay	Envy	Pay	Envy	Pay	Envy
Royal Flush	100%	$1,000	100%	$5,000	100%	$1,000
Straight Flush	10%	$300	10%	$1,500	10%	$250
Four of a Kind	$300	N/A	$300	N/A	$250	N/A
Full House	$50	N/A	$50	N/A	$75	N/A
Flush	$40	N/A	$40	N/A	$50	N/A
Straight	$30	N/A	$30	N/A	$25	N/A
Three of a Kind	$9	N/A	$9	N/A	$10	N/A

(19) The five-card linked progressive pay tables are based on a $1 wager. If the progressive is configured with a different base wagering unit, the seed/reseed, pays, and envy pays should be multiplied accordingly.

(30-1017.57, renumbered as 30-1099.44, effective 12/15/17)

30-1099.51 The play – Cajun Stud. *Effective 1/30/20*

(4) At their option, players may also place an additional wager on the five-card linked progressive wager, provided the wager is of the required fixed amount posted on the tablevision display. Once the progressive wager(s) are placed on the sensors, the sensors will flash, indicating a wager is present.

(5) Once all wagers are placed, and, if any five-card linked progressive wagers have been made, the dealer will lock in those wagers by pressing the dealer button. The dealer will ensure that all sensors with wagers, that were previously flashing, are now continuously lit, while sensors without any wagers remain unlit. The dealer then collects all progressive wagers, as they are paid on a "for 1" basis.

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

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

(b) The five-card linked progressive wager may be evaluated by forming a five-card hand with the player's two-card hand and three additional five-card linked progressive community cards that are not used within the base game.

(47) Immediately prior to the commencement of play and after each round of play has been completed, the dealer shall shuffle and cut the cards according to house procedure. Following the shuffle and cut, the dealer may deal four cards in the designated All 6 square, three community

cards in front of the dealer and two cards to each player face down according to house procedure. If using a mechanical shuffling device, the dealer may deal four cards in the designated All 6 square, three community cards in front of the dealer and two cards to each player face down according to house procedure.

(8) IF THE FIVE-CARD LINKED PROGRESSIVE IS CONFIGURED TO BE EVALUATED USING THREE ADDITIONAL FIVE-CARD LINKED PROGRESSIVE COMMUNITY CARDS THAT DO NOT IMPACT THE BASE GAME, THE DEALER MUST NOW DEAL THREE CARDS FACE-DOWN TO THE DESIGNATED AREA FOR THE ADDITIONAL COMMUNITY CARDS. THEY SHOULD BE DEALT FACE-DOWN SO AS TO NOT GIVE A PLAYER ADDITIONAL INFORMATION WHEN MAKING DECISIONS ON OTHER WAGERS.

(~~5~~9) An incorrect number of cards dealt to any player or dealer constitutes a misdeal for the hand, and all players retain their ante, and any optional bonus wagers. Any number of exposed cards does not constitute a misdeal. If the dealer exposes a card, the dealer will turn the card over and continue dealing.

(~~6~~10) After all cards have been dealt, a player who has placed an ante wager has the option to fold and surrender their ante wager or place an additional wager in an amount of 1X to 3X their ante in the Raise wager furthest to the player's left. Players may also make the two remaining Raise wagers at this time. After all players who wish to fold have folded, the dealer collects the ante wagers and the cards from each player who folded and did not make any optional bonus wagers. All bets will be collected in the order in which the players fold. As the dealer collects the cards, the cards are spread face down to count them, and then placed in the discard rack. If a player folds and made a Board Bonus, Pocket Bonus or Lo Ball, and/or All 6 wager, the cards will be tucked under the optional bonus wager closest to the player until the end of the game when the dealer pays according to the posted pay table.

(~~7~~11) After all players have acted, the dealer will reveal the first community card. The players who have not folded have the option to fold and surrender their ante and Raise wagers or place an additional wager in an amount of 1X to 3X their ante in the second Raise wagering area. Players may make their remaining Raise wagers at this time. After all players who wish to fold have folded, the dealer collects the ante and Raise wagers and the cards from each player who folded. All bets will be collected in the order in which the players fold. As the dealer collects the cards, the cards are spread face down to count them, and then placed in the discard rack. If a player who has folded made a Board Bonus, Pocket Bonus, Low Ball and/or All 6 wager, the cards will be tucked under the optional bonus wager closest to the player until the end of the game when the dealer pays according to the posted pay table.

(~~8~~12) After all players have acted, the dealer will reveal the second community card. The players who have not folded have the option to fold and surrender their ante and all Raise wagers placed or place a final Raise wager in an amount of 1X to 3X their ante in the remaining Raise wagering area. After all players who wish to fold have folded, the dealer collects the ante and Raise wagers and the cards from each player who folded. All bets will be collected in the order in which the players fold. As the dealer collects the cards, the cards are spread face down to count them, and then placed in the discard rack. If a player who has folded made a Board Bonus, Pocket Bonus, Low Ball, and/or All 6 wager, the cards will be tucked under the optional bonus wager closest to the player until the end of the game when the dealer pays according to the posted pay table.

(~~9~~13) After all players have acted, the dealer will reveal the third community card. The dealer then exposes the four All 6 cards and works from right to left revealing the player's two card starting hand. The dealer then collects losing wagers or pays winning wagers according to the posted pay tables. The dealer can pay each of the Ante and Raise wagers separately or the dealer can stack each of these bets and pay as one bet. Then the dealer will pay the Board Bonus bet (if applicable), Pocket Bonus bet (if applicable), the Lo Ball bet (if applicable), and the All 6 bet (if applicable).

(10~~4~~) Board Bonus Winners: The Board Bonus wager is based on the three community cards ONLY. Players win with a pair or better. A player who has placed a Board Bonus wager is paid according to the approved Board Bonus pay table. Pocket Bonus Winners: The Pocket Bonus wager is based on the player's first two cards ONLY. Players win with a pair or an Ace + Face Card (Ace + King, Queen or Jack). A player who has placed a Pocket Bonus wager is paid according to the approved Pocket Bonus pay table. Lo Ball Winners: The Lo Ball wager is based on the player's first two cards and the three community cards ONLY. Players win with a Jack high or less. A player who has placed a Lo Ball wager is paid according to the approved Lo Ball pay table. All 6 Winners: The All 6 wager is based on the player's first two cards and the four All 6 community cards ONLY. Players win with three of a kind or better. A player who has placed an All 6 wager is paid according to the approved All 6 pay table.

(15) CERTAIN FIVE-CARD LINKED PROGRESSIVE PAY TABLES ARE CONFIGURED WITH AN ENVY PAYOUT.

(A) TO QUALIFY FOR AN ENVY PAY, AT LEAST ONE PLAYER MUST WIN A QUALIFYING PROGRESSIVE AWARD. ALL OTHER PLAYERS WHO HAVE PLACED A PROGRESSIVE WAGER IN THAT ROUND WILL RECEIVE THE LISTED ENVY PAY. PLAYERS CAN RECEIVE MULTIPLE ENVY PAYS, BUT CANNOT RECEIVE AN ENVY PAY ON THEIR OWN HAND.

(11~~6~~) Pay tables:

FIVE-CARD LINKED PROGRESSIVE PAY tables

OUTCOME	**PT-BJS-5CL-01**	**PT-BJS-5CL-02**	**PT-BJS-5CL-03**	**PT-BJS-5CL-04**	**PT-BJS-5CL-05**	**PT-BJS-5CL-09**	**PT-BJS-5CL-10**
ROYAL FLUSH	100%	100%	100%	100%	100%	100%	100%
STRAIGHT FLUSH	$1,500	$2,500	$1,000	$2,000	100%	$1,500	100%
FOUR OF A KIND	$250	$250	$200	$250	$250	$250	$200
FULL HOUSE	$100	$100	$100	$75	$75	$75	$75
FLUSH	$50	$50	$75	$50	$50	$50	$50
STRAIGHT	$25	$25	$20	$20	$20	$20	$30
THREE OF A KIND	$5	$5	$5	$5	$5	$10	$5
TWO PAIR	LOSS	LOSS	LOSS	LOSS	$3	LOSS	$3

OUTCOME	**PT-BJS-5CL-06**	**PT-BJS-5CL-07**	**PT-BJS-5CL-08**	**PT-BJS-5CL-11**
5-CARD ROYAL FLUSH	100%	100%	100%	100%
5-CARD STRAIGHT FLUSH	$500	$1,000	$2,500	$500
4-CARD STRAIGHT FLUSH	$200	$200	$150	$200
5-CARD FLUSH	$50	$50	$75	$75
4-CARD FLUSH	$5	$5	$5	$5

OUTCOME	**PT-BJS-5CL-E01**		**PT-BJS-5CL-E02**		**PT-BJS-5CL-E03**	
	PAY	**ENVY**	**PAY**	**ENVY**	**PAY**	**ENVY**
ROYAL FLUSH	100%	$1,000	100%	$5,000	100%	$1,000
STRAIGHT FLUSH	10%	$300	10%	$1,500	10%	$250
FOUR OF A KIND	$300	N/A	$300	N/A	$250	N/A
FULL HOUSE	$50	N/A	$50	N/A	$75	N/A
FLUSH	$40	N/A	$40	N/A	$50	N/A
STRAIGHT	$30	N/A	$30	N/A	$25	N/A
THREE OF A KIND	$9	N/A	$9	N/A	$10	N/A

(19) THE FIVE-CARD LINKED PROGRESSIVE PAY TABLES ARE BASED ON A $1 WAGER. IF THE PROGRESSIVE IS CONFIGURED WITH A DIFFERENT BASE WAGERING UNIT, THE SEED/RESEED, PAYS, AND ENVY PAYS SHOULD BE MULTIPLIED ACCORDINGLY.

BASIS AND PURPOSE FOR RULE 14

The purpose of Rule 14 is to establish the rate of the gaming tax on adjusted gross proceeds of gaming in compliance with section 44-30-601, C.R.S., to provide for security for the payment of gaming taxes to the Department, and to provide for the payment of gaming taxes by electronic fund transfer and to change the method of filing monthly gaming tax returns to electronically transmitted. The statutory basis for purpose for Rule 14 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-602, C.R.S., and 44-30-604, C.R.S., (1991).

RULE 14 GAMING TAX

30-1401 Gaming and device taxes.

(2) (a) Payment of the gaming tax by the retail licensee shall be made to the Department by an electronic funds transfer or by any other method permitted in articles 20, 21, and 26 of title 39, C.R.S. Electronic funds transfer is defined to be Automated Clearing House (ACH) debit. Any electronic funds transfer shall be made using ACH debit transaction in the Cash Concentration or Disbursement (CCD) entry format with addendum record as defined by the 1994 ACH rules published by the National Automated Clearing House Association. The data contained in the addendum record shall be in the format of the tax payment (TXP) banking convention published by the National Automated Clearing House Association in 1990. *(The references to the rules and conventions of the National Automated Clearing House Association in this regulation do not include later amendments or editions of this referenced material. Certified copies of these rules and conventions are on file at the Department of Revenue and may be obtained or examined by contacting the manager of Deposit Control, ~~1375 Sherman Street, Denver, Colorado 80261~~CASHIERS – ROOM 132, 1881 PIERCE STREET, LAKEWOOD, CO 80214.)* The payment for gaming taxes shall be made separately and apart from any other taxes which are paid to the Department. In addition to the payment, the retail licensee shall electronically transmit to the Department a tax return in the format provided by the Department. The return shall be transmitted to be received by the Department no later than the 15th day of the month succeeding the calendar month in which the adjusted gross proceeds were received by the retail licensee or the due date if later in accordance with Section 39-21-119(3) C.R.S. (1994). All monthly gaming tax returns beginning with the return for October 1994 taxes shall be transmitted electronically. *Eff 12/30/2008*

BASIS AND PURPOSE FOR RULE 25

The purpose of Rule 25 is to establish playing rules for keno and procedures for conducting keno games in compliance with section 44-30-302 (2), C.R.S. The statutory basis for Rule 25 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., and 44-30-818, C.R.S.

RULE 25 RULES FOR KENO

30-2505 Keno procedures.

(12) If a patron requests to redeem a winning keno ticket with a keno runner, a keno runner shall:

(b) Take the winning ticket to a keno writer for processing. If the keno runner has paid the patron directly from his or her pouch the keno writer shall transact with the runner to collect or pay any monies transacted. If a keno runner also functions as a writer, the runner's own writer ba~~c~~N k funds the runner pouch; *Amended 6/14/21*

Notice of Proposed Rulemaking

Tracking number

2021-00813

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

01/18/2022

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 rules for the required Colorado Option standardized bronze, silver, and gold health benefit plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2023. The individual market standardized plan shall be offered On-Exchange.

Statutory authority

§§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304(1), and 10-16-1312, C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed New Regulation 4-2-81

CONCERNING COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLAN

Section 1 Authority
Section 2 Scope and Purpose
Section 3 Applicability
Section 4 Definitions
Section 5 Colorado Option Standardized Health Benefit Plan
Section 6 Incorporation by Reference
Section 7 Severability
Section 8 Enforcement
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Appendix A 2023 Standard Gold, Silver and Bronze Plan

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304(1), and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules for the required Colorado Option standardized bronze, silver, and gold health benefit plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2023. The individual market standardized plan shall be offered On-Exchange.

Section 3 Applicability

This regulation applies to all carriers offering individual and small group health benefit plans subject to the individual and group laws of Colorado and the requirements of 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 4 Definitions

A. “Actuarial value” and “AV” means, for the purposes of this regulation, the percentage of total average costs for covered benefits that a plan will cover, with calculations based on the provision of essential health benefits to a standard population.

B. “Behavioral, mental health, and substance use disorder” shall have the same meaning as found at § 10-16-104(5.5)(d), C.R.S.

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

D. “Encounter” means, for the purposes of this regulation, an episode defined by an interaction between a healthcare provider and the subject of care in which healthcare-related activities take place.

E. “Essential health benefits” and “EHB” shall have the same meaning as found at § 10-16-102(22), C.R.S.

F. “Federal law” shall have the same meaning as found at § 10-16-102(29), C.R.S.

G. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

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

I. “Preventive drug” means, for the purposes of this regulation, drugs designated as preventive under state or federal law.

J. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.

K. “Standardized plan” shall have the same meaning as found at §10-16-1303(14), C.R.S.

Section 5 Colorado Option Standardized Health Benefit Plan

A. Carriers shall offer a standardized plan at the bronze, silver, and gold metal level tiers, as required under §10-16-1304, and shall:

1. Use the following naming conventions:

a. For all metal tier plans: "[Name of Carrier] Colorado Option [Metal Tier]." The name of the carrier may be shortened to an easily identifiable acronym that is commonly used by the carrier in consumer facing publications.

b. For silver cost-sharing reduction variant plans: “[Name of Carrier] Colorado Option Silver [% AV value].” The name of the carrier may be shortened to an easily identifiable acronym that is commonly used by the carrier in consumer facing publications.

2. Include a service area or network identifier in the plan name if the plan is not offered on a statewide basis with a statewide network.

B. Coverage must be provided in a manner consistent with the requirements of:

1. 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).

2. Article 16 of Title 10 of the Colorado Revised Statutes, as applicable to individual and small group health benefit plans, including but not limited to:

a. §§ 10-16-1304, 10-16-1305, 10-16-1306, C.R.S.

b. §§ 10-16-104(5.5) and 10-16-147, C.R.S and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) as defined at § 10-16-102(43.5) C.R.S.

(1) Carriers shall submit filings required by Section 9 of Colorado Regulation 4-2-64 no later than April 1.

(2) If it is determined that a carrier's standardized plan does not comply with MHPAEA financial requirements and quantitative treatment limitations, the Division will make the minimum adjustments necessary to the cost sharing structure in the standardized plan to meet these requirements.

3. United States Preventive Services Task Force A and B recommendations, Advisory Committee on Immunization Practices, and/or changes published by the Health Resources and Services Administration (HRSA) summarized in Bulletin B-4.083.

C. As part of the ACA annual filings process, standardized plans must be consistent with Colorado Regulations and guidance regarding rate and form filings, including but not limited to Colorado Regulations 4-2-39, 4-2-41, and 4-2-64.

D. Coverage must provide essential health benefits as defined in Colorado Regulation 4-2-42. Carriers are not permitted to add benefits outside of those outlined in Colorado Regulation 4-2-42 except that carriers may include reproductive health and perinatal care in addition to the benefits in Colorado Regulation 4-2-42 to improve racial health equity and reduce health disparities, subject to approval by the Division of Insurance. Carriers must follow the defined cost-sharing requirements for the benefits listed in Appendix A. Carriers may vary cost-sharing amounts for essential health benefits not listed in Appendix A.

E. The Colorado Option standardized bronze, silver, and gold plans must include the following coverage:

1. Mental health, behavioral health and substance use disorder visits and primary care visits in accordance with the cost-sharing requirements contained in Appendix A.

2. Prenatal and postnatal visits in accordance with the cost-sharing requirements contained in Appendix A.

a. Carriers utilizing a global billing structure for pregnancy-related care shall account for the cost sharing outlined in the standard benefit plan in the global billing fee structure.

b. Home visits shall be considered a covered postnatal care visit, subject to the cost-sharing for “prenatal and postnatal visits” contained in Appendix A.

3. Carrier formularies shall have five drug tiers defined as follows and that allow copay only cost sharing:

a. Tier 1: Preventive Care Drugs

b. Tier 2: Generic Drugs

c. Tier 3: Preferred Brand Drugs

d. Tier 4: Non-Preferred Brand Drugs

e. Tier 5: Specialty Drugs

4. Consistent with existing coverage requirements, carriers must provide the following:

a. Carriers must include the “Colorado QuitLine” as part of covered tobacco cessation programs;

b. When outpatient education for prediabetes is recommended by a provider , carriers must include a program recognized by the National (CDC) Diabetes Prevention Program as part of diabetes prevention coverage.

5. The laboratory test cost-share shall be applied on a per encounter basis. For plans with a copay for laboratory tests, the enrollee's cost-share may be less than the specified copay, but a carrier may not impose a greater cost-share than the amounts provided in Appendix A.

Section 6 Incorporation by Reference

The age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices, as published by the Advisory Committee on Immunization Practices shall mean age-appropriate immunization and vaccine schedules as published on the effective date of this regulation and do not include later amendments to, or editions of, the age-appropriate immunization and vaccine schedules. The age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Advisory Committee on Immunization Practices website at

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http://www.cdc.gov/vaccines/schedules/hcp/index.html. Certified copies of the age-appropriate immunization and vaccine schedules as recommended by the Advisory Committee on Immunization Practices are available from the Colorado Division of Insurance for a fee.

The USPSTF A and B Recommendations, published by the United States Preventive Services Task Force shall mean the USPSTF A and B Recommendations, as published on the effective date of this regulation and does not include later amendments to, or editions of, the USPSTF A and B Recommendations. The USPSTF A and B Recommendations may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the United States Preventive Services Task Force website at https://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations/. Certified copies of the USPSTF A and B Recommendations are available from the Colorado Division of Insurance for a fee.

The women's preventive service guidelines, published by the Health Resources and Services Administration shall mean the women's preventive service guidelines published by the Health Resources and Services Administration, as published on the effective date of this regulation and does not include later amendments to, or editions of the women's preventive service guidelines published by the Health Resources and Services Administration. The women's preventive service guidelines published by the Health Resources and Services Administration may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Health Resources and Services Administration website at https://www.hrsa.gov/womens guidelines/index.html. Certified copies of the women's preventive service guidelines, published by the Health Resources and Services Administration are available from the Colorado Division of Insurance for a fee.

Section 7 Severability

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

Section 8 Enforcement

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

Section 9 Effective Date

This regulation shall become effective on March 17, 2022.

Section 10 History

This regulation shall become effective March 17, 2022.

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Appendix A

This Appendix outlines the Standardized Plan designs across the Gold, Silver and Bronze metal tiers. The column “Deductible Applies” refers to the cost share amount paid by the consumer after their deductible is met. The “x” in the “Deductible Applies” column indicates that a consumer is expected to meet their deductible prior to paying the cost share amount listed in the “Member Cost Share (In Network)” column.

Standardized Silver Cost Sharing Reduction Plans (73% AV, 87% AV, and 94% AV) are only required to be offered in the individual, on-Exchange market.

Gold Standardized Plan 2023

Actuarial Value			**79.2%**
Individual Deductible (Combined Medical & Drug)			$1,500
Individual Out-of-Pocket Maximum			$7,700
Family Deductible			$3,000
Family Out-of-Pocket Maximum			$15,400
Common Medical Event	**Service Type**	**Member Cost Share (In Network)**	**Deductible Applies**
Health Care Provider’s Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$50	
Pregnancy	Prenatal and postnatal visits	$0	
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	30%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	30%	X

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Tests	Laboratory tests	$25	
	X-rays and diagnostic imaging	30%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	30%	X
Drugs to treat Illness or Condition	Tier 1: Preventive Care Drugs	$0	
	Tier 2: Generic Drugs	$10	
	Tier 3: Preferred brand Drugs	$50	
	Tier 4: Non-preferred brand Drugs	$200	
	Tier 5: Specialty Drugs	$600	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	30%	X
	Physician/Surgical Services	30%	X
Need Immediate Attention	Urgent care centers or facilities	$50	
	Emergency room services	30%	X
	Emergency medical transportation (ambulance)	30%	X
Hospital Stay	Inpatient Hospital services	30%	X
	Inpatient Physician and Surgical Services	30%	X
	Inpatient Rehabilitation Services	30%	X
	Inpatient Habilitation Services	30%	X
Help recovering or other health needs	Durable medical equipment[1]	30%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing
[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

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Silver Standardized Plan 2023

Actuarial Value			**68.8%**
Individual Deductible (Combined Medical & Drug)			$5,000
Individual Out-of-Pocket Maximum			$8,550
Family Deductible			$10,000
Family Out-of-Pocket Maximum			$17,100
Common Medical Event	**Service Type**	**Member Cost Share (In Network)**	**Deductible Applies**
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$80	
Pregnancy	Prenatal and postnatal visits	$0	
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	$45	
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
Drugs to treat Illness or Condition	Tier 1: Preventive Care Drugs	$0	
	Tier 2: Generic Drugs	$20	
	Tier 3: Preferred brand Drugs	$125	
	Tier 4: Non-preferred brand Drugs	$300	

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	Tier 5: Specialty Drugs	$650	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X
Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	40%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X
	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing
[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

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Silver (73% AV) Standardized Plan 2023

Actuarial Value			**73.2%**
Individual Deductible (Combined Medical & Drug)			$3,500
Individual Out-of-Pocket Maximum			$6,950
Family Deductible			$7,000
Family Out-of-Pocket Maximum			$13,900
Common Medical Event	**Service Type**	**Member Cost Share (In Network)**	**Deductible Applies**
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$80	
Pregnancy	Prenatal and postnatal visits	$0	
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	$45	
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
Drugs to treat Illness or Condition	Tier 1: Preventive Care Drugs	$0	
	Tier 2: Generic Drugs	$10	
	Tier 3: Preferred brand Drugs	$100	
	Tier 4: Non-preferred brand Drugs	$300	

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	Tier 5: Specialty Drugs	$550	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X
Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	40%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X
	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing
[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

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Silver (87% AV) Standardized Plan 2023

Actuarial Value			**87.1%**
Individual Deductible (Combined Medical & Drug)			$700
Individual Out-of-Pocket Maximum			$2,800
Family Deductible			$1,400
Family Out-of-Pocket Maximum			$5,600
Common Medical Event	**Service Type**	**Member Cost Share (In Network)**	**Deductible Applies**
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$60	
Pregnancy	Prenatal and postnatal visits	$0	
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	30%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	30%	X
Tests	Laboratory tests	$35	
	X-rays and diagnostic imaging	30%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	30%	X
Drugs to treat Illness or Condition	Tier 1: Preventive Care Drugs	$0	
	Tier 2: Generic Drugs	$0	
	Tier 3: Preferred brand Drugs	$60	
	Tier 4: Non-preferred brand Drugs	$120	

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	Tier 5: Specialty Drugs	$180	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	30%	X
	Physician/Surgical Services	30%	X
Need Immediate Attention	Urgent care centers or facilities	$60	
	Emergency room services	30%	X
	Emergency medical transportation (ambulance)	30%	X
Hospital Stay	Inpatient Hospital services	30%	X
	Inpatient Physician and Surgical Services	30%	X
	Inpatient Rehabilitation Services	30%	X
	Inpatient Habilitation Services	30%	X
Help recovering or other health needs	Durable medical equipment[1]	30%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing
[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

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Silver (94% AV) Standardized Plan 2023

Actuarial Value			**94.3%**
Individual Deductible (Combined Medical & Drug)			$100
Individual Out-of-Pocket Maximum			$800
Family Deductible			$200
Family Out-of-Pocket Maximum			$1,600
Common Medical Event	**Service Type**	**Member Cost Share (In Network)**	**Deductible Applies**
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$40	
Pregnancy	Prenatal and postnatal visits	$0	
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	20%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	20%	X
Tests	Laboratory tests	$25	
	X-rays and diagnostic imaging	20%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	20%	X
Drugs to treat Illness or Condition	Tier 1: Preventive Care Drugs	$0	
	Tier 2: Generic Drugs	$0	
	Tier 3: Preferred brand Drugs	$20	
	Tier 4: Non-preferred brand Drugs	$40	

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	Tier 5: Specialty Drugs	$60	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	20%	X
	Physician/Surgical Services	20%	X
Need Immediate Attention	Urgent care centers or facilities	$40	
	Emergency room services	20%	X
	Emergency medical transportation (ambulance)	20%	X
Hospital Stay	Inpatient Hospital services	20%	X
	Inpatient Physician and Surgical Services	20%	X
	Inpatient Rehabilitation Services	20%	X
	Inpatient Habilitation Services	20%	X
Help recovering or other health needs	Durable medical equipment[1]	20%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing
[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

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Silver Off Exchange Standardized Plan 2023

Actuarial Value			**68.8%**
Individual Deductible (Combined Medical & Drug)			$5,000
Individual Out-of-Pocket Maximum			$8,550
Family Deductible			$10,000
Family Out-of-Pocket Maximum			$17,100
Common Medical Event	**Service Type**	**Member Cost Share (In Network)**	**Deductible Applies**
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	$0, unlimited	
	Specialist visit	$80	
Pregnancy	Prenatal and postnatal visits	$0	
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	$0, unlimited	
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	40%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	40%	X
Tests	Laboratory tests	$45	
	X-rays and diagnostic imaging	40%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	40%	X
Drugs to treat Illness or Condition	Tier 1: Preventive Care Drugs	$0	
	Tier 2: Generic Drugs	$20	
	Tier 3: Preferred brand Drugs	$125	
	Tier 4: Non-preferred brand Drugs	$300	

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	Tier 5: Specialty Drugs	$650	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	40%	X
	Physician/Surgical Services	40%	X
Need Immediate Attention	Urgent care centers or facilities	$80	
	Emergency room services	40%	X
	Emergency medical transportation (ambulance)	45%	X
Hospital Stay	Inpatient Hospital services	40%	X
	Inpatient Physician and Surgical Services	40%	X
	Inpatient Rehabilitation Services	40%	X
	Inpatient Habilitation Services	40%	X
Help recovering or other health needs	Durable medical equipment[1]	40%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing
[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

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Bronze Standardized Plan 2023

Actuarial Value			**64.6%**
Individual Deductible (Combined Medical & Drug)			$7,000
Individual Out-of-Pocket Maximum			$8,700
Family Deductible			$14,000
Family Out-of-Pocket Maximum			$17,400
Common Medical Event	**Service Type**	**Member Cost Share (In Network)**	**Deductible Applies**
Health Care Provider's Office or Clinic Visit	Preventive care/screening/immunization	$0	
	Primary care visit or non-specialist practitioner visit to treat an injury or illness	First 3 visits $0, then deductible, then $50	X
	Specialist visit	50%	X
Pregnancy	Prenatal and postnatal visits	First 3 visits $0, then deductible, then $50	X
Mental/ Behavioral Health and Substance Use Needs	Mental/Behavioral Health and Substance Use Disorder Office Visit	First 3 visits $0, then deductible, then $50	X
	Mental/Behavioral Health and Substance Use Disorder Outpatient services	50%	X
	Mental/Behavioral Health and Substance Use Disorder Inpatient services	50%	X
Tests	Laboratory tests	50%	X
	X-rays and diagnostic imaging	50%	X
	Advanced Imaging/Radiology (CT/PET scans, MRI)	50%	X

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Drugs to treat Illness or Condition	Tier 1: Preventive Care Drugs	$0	
	Tier 2: Generic Drugs	$30	
	Tier 3: Preferred brand Drugs	$200	
	Tier 4: Non-preferred brand Drugs	$350	
	Tier 5: Specialty Drugs	$700	
Outpatient Surgery	Facility Fee (e.g. Ambulatory Surgery Center)	50%	X
	Physician/Surgical Services	50%	X
Need Immediate Attention	Urgent care centers or facilities	50%	X
	Emergency room services	50%	X
	Emergency medical transportation (ambulance)	50%	X
Hospital Stay	Inpatient Hospital services	50%	X
	Inpatient Physician and Surgical Services	50%	X
	Inpatient Rehabilitation Services	50%	X
	Inpatient Habilitation Services	50%	X
Help recovering or other health needs	Durable medical equipment[1]	50%	X
	Diabetes Self-Management Education[2]	$5	

[1] Diabetes supplies, including Continuous Glucose Monitors, are provided with no-cost sharing
[2] At a minimum 10 hours of individual or group sessions in the first year of diagnosis, and 6 hours of individual or group sessions every year after diagnosis

DRAFT

Notice of Proposed Rulemaking

Tracking number

2021-00787

Department

700 - Department of Regulatory Agencies

Agency

723 - Public Utilities Commission

CCR number

4 CCR 723-6

Rule title

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

Rulemaking Hearing

Date

01/14/2022

Time

09:00 AM

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 to consider narrow and clarifying amendments to Rule 6511 of the Commissions Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations (CCR) 723-6. The Commission has statutory authority to adopt these rules under §§ 40-2-108 and 40-10.1-106, C.R.S. The proposed revisions to the language in Rule 6511 retain the same substantive rule amendments adopted in prior rulemaking Proceeding Nos. 19R-0709TO and 21R-0180TO. The limited purpose of this rulemaking is to revise the language of Rule 6511 to more clearly identify, in rule, the maximum rates that towing carriers may assess for their services, as subject to an annual inflation adjustment. These technical edits to the rule language are made solely for increased transparency, so that towing carriers and the general public can more readily identify the adopted rates. We also propose that the effective date of the annual inflation adjustment be moved from January 31 of each year to a later date, for example, March 15 of each year,to accommodate the fact that the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index (CPI) for Denver-Aurora-Lakewood is released annually near the end of February.

Statutory authority

The Commission has statutory authority to adopt these rules under §§ 40-2-108 and 40-10.1-106, C.R.S.

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORATION BY MOTOR VEHICLE

* * * *

[indicates omission of unaffected rules]

6511. Rates and Charges.

(a) Drop Charge. A towing carrier may assess a drop charge if the owner, authorized operator, or authorized agent of the owner of the motor vehicle that is parked without the authorization of the property owner appears in person to retrieve the motor vehicle after the motor vehicle is hooked up to the tow truck, but before the motor vehicle is removed from the property.

(I) The maximum drop charge is as follows for each vehicle weight classification ~~published on the Commission's website for the following classifications~~:

(A) $79.40 for motor vehicles with a GVWR less than or equal to 10,000 pounds;

(B) $102.08 for motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;

(C) $136.11 for motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds; and

(D) $158.79 for motor vehicles with a GVWR greater than 33,000 pounds.

(E) Maximum drop charges may be less than these amounts if required by municipal ordinance or by the tow agreement with the property owner and shall be enforced by the Commission pursuant to this rule.

(II) The maximum drop charge shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule~~The adjusted rates shall be published on the Commission's website no later than January 31 of each year. The effective date of any rate change shall be January 31 of each year~~.

(III) The minimum drop charge is $0.00.

(IV) The towing carrier shall halt any tow in progress, including preparation therefor, prior to removal from the private property, and advise the owner, authorized operator, or authorized agent of the owner of the motor vehicle that he or she may offer payment of the towing carrier's drop charge. The towing carrier shall concurrently advise the owner, authorized operator, or authorized agent of the owner of the motor vehicle of acceptable forms of payment under rule 6512. Such advisements shall be provided via delivery of a charge notification card, in addition to any other means desired by the towing carrier.

(V) If the towing carrier does not advise the owner, authorized operator, or authorized agent of the owner of the motor vehicle of the acceptable forms of payment under rule 6512 or accept such forms of payment, the towing carrier shall not charge or retain any fees or charges for the services it performs. Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of the motor vehicle.

(b) The towing rates for PPI tows consists of up to four elements: a base rate for the tow; a mileage charge, including any applicable fuel surcharge; a charge for motor vehicle storage; and a charge for release from storage pursuant to paragraph 6511(f), if applicable.

(I) The base rates for PPI tows are as follows for each vehicle weight classification ~~are published on the Commission's website for the following classifications~~:

(A) $203.90 for motor vehicles with a GVWR less than or equal to 10,000 pounds;

(B) $234.48 for motor vehicles with a GVWR greater than 10,001 pounds and less than or equal to 19,000 pounds;

(C) $316.05 for motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds; and

(D) $356.83 for motor vehicles with a GVWR greater than 33,000 pounds.

(II) The base rates shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule. ~~The adjusted rates shall be published on the Commission's website no later than January 31 of each year. The effective date of any rate change shall be January 31 of each year.~~

(III) The maximum mileage charge a towing carrier may assess for a PPI tow of a motor vehicle is $3.80 per mile for each mile that the motor vehicle is towed, subject to the following limits: The maximum mileage that may be charged for a PPI tow is 12 miles for tows within ten miles of either side of U.S. Interstate Highway 25, and 16.5 miles for mountain areas and eastern plains communities that lie farther than ten miles from U.S. Interstate Highway 25.

(IV) An additional fuel surcharge may be assessed when the price per gallon of diesel fuel exceeds a base rate of $2.60. The Commission shall, each month, adjust the maximum mileage charge when the price per gallon of diesel fuel exceeds the base rate. The

surcharge shall be based on the United States Department of Energy "weekly retail on-highway diesel prices" for the Rocky Mountain region (DOE's Weekly Diesel Price). The fuel surcharge adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in the DOE's Weekly Diesel Price, or a one-percent decrease in the mileage rate for every ten-cent decrease in the DOE's Weekly Diesel Price, but in no event decreasing below the base rate.

(V) A towing carrier shall not charge or retain any additional fees not identified in these rules for the nonconsensual tow of a motor vehicle from private property.

(c) Maximum towing rates for law enforcement ordered tows and recovery operations are to be calculated on an hourly basis, per required tow truck, as follows, with no additional fees, charges, or surcharges permitted.

(I) The maximum hourly rates for tow truck and driver, billable in ¼ hour increments after the first hour, for the towing or recovery of motor vehicles, are ~~published on the Commission's website for the following~~as follows for each vehicle weight classification~~s~~:

(A) $232.52 per hour for motor vehicles with a GVWR less than or equal to 10,000 pounds;

(B) $277.89 per hour for motor vehicles with a GVWR greater than 10,000 pounds and less than or equal to 19,000 pounds;

(C) $362.96 per hour for motor vehicles with a GVWR greater than 19,001 pounds and less than or equal to 33,000 pounds; and

(D) $419.67 per hour for motor vehicles with a GVWR greater than 33,000 pounds.

(E) The recovery of a motor vehicle requiring the use of a Heavy Rotator (60+ tons) shall not exceed $663.53 ~~585~~ per hour.

(II) The maximum hourly rates for tow truck and driver shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule. ~~The adjusted rates shall be published on the Commission's website no later than January 31 of each year. The effective date of any rate change shall be January 31 of each year.~~

(III) Mileage and fuel surcharges authorized elsewhere in rule 6511 do not apply to law enforcement-ordered tows or recovery operations.

(IV) Any towing carrier billing greater than one hour for any tow truck and driver for a given tow shall:

(A) include, in addition to requirements of rule 6509, the following information on the tow record/invoice, recorded at the time of occurrence: the time of dispatch; the time the tow truck leaves the yard or other staging location; the time the tow truck arrives on scene; the time the tow truck leaves the scene, and the time the towed motor vehicle is unhooked from the tow truck;

(B) include an advisement on the tow record/invoice that documentation of costs billed in excess of one hour for any tow truck and driver for such tow are available upon request from the towing carrier;

(C) only begin billing from a time not earlier than the towing carrier leaves their yard or staging area en route to the scene of the requested tow until the towed motor vehicle is unhooked;

(D) not bill more than the reasonable time necessary to perform the tow at hourly rates for one tow truck and driver, plus the towing carrier's actual and reasonable cost of recovery equipment and labor in excess of one tow truck and driver, plus an additional twenty-five percent of those actual and reasonable costs;

(E) provide an owner, authorized operator, or authorized agent of the owner of the motor vehicle documentation of actual and reasonable costs billed in excess of one hour for any tow truck and driver for such tow upon request; and

(F) not, under any circumstances, bill rates and charges provided in paragraph (b) for a PPI tow.

(d) The maximum rates for a tow from a storage facility, when directed by a law enforcement officer who is performing an accident reconstruction or stolen vehicle investigation, are as follows:

(I) $91.00 for one additional hookup;

(II) $91.00 per hour waiting time; and

(III) mileage charges as provided in paragraph (b).

(e) Storage for nonconsensual tows.

(I) Storage charges may accrue from the time a motor vehicle is placed in storage and shall not exceed the following maximum rates ~~published on the Commission's website~~, based on a 24-hour period or any portion of a 24-hour period, for the following classifications:

(A) $39.18 for motor vehicles having a GVWR of less than 10,000 pounds;

(B) $48.32 for motor vehicles having a GVWR of 10,000 pounds or more; or

(C) in lieu of the storage rates provided above, ~~published on the Commission's website,~~ and at the option of the towing carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at $1.50 per foot or portion thereof.

(D) For the purposes of this rule, the 24-hour time period commences when the motor vehicle enters the towing carrier's storage facility. The second day of storage, for the purposes of charges, shall not begin until 24 hours after the motor vehicle entered the towing carrier's storage facility.

(II) The storage charges shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For

reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule. ~~The adjusted rates shall be published on the Commission's website no later than January 31 of each year. The effective date of any rate change shall be January 31 of each year.~~

(III) Storage charges shall not be charged, collected, or retained for any time during which garage keeper's liability insurance coverage is not kept in force.

(IV) Maximum storage charges for abandoned motor vehicles towed from private property.

(V) Storage charges after the tow and storage of an abandoned motor vehicle subject to Part 21 of Title 42, C.R.S., shall not be accumulated beyond 120 days after the mailing date of the report required by § 42-4-2103(4), C.R.S.

(f) For a nonconsensual tow, the maximum additional charge for release of a motor vehicle from storage at any time other than the towing carrier's business hours is $86.19~~published on the Commission's website~~. The release charge shall be adjusted for inflation annually, starting March 15, 2022, and effective March 15 of each year thereafter, based upon the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index – Denver-Aurora-Lakewood, as published by the Colorado Department of Local Affairs for the immediately preceding calendar year. These adjustments shall be compounded annually. For reference by towing carriers and the general public, the Commission will post a notice on its website by March 15 of each year reporting the annual inflation adjustments applicable pursuant to this rule.. ~~The adjusted rates shall be published on the Commission's website no later than January 31 of each year. The effective date of any rate change shall be January 31 of each year.~~

(g) Noncompliance. If a tow is performed, or storage is provided, in violation of state statute or Commission rule, the towing carrier may not charge or retain any fees or charges for the services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization may be released without charge to the persons authorized in paragraph 6512(a). Any money collected must be returned to the owner, authorized operator, or authorized agent of the owner of the motor vehicle.

(h) Abandoned motor vehicles.

(I) Notifications. The charges for notification(s) to the owner and the lien holder(s) of the motor vehicle held in storage shall be in accordance with §§ 42-4-1804 and 42-4-2103, C.R.S., and the rules of the Colorado Department of Revenue. For purposes of notification, any motor vehicle in possession of the towing carrier, including motor vehicles incidental to the tow (for example, loaded on a trailer when the trailer was towed) shall comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S.

(II) Consequences of failure to notify. A towing carrier holding a motor vehicle in storage who cannot demonstrate that it has made a good faith effort, as set forth in §§ 42-4-1804 and 42-4-2103, C.R.S., to comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S., shall not charge, collect, or retain any fees associated with the tow or storage of the motor vehicle.

(III) Sale of an abandoned motor vehicle to cover the outstanding towing and storage charges must be done in accordance with the notice and procedural requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S.

(IV) Additional costs that may be charged when a stored motor vehicle is sold.

(A) When a stored motor vehicle is sold, a towing carrier may charge the costs of maintaining that motor vehicle while in storage in accordance with § 38-20-109, C.R.S.

(B) When a stored motor vehicle that does not come within the provisions of § 38-20-109, C.R.S., is sold, a towing carrier may charge the costs of maintaining that motor vehicle, up to a maximum of $90.00.

(C) "Cost of maintaining a motor vehicle" means a documented cost that is incurred by the towing carrier and that keeps a motor vehicle in safe and operable condition.

(D) Certified VIN verification procedure. When an abandoned motor vehicle that is less than five model years old and that the Colorado Department of Revenue cannot find in its records must be sold, the maximum rates that may be charged for a certified VIN verification are as follows:

(i) rates as provided in paragraph (d); and

(ii) in addition, the towing carrier may charge for all other documented expenses of obtaining the VIN verification.

(i) Trailers.

(I) No additional fees may be charged for the towing of a power unit and trailer in combination as a single motor vehicle.

(II) A vehicle in or on a trailer is considered in combination as a single unit.

(III) No additional fees may be charged for the towing of cargo in combination; however, additional fees may be charged for towing a trailer when reasonably and actually conducted as a separate tow from a power unit.

Decision No. C21-0758

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0581TO

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULE 6511 OF THE RULES REGULATING TOWING CARRIERS, 4 CODE OF COLORADO REGULATIONS 723-6.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 1, 2021
Adopted Date: December 1, 2021

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider narrow and clarifying amendments to Rule 6511 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The Commission has statutory authority to adopt these rules under §§ 40-2-108 and 40-10.1-106, C.R.S.

2. The proposed revisions to the language in Rule 6511 retain the same substantive rule amendments adopted in prior rulemaking Proceeding Nos. 19R-0709TO and 21R-0180TO. The limited purpose of this rulemaking is to revise the language of Rule 6511 to more clearly identify, in rule, the maximum rates that towing carriers may assess for their services, as subject to an annual inflation adjustment. These technical edits to the rule language are made solely for increased transparency, so that towing carriers and the general public can more readily identify the adopted rates.

3. We also propose that the effective date of the annual inflation adjustment be moved from January 31 of each year to a later date, for example, *March 15* of each year, to accommodate the fact that the annual percentage change in the United States Bureau of Labor Statistics Consumer Price Index (CPI) for Denver-Aurora-Lakewood is released annually near the end of February. The current rules use a January 31 effective date for annual inflation adjustments, which could potentially require the use of a projected or unofficial Denver-Aurora-Lakewood CPI instead of the final figure. Using a later effective date will allow for more certainty regarding rates for consumers and a simpler regulatory regime for towing carriers.

4. The proposed amendments to Rule 6511 are available for review as Attachment A (legislative or redline) and Attachment B (clean) to this Decision, accessible through the Commission's Electronic Filings website (by searching Proceeding No. 21R-0581TO) at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0581TO.

5. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a remote hearing on the proposed rules at **9:00 a.m. on January 14, 2022**. The Commission requests that interested persons file any written comments by January 7, 2022, so that the comments can be considered at the rulemaking hearing.

B. Background

1. Rulemaking Proceeding No. 16R-0095TO

6. The existing base rates adopted in the Commission's Towing Carrier Rules, 4 CCR 723-6, were established by Decision No. R17-0273, issued April 11, 2017, in rulemaking Proceeding No. 16R-0095TO.[1] In that Proceeding, the Commission adopted statewide maximum rates for nonconsensual recovery, towing, and storage. These rates comprised a fixed fee for tows from private property (*i.e.*, "private property impounds" or "PPI" tows) and an hourly rate for law enforcement ordered tows and recovery operations. In each case, the rates are set at increasing levels corresponding with the weight of the towed vehicle. The Commission undertook the rulemaking in Proceeding No. 16R-0095TO after a legislative change in 2014. House Bill 14-1031, codified at §§ 42-4-1809(2)(a) and 40-10.1-403, C.R.S., expanded the

[1] Proceeding No .16R-0095TO did not alter the rates for storage for nonconsensual tows and for release of a towed vehicle outside of the towing carrier's business hours. Those rates were last updated in Proceeding No. 08R-478TR, effective July 30, 2009.

Commission's rate regulation to all towed vehicles, regardless of weight, and established a statutory Towing Task Force to make recommendations to the Commission about maximum rates for nonconsensual recovery, towing, and storage.

7. In Proceeding No. 16R-0095TO, the Towing Task Force made rate recommendations based on a study performed of the towing industry in Utah, as adapted by the Towing Task Force to identify reasonable costs for an average-sized Colorado towing carrier. The ALJ conducting the rulemaking ultimately adopted the recommended rates. *See* Proceeding No. 16R-0095TO, Decision No. R17-0273, issued April 11, 2017 (concluding that adoption of the recommended rates strikes a reasonable balance in the towing carrier's appropriate recovery of costs versus the potential for abuse due to the inability to objectively determine or verify billing element).

2. Adoption of Compound Annual Inflation Adjustment for All Categories of Tow Rates

8. Through prior rulemaking Proceeding Nos. 19R-0709TO and 21R-0180TO, the Commission considered, and subsequently adopted, proposed rule amendments that would apply an annual inflation adjustment to the existing tow rates in the Commission's rules.

a. Rulemaking Proceeding No. 19R-0709TO

9. The Commission opened Proceeding No. 19R-0709TO following consideration of a petition for rulemaking filed by members of the towing industry and a stakeholder outreach proceeding led by Commission Transportation Staff. As relevant here, the Commission indicated that it would consider in the rulemaking, the proposal from the industry to amend Rule 6511 to allow for an annual inflation adjustment for tow rates. *See* Decision No. C19-0994, issued December 13, 2019 (issuing Notice of Proposed Rulemaking); *see id*. ¶¶ 71 through

80 (discussing potential amendment to Rule 6511). The industry raised the concern that there was too much regulatory lag between rulemaking proceedings to maintain rates commensurate with their steadily rising costs.

10. Through Proceeding No. 19R-0709TO, the Commission developed a full record concerning this request by the industry. The ALJ conducting the rulemaking ultimately concluded that a "a rate that is fair to the tow operators but also uniform to prevent gouging of a captive customer is vital." Decision No. R20-0688 issued October 1, 2020, ¶ 136. The ALJ found that the industry's proposal to tie rates to the CPI "achieves these goals" and therefore should be adopted. *Id*. The rules adopted in Proceeding No. 19R-0709TO became effective February 14, 2021.

b. Rulemaking Proceeding No. 21R-0180TO

11. Soon after concluding Proceeding No. 19R-0709TO, the Commission opened Proceeding No. 21R-0180TO to consider a renewed request from the stakeholder group Towing and Recovery Professionals of Colorado that the Commission further amend Rule 6511 to apply an annual inflation adjustment to all categories of tow rates, not just the rates for PPI tows, as was adopted in Proceeding No. 19R-0709TO. *See* Decision No. C21-0286, issued May 14, 2021 (issuing Notice of Proposed Rulemaking).

12. Through Proceeding No. 21R-0180TO, the Commission developed a full record concerning this further request by the industry. The ALJ conducting the rulemaking ultimately concluded that revising Rule 6511 to provide for annual inflation adjustment of all categories of tow rates will provide uniformity in the rules between all types of tows and annual cost increases. Decision No. R21-0450, issued July 26, 2021. The ALJ found the industry's proposal

should be adopted. *Id*. The rules adopted in Proceeding No. 21R-0180TO became effective on October 30, 2021.

C. Discussion of Proposed Amendments

13. The Commission opens this additional rulemaking for the limited purpose of revising the language in Rule 6511 to identify more clearly, in rule, the maximum rates and charges that towing carriers may assess for their services and to set a more appropriate effective date of inflation adjustment. Upon review of the language adopted in prior rulemaking Proceeding Nos. 19R-0709TO and 21R-0180TO, the Commission finds it warranted to amend Rule 6511 to set forth specific rates which serve as the base maximum rates. These changes are made for increased transparency, so that towing carriers and the general public can more readily identify the applicable rates to be assessed for towing services provided in this state.

14. The proposed amendments to Rule 6511 do not change the cost-based rates adopted in prior rulemaking or alter the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO. Instead, the proposed amendments simply provide, in rule, the original cost-based rates adopted in prior rulemaking, as adjusted for annual inflation through the issuance date of this NOPR.

15. Relatedly, the Commission proposes to adjust the effective date of the annual inflation adjustment to better correspond with the date on which the annual percentage change in the Denver-Aurora-Lakewood CPI is released by the United States Bureau of Labor Statistics. Since this figure is typically released at the end of February of each year, it makes more sense for the annual inflation adjustment to be effective *after* that figure is released. The current January 31 date in rates could potentially require the interim use of a projected

Denver-Aurora-Lakewood CPI instead of the final figure. The proposed rules use a March 15 adjustment date.

16. To illustrate the annual inflation adjustments as set forth in the subparts of Rule 6511, consider a hypothetical calculation. Rule 6511(a)(I)(A) establishes a maximum drop charge of $79.40 for motor vehicles with a GVWR less than or equal to 10,000 pounds. This maximum charge is effective until March 15, 2022, then the charge is adjusted to reflect the 2021 percentage change in the Denver-Aurora-Lakewood CPI. The adjusted charge would then be subject to a subsequent inflation adjustment, following the same standard, effective March 15, 2023. The annual inflation adjustments are compounded annually.

17. The Commission finds the approach set forth in this NOPR the most appropriate and transparent means to provide notice to towing carriers and the general public of the adopted rates for towing services. Going forward, interested persons can calculate the currently effective rates by applying the percentage change in the Denver-Aurora-Lakewood CPI for the immediately preceding year to the rates set forth in these rules (compounded annually). The Denver-Aurora-Lakewood CPI is published each year by the Colorado Department of Local Affairs, currently available at: https://cdola.colorado.gov/inflation-denver-aurora-lakewood-consumer-price-index. For further reference by towing carriers and the general public, the Commission will post a notice on its website each year reporting the annual inflation adjustments applicable pursuant to Rule 6511 and the resulting rates by category of tow.

18. Through this NOPR, the Commission proposes the following revisions to the current rule language of Rule 6511:

1. Rule 6511(a). Drop Charge.

19. The Commission proposes to provide, in rule, the currently effective maximum rates for drop charges. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

20. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

2. **Rule 6511(b). PPI Tows.**

21. The Commission proposes to provide, in rule, the currently effective maximum rates for "private-property impound" or "PPI" tows. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

22. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI,

as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

3. Rule 6511(c). Law Enforcement Ordered Tows and Recovery.

23. The Commission proposes to provide, in rule, the currently effective maximum rates for law enforcement tows and recovery operations. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

24. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

4. Rule 6511(e). Storage.

25. The Commission proposes to provide, in rule, the currently effective maximum rates for storage of towed vehicles. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

26. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting

March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

5. Rule 6511(f). Release Charge.

27. The Commission proposes to provide, in rule, the currently effective maximum rates that a tow carrier may assess for releasing a vehicle from storage outside of the towing carrier's business hours. As set forth in the current and proposed rule, these charges shall be subject to annual inflation adjustment.

28. The rates set forth in the proposed rule reflects the original cost-based rates adopted in prior rulemaking, with the annual inflation adjustments adopted in Proceeding Nos. 19R-0709TO and 21R-0180TO, as calculated through the issuance date of this NOPR. The revised rule language clarifies that these rates are subject to annual inflation adjustment, starting March 15, 2022, based upon the annual percentage change in the Denver-Aurora-Lakewood CPI, as published by the Colorado Department of Local Affairs. The Commission notes the rates in the proposed rule are consistent with the rates published on the Commission's website as of the issuance date of this NOPR.

D. Findings and Conclusions

29. 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.

Considering the limited scope of the proceeding as set forth in the NOPR and the Commission's desire to refine the product of the preceding rulemakings, the Commission requests that interested persons limit their comments to the proposed amendments only. The instant rulemaking is not intended to be construed as an opportunity to reopen contentious issues that have already been resolved in preceding rulemakings.

30. 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 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.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking, including attachments, shall be filed with the Colorado Secretary of State for publication in the December 25, 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 shall be held as follows:

DATE: January 14, 2022

TIME: 9:00 a.m. until not later than 5:00 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 will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission's Electronic Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.homepage.

The Commission requests that interested persons file any written comments by January 7, 2022, so that the comments can be considered at the rulemaking hearing.

6. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 1, 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

2021-00810

Department

1504 - Department of Higher Education

Agency

1504 - Division of Private Occupational Schools

CCR number

8 CCR 1504-1

Rule title

PRIVATE OCCUPATIONAL EDUCATION ACT OF 1981

Rulemaking Hearing

Date

01/25/2022

Time

09:30 AM

Location

Virtual Meeting via Zoom

Subjects and issues involved

REVISE: 8CCR 1504-1, sections I.U through XI.D to clarify definitions, requirements and correct typographical errors.

Statutory authority

C.R.S. § 23-64-101 et seq.; and specifically, C.R.S. § 23-64-108(1)(i).

Contact information

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DEPARTMENT OF HIGHER EDUCATION

Division of Private Occupational Schools

PRIVATE OCCUPATIONAL EDUCATION ACT OF 1981

8 CCR 1504-1

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

STATEMENT OF BASIS AND PURPOSE

The Private Occupational School Board, Colorado Department of Higher Education adopts these Rules and Regulations ("Rules") pursuant to the rule making authority as stated in the Private Occupational Education Act of 1981, Colorado Revised Statutes, Article 64 of Title 23 ("The Act"), for the purpose of delineating and clarifying the respective responsibilities of the Private Occupational School Board, the Division of Private Occupational Schools and the Private Occupational Schools under the Act as revised.

I. DEFINITIONS

In addition to the definitions used in the Private Occupational Education Act of 1981, the following will also apply in interpreting the Act and Rules except where the context requires otherwise.

A. "Acceptable full-time equivalent employment/work experience" (for the purposes of instructor qualifications) means full-time equivalent work experience reasonably related to the occupational area to be taught or supervised.

B. "Accreditation" is a status granted to a school by one or more of the accreditation organizations approved by the U.S. Secretary of Education as having met a set of standards established by the organization. Accreditation is voluntary and does not imply automatic transfer of credits from one institution to another.

C. "Admission requirement" means the specific minimum criteria a school must use when accepting a student into the school.

D. "Agent's permit" means the written authorization obtained pursuant to § 23-64-117, C.R.S, to engage in the activities of an agent as defined in § 23-64-103(2) C.R.S., hereinafter referred to as Agent.

E. "Ancillary/supplementary education" means an optional stand-alone course to further the knowledge of a professional holding an active license in good standing that is regulated by a Colorado state professional licensing entity. Those seeking an exemption from the provisions of Article 64, Title 23, C.R.S, for ancillary/supplementary education pursuant to § 23-64-104(1)(c), C.R.S., must apply for the exemption in a manner approved by the Board. The education must be less than 40 hours and must be less than $1000. Additionally, the education, curriculum, syllabi, and licensed professional instructing the education must be approved by an industry recognized certification board, or registered product manufacturer or supplier.

F. "Apprenticeships" are registered and defined by the United States Department of Labor and Employment.

G. "Approval" means approval by the Colorado Private Occupational School Board ("Board") unless otherwise provided by these Rules and requires fulfillment of the standards stipulated by the Act and Rules.

H. "Avocational Education" means any education to facilitate the personal development of individual persons which is distinguishable from one's recognized occupation and is not conducted as part of a program or course designed with the objective to prepare individuals for gainful employment in a recognized occupation. Such avocational education includes programs or courses that instruct participants where the instruction is primarily for personal interest and is recreational such as any hobby, craft, personal development, or non-occupational interest.

I. "Bona fide" means a trade, business, professional or fraternal organization that: is widely recognized by the industry; primarily benefits the organization's membership or mission; conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes; receives funding and revenue and charges fees in a manner that does not incent it or its employees to act other than in the best interest of is membership; compensates its employees in a manner that does not incent its employers to act other than in the best interest of its membership; and has existed and operated as a bona-fide organization for two years or more. The Division has the discretion to determine whether the trade organization meets the definition of bona fide and whether its level of oversight is adequate. Those seeking an exemption from the provisions of Article 64, Title 23, C.R.S, for education pursuant to § 23-64-104(1)(h), C.R.S., must apply for the exemption in a manner approved by the Board.

J. "Certified" is a term used by schools to describe certain programs or courses. The Division does not regulate the use of the term "certified" or certify or license persons.

K. "Computer/online based instruction" means instruction via electronic media.

L. "Continuing Education" means a continuing professional educational program or courses as set forth in § 23-64-104(1)(o), C.R.S.

M. "Course" means a unit of learning which is an integral part of an occupational program of learning.

N. "Contact hour" is defined as a minimum of 50 minutes of instruction with at least a five-minute break between hours.

O. "Designated agent" is the school's representative, having a physical Colorado address (no P.O. Box addresses) other than the school's address, and upon whom any legal process, notice, or demand may be served. The designated agent shall be maintained continuously.

P. "Distance Education" is a formal education process in which the orderly delivery of instruction occurs beyond a school's walls through virtually any media since the student and instructor are in different locations. Distance education may employ a variety of communication methods for delivering instruction to students.

Distance education could be offered either synchronous, where the instructor is engaging with students in real time, or asynchronous, where the instruction may be pre-recorded, or a combination of both. Whether a particular method of distance education is appropriate for a particular type of education, is a case-by-case decision by DPOS.

Q. "Enrollment" for the purposes of reporting data to the Division means any student who has signed an enrollment agreement with the school and remains enrolled after 10% of the training has elapsed.

R. "Externship/internship" is an educational component for which academic credit is awarded, offered as part of an instructional course or program with job experience included. To be considered an externship/internship the course shall meet the requirements of the Board further defined in Rule III.B.~~7~~6.

S. "Fees", except when used in the context of fees assessed by the Board pursuant to § 23-64-122, C.R.S. ("Board fees"), means a refundable charge assessed to enrolling students and which are intended to cover non-instructional expenses. Fees may not be used to cover instructional expenses or books and supplies. All fees as defined herein must be itemized.

T. "General Education" means that body of instruction which is not directly related to a student's formal technical, vocational, or professional preparation, but is supportive as a required part of a student's course of study, regardless of his or her area of emphasis; and is intended to impart common knowledge, intellectual concepts, and attitudes. For example, math is a general education course, but applied math is not.

U. "In-state school" is a school with physical presence within the state that provides occupational educational services to students.

V. "Instructor" means any person employed by a school, contracted by a school, or who otherwise provides either a residential or distance education course/program for the purpose of delivering instruction or training necessary to meet the stated objectives of the course/program in which the person is qualified to teach; determines educational objectives and activities of any course or program area, including, but not limited to measures, assesses, records, reports or evaluates students' attendance, achievement or completion of lessons, courses or training programs; maintains essential student records and data for which s/he is responsible according to state law or school policy; or exercises technical and functional supervision over instructional staff aides or volunteers.

W. "Instructional Staff" means program supervisors and instructors. Prospective instructional staff means program supervisor or instructor applicants that a school intends to hire.

X. "Major program or stand-alone course revision" means changes since the last approval by the Board to the method of delivery; to the occupational objective; and/or increases or decreases since the last approval in the hours exceeding an accumulated 25% of the total hours of the program or stand-alone course approved.

Y. "Minor program or stand-alone course revision" means any revision not meeting the definition of a major program or stand-alone course revision.

Z. "Occupational in Nature" for the purposes of determining an exemption under § 23-64-104(1)(c), C.R.S., means a program or course that satisfies the definition of "educational services" or "education" contained in § 23-64-103(13), C.R.S., and the definition of "occupational education" contained in § 23-64-103(17), C.R.S. Any program or course that does not meet this definition is not occupational in nature.

AA. "Out-of-state school" is a school located in another state or territory of the United States and offers education from its location or through distance education, which actively solicits, recruits, and/or enrolls Colorado residents as students. Out-of-state schools may operate in Colorado if said schools comply with the requirements of The Act, in particular in §§ 23-64-117(2) and 23-64-121(6), C.R.S.

BB. "Physical presence" means a school that delivers educational services within Colorado, including any combination of factors lending to the determination that the institution maintains a physical presence within the state, including, but not limited to, the presence of a physical facility or

equipment, whether owned, leased, rented, or provided without charge; the physical location of student records; or the presence of a resident director or similar administrator.

CC. "Prepaid tuition and fees" (for surety purposes) means the total of prepaid, unearned tuition and fee charges and fees paid by students but not yet earned by the institution, including debt incurred as a result of financial aid disbursements to the student.

DD. "Prerequisite" means any education, credential, license, coursework, specialized training, or expertise required as a necessary precondition of admission into a program or stand-alone course.

EE. "Program" means a group or series of organized courses, lessons, or units of instruction pursued to attain an occupational objective.

FF. "Provisional Certificate of Approval" means a conditional approval for a new school to operate. The initial Certificate of Approval is effective for more than one year, but less than two years and during the time of the provisional approval, the school shall establish satisfactory operation and maintain the minimum standards of the Act.

GG. "Separate classroom" means a physical location where training occurs that is located a reasonable distance from the main school.

HH. "Standard Certificate of Approval" means a certificate that acknowledges the compliance of a school with the minimum standards of the Act and authorizes the continuing operation of the school for a period of three years, provided that said school remains in compliance with the Act.

II. "Stand-alone course" is a single course, or one that can be offered independent of a program, which may take the form of a seminar, workshop, continuing education course, or other similar educational service. A stand-alone course may enhance or advance skills in an existing occupation. Courses from within a program that are offered independently or whereby students receive a Certificate of Completion and transcript must be approved as stand-alone courses.

JJ. "Tuition" means the amount of money charged to students for instruction.

II. GENERAL AND ADMINISTRATIVE

A. Each school shall prominently display its current Certificate of Approval to the public, prospective students, and other interested persons.

B. The student-teacher ratio in each school shall be reasonable in terms of the suitability of the facility, adequacy of equipment and the method of instruction, and shall be submitted for approval; once approved by the Board, the ratio as approved must not be exceeded at any time.

C. Each school that allows tuition or fee financing through installment or deferred payment plans shall comply with the provisions of appropriate State and Federal laws concerning consumer credit and truth-in-lending or any other such law related to consumer financing.

D. The payment of all Board fees shall be timely made by school check, certified or cashier's check, money order, online, or other approved means made payable to the Division of Private Occupational Schools.

E. The Division Director shall set the Board agenda; which agenda may be modified by the Board.

F. For schools under corporate ownership, the Division may consider the on-site resident school director as the school representative and primary Division contact.

G. All applications and forms submitted to the Division requiring a fee as outlined below in the Fee Schedule must be complete within one year of receipt. If the Division has communicated deficiencies that must be cured prior to approval but the applicant(s) fails to make necessary change(s) to meet requirements of the rules and regulations, the application shall expire after one year, requiring the school to resubmit the application, fee and supporting documentation in order to be considered for approval.

FEE SCHEDULE

Effective Date ~~December 15, 2019~~April 1, 2022

FEE TYPE	FEE AMOUNT
Provisional In-State School: Initial Application for Certificate of Approval (COA) --includes up to five new Programs and Stand-Alone Courses. Any additional programs or stand-alone courses are subject to the Programs/Course fees listed below. Initial COA Application for Additional Campus	$ 5,000.00 Per School $ 2,500.00 Per Campus
Renewal In-State School: Standard COA – three (3) year period	$ 2,000.00 Per School/Campus
Programs/Courses (Per Program and/or-Stand-Alone Course:): New Program/Stand Alone Course per Campus Major Revision Program/Stand Alone Course per campus Minor Revision Program/Stand Alone Course per campus	 $ 500.00 $ 500.00 $ 125.00
In-State Agent Permit:	$ 300.00 Per Agent
In-State Agent Permit for Multiple Campus Locations *under same ownership with same school name:* One (1) Permit per agent—valid at all campus locations (Provisional or Standard COA)	$ 300.00 Per Agent
Out-of-State Initial/Renewal: Initial application and annual renewal **Out-of-State Agent Permit** per year *under same ownership with same school name:* One (1) Permit per agent—valid at all campus locations	$ 2,500.00 $ 300.00 Per Agent
Student Assessment: In-State and Out-of-State, Quarterly per Enrolled Student (out-of-state is Colorado resident that resides with-in Colorado receiving training or Colorado resident recruited to attend out-of-state school)	$ 5.00 Per Enrolled Student (Subject to Change)
ADDITIONAL FEES	**Per School**
Change of School Location (per campus)	$ 500.00
Change of School Name (per campus)	$ 250.00
Change of School Ownership	$ 5,000.00
Student Transcript for Closed School	$~~35~~30.00 Per Transcript
Failure to pay and/or late payment of fees	1st violation: minimum $100; 2nd minimum $300; 3rd minimum $500, and each violation thereafter $500.
Failure to adequately and timely submit Annual Filings pursuant to Rule V	$500.00 minimum per violation per year

PLEASE NOTE:

1. Please make all checks payable to: “DPOS” or “Division of Private Occupational Schools”
2. Fees are NOT refundable.
3. Fees are established pursuant to § 23-64-122(1), C.R.S., “for the direct and indirect costs of the administration of” the Private Occupational Education Act of 1981.

III. MINIMUM STANDARDS

In addition to the minimum standards outlined in the Act, a school shall comply with the following standards and shall not be owned, operated by, or employ any person who is addicted to or dependent upon alcohol or any controlled substance or such person who is a habitual user of a controlled substance if the use, addiction, or dependence is reasonably found by the Board to present a danger to students, clients, or prospective clients.

A. Financial

1. To meet this minimum standard, the school, its ~~owners~~owners, or guarantors shall demonstrate it has sufficient financial resources to:

   a. Provide instructional services as described in its application for the full duration of any program or course of instruction.

   b. Make refunds as required by the Act.

2. A school submitting a provisional application for approval shall provide a statement of projected operations for a twelve (12) month period from the financial statement date.

3. A school submitting documentation to establish financial stability shall provide at a minimum a complete set of compiled financial statements which includes a cover sheet, balance sheet, income and expense statement, source and use statement and all supportive notes, prepared by an independent public accountant or a certified public accountant using a format which reflects generally accepted accounting principles and procedures.

B. Approval of Education Services

1. Schools shall offer only educational services through the method of delivery that has been approved by the Board.

   a. Program or stand-alone course approval applications shall state the program/course occupational objective and list any prerequisites for admission to the program, course, or stand-alone course. Program or stand-alone course approval applications must be submitted in a manner approved by the Board, including but not limited to, detailed curriculum, course schedules, equipment lists detailing the equipment to be used, and catalog course descriptions for each course to be taught within the program.

   b. The Board may require new and/or revised educational services to be evaluated by qualified professionals as defined by the Board.

   c. Distance education is an acceptable method of delivering educational services.

      (1) Courses and programs offered via distance education must meet the objectives set forth within the course curriculum and the requirements of this rule. Schools must submit documentation outlining the specifics of the distance education in the forms provided by the Division.

2. All new programs and stand-alone courses and program revisions shall be submitted to the Board for review and approval prior to the proposed date of implementation. Said revisions shall be submitted in a manner which will allow a reasonable period of time for such review. Major program revisions will be considered by the Board. Minor program

revisions will be reviewed by Division staff for compliance with minimum required standards and may be approved by staff. The Director reserves the right to submit any new or revised program and/or stand-alone course to the Board. A finding of noncompliance with minimum required standards will result in the submittal being returned to the school for changes necessary to meet compliance standards.

3. Programs or stand-alone courses regulated by another agency must have and maintain continuous approval by the body before the program/stand-alone course can be presented to the Board or staff for action. The withdrawal of approval of a program/stand-alone course by the other regulatory agency will result in an automatic withdrawal of approval of the program/stand-alone course by the Board.

4. Schools shall assess students prior to enrollment and shall only admit those who demonstrate a reasonable likelihood of success in completing the education/training and being employed in the field for which trained. Documentation of this assessment shall be included in each student's record. A high school diploma, GED, Ability to Benefit Test, or other assessment may be utilized to meet the minimum requirements of this section.

5. The school shall provide adequate instruction, including having a sufficient number of qualified instructors to meet the needs of students.

6. Externships/Internships - No internship or externship will be approved in a program if it requires students to be on duty more than eight hours per day for five consecutive days. Appropriate breaks must be included in the externship/internship schedule, pursuant to any and all existing state and federal laws. An externship/internship must be under the coordination of a qualified instructor. To be considered an externship or internship, the program shall:

    a. Be part of the approved curriculum of the school.

    b. Provide a designated school instructor who meets qualifications as defined in Rule III.E. and has oversight of the student's education at the internship/externship site.

    c. Have a written training plan that specifies the expected educational outcome.

    d. Designate an on-site supervisor who will guide the student's learning and who will participate in the student's evaluations.

    e. Be described in the school catalog and include the purpose and requirements of the course.

    f. Provide a schedule of time required for the training and include an expected completion date.

    g. The student extern/intern is not to replace a permanent employee.

    h. Externships/internships may be paid or unpaid.

    i. If the externship/internship is part of the course requirements, students may not be considered as graduates or issued a graduation credential until the externship/internship has been satisfactorily completed.

    j. Externship/internship locations and available positions must be filed with the program application and/or revision. For each location and available position, the

school must maintain documentation acceptable to the Board from an authorized representative of the location verifying that the location will provide the specified number of positions for a defined timeframe that corresponds with the program requirements. All externship/internship location contracts along with number of student positions shall be made available to the Division at time of such request/audit. The number of students enrolled in a program may at no time exceed the number of available externship/internship positions. Location of externship/internship shall be a location other than that of the school/institution where a student commences all remaining educational requirements. A school on-site clinic/lab in lieu of a program required externship/internship is not acceptable.

7. Schools shall make an application for change of location not later than thirty (30) days prior to moving location. The Division shall have authority to approve applications for change of location.

C. Instructional Equipment, Facilities and Materials

1. Programs and stand-alone courses shall only be offered in institutional facilities that are appropriate for learning activities necessary to complete the occupational objective of the program.

2. The equipment and facilities of each school shall conform to safety, health, and other applicable requirements of local, county, ~~state~~state, and federal agencies.

3. Equipment shall be maintained in good shape and materials shall be available in sufficient quantities to permit skilled development at required levels by all students.

4. Teaching aids, exclusive of basic supplies, must be as listed in the school catalog in effect at the time of the student's enrollment.

D. Administrative staff

1. The school shall have sufficient administrative, instructional and support personnel based on student enrollment and needs for educational and support services, including required record keeping.

2. Each school shall designate an on-site school director for each approved campus.

3. Each school shall designate at least one in-state agent.

4. Each school shall designate a contact person responsible for instructional staff matters, including but not limited to maintaining and providing Division access to instructor qualification files.

E. Educational staff

1. Program Supervision - each school offering associate degree programs shall assure supervision of each program area in at least one of the following ways:

a. For programs of any size - by appointing a program supervisor who has the following qualifications:

(1) A minimum of three years of successful teaching experience in the program area to be supervised; or at least one year of successful

teaching experience in the program area to be supervised, plus the establishment of an acceptable program advisory committee whose members are qualified to advise the program supervisor on the program content, and

(2) Meets the minimum qualifications for an instructor as defined in Rule III.E.2.

b. For programs utilizing not more than two instructors - by establishing an acceptable program advisory committee whose members are qualified to advise the resident director on the program content.

2. Instructional Staff - all instructional staff employed by a school shall possess the following minimum qualifications to deliver educational services in the program area to be taught:

a. Except as otherwise provided in Rule III.E.2.b.(3)(a), each school shall be responsible for assuring and documenting that its instructors meet minimum qualifications. Within 30 days after a school hires a new instructor, the school shall submit to the board, in the format required by the Division, certification that the instructor meets minimum qualifications.

b. Minimum Qualifications:

(1) Experience. In those occupational areas for which industry standards or a governmental agency require a license, certification, registration, journeyman's card, or similar regulatory credential ("Regulatory Credential") to engage in the occupation, a minimum of two years comprised of at least 4,000 hours of acceptable full or part-time equivalent employment/work experience must be documented. Any licensure, certification(s), registration(s), journeyman's card(s) or other similar regulatory credential(s) which must be continuously maintained and in good standing shall be required.

(2) Education. For those occupations that do not require a license, certification, registration, journeyman's card or similar regulatory credential to engage in the occupation, either a minimum of five years comprised of at least 10,000 hours of acceptable full or part-time equivalent employment/work experience must be documented, or successful completion of an accredited or Board approved program in the occupational area as well as a minimum of two years comprised of at least 4,000 hours of acceptable full or part-time equivalent employment/work experience is required. Work experience in the occupational school after graduation may be credited toward the two-year requirement provided the work performed ~~for the general public~~ is related to the occupational area.

(3) Background Check. A school shall only employ instructors who are of good reputation and free of moral turpitude. Consideration of past felonies involving moral turpitude or other crimes or offenses involving moral turpitude (offenses involving an act of baseness, ~~vileness~~vileness, or depravity in private or social duties owed to individuals or to society) ("offenses") must bear a reasonable relationship to the activity of providing occupational education. Past offenses shall be given consideration in determining whether instructional staff is of good reputation and free of moral turpitude at the time of application, however, past offenses do not automatically disqualify instructional staff.

Instructional staff may meet minimum qualifications despite past offense(s) if they have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

(a) Instructional staff and prospective instructional staff who may be teaching in schools designated by the Board as teaching students under sixteen years of age ("minor student"), a list of such schools that is available by contacting the division, must submit fingerprints and pay the required fee to the Colorado Bureau of Investigation for the purpose of conducting a state and national fingerprint background check in accordance with § 23-64-110, C.R.S.

(i) The Division Director shall give notice to any such instructor or prospective instructor when a fingerprint background check returned to the Board shows that the person has been convicted of, pled *nolo contendere* to, or received a deferred prosecution or deferred sentence for a felony or misdemeanor described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S., or any other offense involving moral turpitude. The notice shall indicate that the instructor or prospective instructor may submit written data, views, arguments, or information with respect to the background check and any subsequent rehabilitation that would tend to show that he or she is prepared to accept the responsibilities of teaching minor students. The Division Director shall give notice to a school that employs or is considering employing an instructor subject to a background check that the instructor's or prospective instructor's qualifications are under review but the notice to the school shall contain no reference to or details of the results of the fingerprint background check.

(ii) The Director will consider the results of the background check and the instructor's or prospective instructor's response to the notice and any other information deemed necessary to determining whether the instructor or prospective instructor is qualified. The instructor or prospective instructor will not be deemed qualified unless the instructor or prospective instructor provides clear and convincing evidence and reasons establishing that he or she has been rehabilitated and is ready to accept the responsibilities associated with teaching minor students. Such a prospective instructor whose results of the fingerprint background check are under review by the Division Director, for such circumstances identified herein, shall not commence instruction of any student under the age of sixteen (16) until such time that the Division Director notifies the school and prospective instructor that a favorable qualification to instruct has been determined. The Director will notify the instructor or prospective instructor of the Director's determination. Notice to the school shall only include an indication of whether the instructor is qualified or unqualified.

(iii) The instructor or prospective instructor may file an appeal to an adverse Director's decision concerning qualification to instruct based on criminal history to the Board within 20 days after notice. The appeal shall state in writing the reasons for appealing the notice denying the qualification, including the facts, circumstances and/or arguments supporting its appeal. In the event the Board denies an appeal, the instructor or prospective instructor may request a hearing in accordance with the State Administrative Procedures Act. A final order of the Board is subject to judicial review in accordance with § 24-4-106, C.R.S. in an administrative hearing on instructor qualifications, a certified copy of the judgment of a court of competent jurisdiction of a conviction, the acceptance of a guilty plea, a plea of *nolo contendere* or a deferred prosecution or deferred sentence shall be conclusive evidence of the court's action.

(iv) All information related to the results of a fingerprint background check and any investigation of such results shall be treated as confidential data in accordance with § 23-64-109, C.R.S., except as necessary to conduct an investigation of qualifications, until such time as there may be a hearing in accordance with the State Administrative Procedures Act on the matter. A school that employs or is considering employing an instructor subject to a background check shall be notified when a review of instructor qualifications following submission of a background check is complete. Notice to the school shall include only an indication of whether the instructor is qualified or unqualified.

c. Exceptions.

(1) Modeling instructors - shall have a minimum of 1,000 hours of acceptable employment/work experience in modeling or related specialized occupations and completion of a modeling or specialized program in the occupational area(s) to be taught, or 2,000 hours of acceptable work/employment experience in the occupational area(s) to be taught.

(2) Tax preparation instructors - shall have attained a minimum of 1,000 hours of employment/work experience in tax preparation within the last five years, 200 hours of such employment/work experience must have occurred within the last 24 months. In lieu of having acquired 200 hours within the last 24 months, the instructor may substitute a suitable tax preparation update course, which was successfully completed within the past 12 ~~months~~months, and which included at least five contact hours.

(3) Securities Instructors – securities instructors offering educational services for occupations regulated by the United States Securities and Exchange Commission are exempt from the licensure, certification(s), registration(s), journeyman's card(s) or other similar regulatory credential(s) requirements of Rule III.E.2.b.(1).

(4) General Education subject areas do not require verified occupational experience. Refer to Part I, paragraph T of these rules for the definition of general education.

d. Compliance Standards.

(1) Each school shall be responsible for assuring and documenting that its instructors meet minimum qualifications, except as provided in Rule III.E.2.C.(3). In a format prescribed by the Board, the school shall maintain an instructor qualification file for each instructor employed. Such instructor qualification file shall include data verifying employment/work experience, education and any applicable regulatory credentials including, but not limited to:

(a) Instructor application

(b) For instructors teaching in occupational areas for which industry standards or a governmental agency require regulatory credentials:

(i) A copy of any educational credentials (degree certificate or diploma) showing completion of a training or degree program at an accredited or Board approved school in the occupational area(s) to be taught

(ii) A copy of applicable license(s), certification(s), registration(s), journeyman's card(s) or similar regulatory credential(s) and a statement of good standing from the applicable board, agency, association, or similar regulatory body as identified in Rule III.E.2(b)(1).

(c) For instructors teaching in occupational areas for which industry standards or a governmental agency do not require regulatory credentials:

(i) A copy of any educational credentials in the occupational area(s) to be taught, or at a minimum, a transcript of courses with emphasis in the occupational area(s) to be taught or related areas sufficient to show that the instructor has a background of education adequate to enable the instructor to carry out the stated objectives of the specific courses, lessons, or units of instruction to be taught. (See Rule III.E.2(b)(2)).

(d) Documentation of required hours of employment/work experience in the occupational areas to be taught, verified by signature of the instructor and the school director.

(2) The school must notify the Division in writing within thirty (30) calendar days of any change in employment status of instructional staff.

(3) A school's instructor qualification files shall be available to the Division upon request. The Division may conduct unannounced site visits to inspect instructor qualification files and any other reasonably related

records to ensure that the school is fulfilling its responsibilities to employ only qualified instructors.

e. Guest Instructors. Guest instructors are exempt from instructor qualification requirements of this rule. A guest instructor is a person whose special experience or expertise in an area related to the subject matter to be taught will make a contribution to the educational processes that will be supportive and expanding and whose use is to be limited to not more than 20% of the program or stand-alone course. Students currently attending the school and persons who have attended the school at any time during the previous twelve (12) months may not act as guest instructors. The school shall maintain a record of all guest instructors with the respective courses to which they contributed that documents the special experience or expertise of the person.

f. Emergency Instructor Provision. A school owner/director experiencing a hardship in hiring an instructor who meets minimum standards and qualifications pursuant to the Act and Rules may petition the Board for permission to hire an instructor who does not meet applicable employment/work experience and/or education qualifications. The school shall provide the Board a summary of the conscientious efforts made to secure the services of a fully qualified instructor by describing the person's suitability for the position and attesting that the hiring of the person is essential to the preservation of the program/course. The Board may request additional detailed information to support the search efforts prior to approving or rejecting the petition. Board approval to hire an instructor under the emergency instructor provision is granted for a period of time as deemed appropriate by the Board.

g. Continuing Competency.

(1) All instructional staff is expected to maintain continuing competency. Instructional staff shall provide the school on a regular basis, but not less than every three (3) years, with sufficient and recent educational and employment/work experience to assure up-to-date knowledge of content and practice to continue teaching in the occupational field for which they are employed to teach.

(2) Competency must be documented and demonstrated by successful completion of courses from accredited colleges or universities or board approved schools, occupational experience, workshops/seminars, or continuing education approved by a regulatory agency, organization or recognized professional association, or school directed education/training, and by a written annual performance evaluation of the instructor performed by the school director or other authorized school representative. The performance evaluation must include, at a minimum, an evaluation of the instructor's effectiveness in meeting the stated objectives of the course and his/her performance with respect to properly and accurately maintaining and handling all student records for which the instructor is responsible under school policy, including but not limited to attendance and grades and/or satisfactory completion of lessons, courses, or training programs.

(3) Where applicable, all instructional staff shall maintain an active, and in good-standing current license, certification, registration, or similar regulatory credential as required by governmental regulatory agencies or industry standards to practice in the occupational field.

(4) In respect to instructional staff of minor students (under the age of sixteen), in order to continue to be deemed competent, said instructor may not be judicially determined to have committed, nor pled guilty or nolo contendere to a felony or misdemeanor described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S. or any other crime of moral turpitude, after his or her hire date by the school. Such change in instructor criminal history must be reported to the school not later than ten (10) calendar days from the date of entry of a judicial adjudication or court acceptance of a guilty plea or nolo contendere plea to a felony or misdemeanor described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S. or any other crime of moral turpitude. A school employing an instructor with such a post-hire change in criminal history must report to the Division in writing not later than twenty (20) calendar days from the receipt of instructor notice. The school's report to the Division shall include the complete name of the instructor, the nature of the change on criminal history, and the date and content of the adjudication or plea entry. The instructor may be required by the Division to submit additional information, including, but not limited to, sufficient court documents identifying the circumstances surrounding the charges and plea, and adjudication. The Division, upon notice, shall conduct a timely review of; issue a Director Decision and afford appeal rights in accordance with the procedure outlined in Rule III.E.2(b)(3)(a)(iii).

(5) In order to meet and continue to maintain required minimum standards, all staff working at a school, including instructional and administrative staff, may not be judicially determined to have committed, nor pled guilty or *nolo contendere* to any felony or misdemeanor relative to the health and safety of all persons upon the school premises. Such change in instructor criminal history must be reported to the school not later than ten (10) calendar days from the date of entry of a judicial adjudication or court acceptance of a guilty plea or nolo contendere plea to a felony or misdemeanor described in subsection (5). A school must report to the Division in writing not later than twenty (20) calendar days from the receipt of notice of any judicial adjudication. The school's report to the Division shall include the complete name of the instructor or staff member, the nature of the change on criminal history, and the date and content of the adjudication or plea entry. The Division may require additional information, including, but not limited to, sufficient court documents identifying the circumstances surrounding the charges and plea, and adjudication. The Division, upon notice, shall conduct a timely review of; issue a Director Decision and afford appeal rights in accordance with the procedure outlined in Rule III.E.2(c)(3).

h. Enforcement and Penalties.

(1) Enforcement.

(a) The Board has the authority to investigate, upon a student complaint or upon its own motion, or upon delegating to the Division Director the qualifications of any instructor. If the Board has reasonable grounds to believe that an instructor fails to meet instructor qualifications, the Board shall issue a notice of noncompliance setting forth the reasons that a school has violated or is violating the act or rules and a period of time within which the instructor and the school may respond by submitting written data, views, arguments, or information in the notice. The school shall set forth in its response to the notice the measures

that it used to verify the qualifications of the instructor and whether it knew of any deficiencies in the instructor's qualifications.

(b) The Board shall consider the submissions of the school and the instructor to the notice and notify the school and the instructor of the board's determination as to 1) whether the instructor meets minimum qualifications, and 2) if the instructor does not meet minimum qualifications, whether the school knew or should have reasonably known that the instructor did not meet minimum qualifications.

(c) The school and/or the instructor may request a hearing on the Board's decision within thirty (30) days after notice in accordance with the State Administrative Procedures Act. A final order of the Board is subject to judicial review in accordance with § 24-4-106, C.R.S.

(2) Penalties.

(a) An instructor whose qualifications are found to be deficient may not be employed by the school as an instructor.

(b) A school that knew or should have reasonably known that an instructor did not meet instructor qualifications and employed or continued to employ such instructor, may be subject to fines and/or other disciplinary action up to and including revocation of the school's certificate of approval.

(c) If the instructor is found to have engaged in any of the following, the Board may also order that the instructor is ineligible for employment at any school within the jurisdiction of the Board for such period of time as ordered by the Board:

(i) The instructor obtained employment or demonstrated continuing competency through misrepresentation; fraud; misleading information; or otherwise untruthful statements submitted or offered with the intent to misrepresent, mislead or conceal the truth.

(ii) The instructor failed to keep essential student records or failed to turn over all students records for which s/he is responsible according to state law or school policy.

(iii) The instructor falsified or misrepresented records or facts relating to students' attendance, grades or satisfactory completion of lessons, courses, or training programs.

(iv) The instructor is employed by a school that teaches minor students and at any time during his or her employment has been convicted of or pled *nolo contendere* to or received a deferred sentence or deferred adjudication for a felony or misdemeanor

described in § 22-60.5-107(2)(b) or 2.5(a), C.R.S. or any other crime of moral turpitude.

F. Requirements for Schools to offer Associate Degree Programs

1. All private occupational schools making application to grant associate degrees shall hold a Certificate of Approval by the Board.

2. Schools offering an Associate Degree shall be accredited by an accrediting agency which is officially recognized by the United States Department of Education.

3. All Associate Degree Programs offered by a school shall be approved by the Board.

4. Application Procedure--An approved school shall make a separate application to the Board for the approval of each associate degree program. The application shall clearly indicate the course of instruction for which the degree will be awarded. Information must be included in sufficient detail to indicate conformance with the following standards of instruction.

   a. The curriculum in the appropriate associate degree program shall include a program of instruction which corresponds with general education curriculum course credits required in institutions that prepare the student to enter full-time, entry level employment in their chosen occupation.

   b. Types of Associate Degrees:

      (1) Associate of Arts (A.A.)

      (2) Associate of Science (A.S.)

      (3) Associate of Applied Science (A.A.S.).

      (4) Associate of Occupational Studies (A.O.S.).

5. Admission - The student shall possess a high school diploma or a GED and be able to matriculate in a degree program.

6. Curriculum - The curriculum in the appropriate associate degree program of study will consist of courses and/or the occupational education area as approved by the Board. The appropriate associate degree program of instruction will correspond with the curriculum course credits required in institutions of higher education offering such associate degree programs. This means a minimum curriculum as defined below:

   a. Associate of Arts (A.A.) - Degree Programs, requiring 45 quarter credit hours or 30 semester hours of general education courses (Arts, Humanities, Social or Behavioral Sciences, or one of the professional fields of emphasis). The range of credit hours is 60 semester or 90 quarter hours to 68 semester or 102 quarter hours. Associate of Arts degree programs are intended for transfer into baccalaureate degree programs with junior standing offered by senior colleges and universities.

   b. Associate of Science (A.S.) - Degree Programs, requiring 45 quarter credit hours or 30 semester credit hours of general education courses (Mathematical, Biological or Physical Sciences, or one of the professional fields' emphasis). The range of credit hours is 60 semester or 90 quarter hours to 68 semesters or 102

quarter hours. Associate of Science degree programs are intended to transfer into baccalaureate degree programs with junior standing offered by colleges or universities.

c. Associate of Applied Science (A.A.S) - Degree Programs requiring 18 quarter credit hours or 12 semester credit hours of general education courses. The range of credit hours is 60 semester or 90 quarter hours to 75 semester or 108 quarter hours. Exceptions to the maximum may be granted by the Board if there is a demonstrated need. These programs are occupational in nature and are not intended for transfer to baccalaureate degree programs; however, certain courses may be accepted toward a bachelor's degree at some colleges and universities. Associate of Applied Science degree programs are intended to prepare students to enter full-time skilled, paraprofessional occupations.

d. Associate of Occupational Studies (A.O.S) - Degree Programs. In addition to the minimum total credits of 90 quarter credit hours or 60 semester credit hours require only that the school justify each such program to the Board in terms of a logical sequence of courses which will assure adequate preparation for entry level employment in a particular occupational field. These programs are occupational in nature and are not intended for transfer to baccalaureate degree programs; however, certain courses may be accepted toward a bachelor's degree at some colleges and universities. Associate of Occupational Studies degree programs are intended to prepare students to enter full-time, skilled para-professional occupations.

7. Degree credit hours are computed as follows:

For each quarter credit hour awarded:

10 theory/lecture contact hrs. = 1 credit

20 laboratory contact hrs. = 1 credit

30 intern/externship contact hrs. =1 credit

For each semester credit hour awarded:

15 theory/lecture contact hrs. = 1 credit

30 laboratory contact hrs. = 1 credit

45 intern/externship contact hrs. = 1 credit

Computation of hours may not be rounded up.

8. Faculty - Instructors teaching only general education courses in associate degree programs shall hold at least a baccalaureate degree with adequate preparation in areas the instructors are assigned to teach.

9. Cosmetology and related credit hours. The following only relates to cosmetology and related areas. The school catalog shall include at least the following information which is to be given to the student at the time of the execution of the enrollment agreement.

For all cosmetology schools credit hours are computed as follows:

30 theory/lecture contact hours = 1 semester credit

30 laboratory contact hours = 1 semester credit

30 intern/externship contact hours = 1 semester credit

G. Catalogs

1. Each school shall publish a catalog which shall include at least the following information:

a. The name and address of the school.

b. Catalog number and date of publication.

c. Table of contents.

d. Names of owners and officers, including any governing Boards.

e. The school calendar, including holidays, enrollment periods and beginning and ending dates of terms, courses or programs as may be appropriate.

f. The school's enrollment procedures and entrance requirements, including late enrollment, if permitted.

g. A description of the school's placement assistance. If no assistance is offered, the school shall make this fact known.

h. The school's attendance policy.

(1) Minimum attendance requirements.

(2) Circumstances under which a student will be placed on probation for unsatisfactory attendance,

(3) The conditions under which a student may be readmitted.

(4) Student leaves of absence.

(5) Dismissal for disruptive behavior,

(6) Any fees resulting from student absence.

i. The school's policy concerning satisfactory progress, and how the policy will be enforced which shall also include:

(1) How progress is measured and evaluated, including an explanation of the system of grading used.

(2) The conditions under which the student may be readmitted if terminated for unsatisfactory progress.

(3) A description of any probation policy.

j. The school's system for making progress reports to students.

k. The school's policy regarding student conduct, including causes for dismissal and conditions for readmission must be described.

l. A description of the school's facilities; teaching aids, exclusive of basic supplies; and equipment used for training.

m. A description of each approved educational program offered including objectives, prerequisites, tuition, fees, length, or, in the case of distance education, number of lessons or units of instruction, as appropriate and the school shall designate credit hours as semester or quarter.

n. The school's policy concerning credit granted for previous education, training, or experience.

o. A statement that the school does not guarantee the transferability of its credits to any other educational institution and that transferability is up to the receiving institution unless it has written agreement on file of current acceptability of such credits from other institutions.

p. The school's cancellation and refund policy which shall also include the school's method of determining the official date of termination.

q. Reasonable additional costs to the student for make-up hours for completion of the program.

r. In-state schools shall use a statement printed in the catalog to read, "Approved and Regulated by the Colorado Department of Higher Education, Private Occupational School Board." Out-of-state schools shall use a statement printed in the catalog to read, "Agents approved by the Colorado Department of Higher Education, Private Occupational School Board."

s. The policy for the granting of credit for previous training shall not impact the refund policy.

t. A section informing the student of the school's grievance policy and protocol for reviewing and resolving student complaints, appeals, or claims. This section must also include:

(1) A statement that informs the student that they or their guardian may file complaints in writing with the Board through the Division's established process within two years after the student's last date of attendance at the school, or at any time prior to the commencement of training.

(2) This section shall include the web address and phone number for the Division of Private Occupational Schools.

(3) The complaint policy shall be displayed in a type-size no smaller than that used to meet any other requirements of this section.

u. A school shall publish its admission standards in its catalog. A school must secure documentation to demonstrate that each applicant meets all admission requirements, for example, high school diploma, general equivalency.

v. Course/programs not regulated by DPOS but offered by the school should clearly be designated as such in the school catalog.

2. Supplemental pages(s) may be used as part of the school catalog provided they are used in such a way as to become an effective part of the catalog and may include information such as faculty, calendar, and any other pertinent information. Supplemental pages shall show an effective date and shall be presented to each prospective student prior to execution of any enrollment contract.

3. Postponement clause – the school's policy regarding postponement of starting date and the effect on student's rights to a refund is to read:

   "Postponement of a starting date, whether at the request of the school or the student, requires a written agreement signed by the student and the school. The agreement must set forth:

   a. whether the postponement is for the convenience of the school or the student; and,

   b. the deadline for the new start date, beyond which the start date will not be postponed.

   If the course is not commenced, or the student fails to attend by the new start date set forth in the agreement, the student will be entitled to an appropriate refund of prepaid tuition and fees within 30 days of the deadline in accordance with the school's refund policy and all applicable laws and Rules concerning the Private Occupational Education Act of 1981."

4. Any changes to approved school catalogs, including addenda, shall be submitted to the Division for review. The school will not print or distribute the new catalog prior to confirmation of review by the Division. It is the responsibility of each school to ensure that catalogs, including addenda, are in compliance with Rules and The Act.

H. Student Enrollment Agreement

1. Student enrollment agreements for educational service shall comply with the provisions of § 23-64-126(1), C.R.S., be fully completed, dated, and signed by the student and by an authorized representative of the school prior to the time instruction begins.

2. The school shall retain a copy of the student enrollment agreement and one copy shall be delivered to the student at the time of execution or by return mail when solicited by mail.

3. The student enrollment agreement shall include information that will clearly and completely define the terms of the agreement between the student and the school, including at least the following:

   a. The name and address of the school and the student.

   b. The title of the educational service, date training is to begin, and the number of contact/credit hours or units of instruction or lessons for which enrolled. Enrollment Agreements shall indicate that credit hours are semester or quarter credit hours.

   c. The total costs incurred by the student in order to complete the training. Such costs shall be itemized and shall include tuition, all fees, books, supplies where appropriate and all other expenses necessary to complete the training. The student enrollment agreement shall outline the method of payment or the payment schedule.

d. The school's refund policy, including the method of determining the official date of termination, displayed in a type-size no smaller than that used to meet any other requirements of this section.

e. A statement acknowledging receipt of a current/approved copy of the school catalog (including addenda) and student enrollment agreement by the student.

f. A statement that students may file complaints online directly with the Division within two years from the student's last date of attendance. A statement that informs the student that they or their guardian may file complaints in writing with the Board through the Division's established process within two years after the student's last date of attendance at the school, or at any time prior to the commencement of training.

(2) This section shall include the web address and phone number for the Division of Private Occupational Schools.

(3) The complaint policy shall be displayed in a type-size no smaller than that used to meet any other requirements of this section.

g. The complaint policy shall be displayed in a type-size no smaller than that used to meet any other requirements of this section and must precede any other grievance/complaints policies referenced.

4. Student enrollment agreements must reflect and be consistent with the school catalog in effect at the time of enrollment. Any changes to approved student enrollment agreements, including addenda, shall be submitted to the Division for review. The school will not print or distribute the new student enrollment agreement prior to confirmation of review by the Division. It is the responsibility of each school to ensure that student enrollment agreements, including addenda, are in compliance with Rules and The Act.

5. Student enrollment agreements shall reflect minimum admission(s) requirements as outlined in the school catalog.

I. Student Records

1. A diploma, certificate of completion, and transcripts shall be conferred only upon the successful completion of the prescribed course(s) of instruction as stated in the catalog and approved by the Private Occupational School Board.

2. Appropriate certification shall be conferred upon successful completion of individual subjects or a combination of subjects as listed in the catalog and approved by the Private Occupational School Board.

3. Each school shall maintain for a minimum of six years from the date the student discontinues his/her training at the school, student records in electronic format which shall include at least the following:

a. A copy of the enrollment contract and other instruments relating to the payment for educational services

b. Student information including:

(1) Student name.

(2) Permanent or other address at which the student may be reached.

(3) Records relating to financial payments and refunds.

(4) Record of attendance as determined by the school.

c. Date of completion or termination of training and the reason(s) as determined by the school.

d. Record of any student grievance and subsequent resolution.

e. Copies of all correspondence or other records relating to the recruitment, ~~enrollment~~enrollment, and placement of the student.

4. Student transcripts and certificates of completion, diploma, or degree must be retained by the school in perpetuity.

a. Upon request, each school shall provide a transcript within seven (7) days to the student who has satisfied all financial obligations currently due and payable to the school. This transcript of the individual student's records of achievement must be maintained as a permanent record in a form that provides at least the following information:

(1) Name of student

(2) Title of program/course, including total number of hours of training received, specify the number of hours and method of delivery for each course, and dates of enrollment.

(3) Grade record of each course, lesson, or unit of instruction and the cumulative grade for the program.

(4) Explanation of grading system.

b. Upon request, each school must provide a certificate of completion, diploma, or degree within seven (7) days to the student who has satisfied all academic and financial obligations currently due and payable to the school. This certificate of completion, diploma, or degree of the individual student's records of achievement must be maintained as a permanent record in a form that provides at least the following information:

(1) Name of student

(2) Title of program/course, including total number of hours of training received and date of completion.

5. In the event of closure of a school, the school shall deposit with the Division all educational, financial, or other records as described below of said school in electronic format. These records shall be submitted to the Division within sixty (60) days of school closure. Any delay in record submission or any missing records shall be accounted for.

a. Student educational records including transcripts, records of completion, diplomas, and certificates for all students since the school began operation.; Ffinancial records, including enrollment agreements, ledger cards or record of

student payments and refund calculations for all students who attended the school for two years prior to the closure.

b. It is acceptable for the school to maintain its records once it is no longer operating as a DPOS-approved school if the school is continuing to operate in other locations or has met an approved DPOS exemption. The school is required to submit to the Division a list of students from two years prior to closure and the school contact information for directing students requiring copies of their records and transcripts.

6. In the event of voluntary closure of a school, the school owner or designee shall:

a. Notify the Division in writing within twenty-four (24) hours of the school closing.

b. Provide a record of the status of all students currently enrolled whose training program has not been completed within forty-eight (48) hours following school closure.

c. Surrender of the Certificate of Approval to the Division within forty-eight (48) hours following school closure.

IV. APPLICATION FOR CERTIFICATE OF APPROVAL AND SURETY REQUIREMENTS

A. School Name

The complete legal name and location of each school shall be clearly stated in its application for a Certificate of Approval.

B. Parent Corporation Financial Information

A school which is a subsidiary of another corporation shall submit to the Board as a part of the school's application current financial information about the parent corporation including separate financial statements pertinent to the school.

C. Franchise Agreement

A school operating under any form of franchise agreement must file said franchise agreement and all attachments thereto with the Board as a part of its application for a Certificate of Approval. No franchise school shall be approved unless the franchise agreement contains a provision that the franchise shall not be terminated by the franchiser or the franchisee by reason of default or otherwise, until sufficient arrangements, as determined by the Board, shall have first been made to assure the completion of training of students enrolled in said school; and for the appropriate preservation and/or transfer of pertinent school and/or student records to the Division.

D. School Sites

1. Schools under common ownership which offer educational services and maintain ongoing individual facilities, faculty or students shall be considered as independent entities.

2. A school that intends to offer educational services on an intermittent schedule that does not represent a consistent pattern at locations other than the approved school site as described above must notify the Division thirty (30) days prior to each course or other educational service start date. No exterior or interior school emblem/logo is to be displayed at times other than during approved sessions. This notification shall include:

a. Date of educational service and the approved program or stand-alone course to be offered on forms provided by Division staff.

b. Length of stand-alone course or other educational service.

c. Number of students anticipated.

d. Location of facility (complete physical address).

e. Description of facility, including square feet, type of facility, etc.

f. New surety calculation and, if appropriate, a new bond, bond rider, or alternative surety to cover all students regardless of the training location.

This would be classified as a temporary offsite educational offering not to exceed three months and would not require a separate Certificate of Approval. However, this temporary offsite educational offering would fall under the jurisdiction of the school conducting the educational services and that school is responsible for maintaining all Rules and Regulations within the scope of its Certificate of Approval.

3. A separate classroom may be used under special circumstances if the student's education or training benefits from the usage of a separate classroom location due to enhanced or specialized equipment and/or teaching aids. A school that uses a separate classroom must notify the Division using forms provided by the Division. A site visit will be conducted prior to approval.

E. Surety Bonds and Surety Bond Alternatives

1. At the time application is made for a Certificate of Approval, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Division a surety bond or surety alternative which meets the requirements set forth in these Rules. Schools located in Colorado each shall file one bond or alternative covering the school and its agents.

a. A school whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students shall be noncompliant with these Rules, and, if, after a period of time determined by the Board from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its certificate of approval.

b. Pursuant to §§ 23-64-119(5), 23-64-121(8), and 23-64-121(10), C.R.S.:

(1) Schools must submit a continuation certificate to the Division no less than fifteen (15) days prior to the renewal date of the bond confirming the next term of coverage.

(2) Schools must submit the following for alternative surety instruments:

(i) Schools that have assigned a certificate of deposit to the Division as a surety bond alternative must submit a bank statement or other acceptable verification from the bank within fifteen (15) days of the maturity date or as requested by the Board. The bank statement must show that the certificate of deposit account

remains open, the account number, the amount of the Certificate of Deposit, and the next maturity date/ term.

(ii) Schools that have assigned a savings account to the Division as a surety bond alternative must submit annually, or as requested by the Board, a current bank statement or other acceptable verification from the bank confirming the account remains open. The bank statement must show the savings account number and the balance of the savings account.

(iii) Schools that have assigned an irrevocable letter of credit to the Division as a surety bond alternative must submit verification that the letter of credit requirements are still being met and that the irrevocable letter of credit remains in effect, within fifteen (15) days prior to the expiration date or as requested by the Board. The verification must include the letter of credit number, the amount, and the next expiration date or term, if applicable.

(iv) Schools that have executed a participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of private occupational schools must submit annually, within fifteen (15) days prior to the execution anniversary date, or as requested by the Board, verification that the participation contract is current. The verification must include the amount and the next expiration date or term, if applicable.

2. The bond or alternative-submitted to the Division with an application for a Certificate of Approval shall be in the amount required by § 23-64-121(3), C.R.S. Each application for a Certificate of Approval shall include a bond calculation in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to § 23-64-121, C.R.S., and explaining the method used for computing the amount of the bond or alternative.

3. In order to be approved by the Board, a surety bond must be:

   a. Executed by the applicant and by a surety company authorized to do business in Colorado; and

   b. In a form acceptable to the Board; and

   c. Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Approval ceasing operation; and

   d. ~~An~~ A clear, clean electronic copy of an original bond.

4. In lieu of a surety bond, an applicant may file with the Division an assignment of savings account that:

   a. Is in a form acceptable to the Board; and

   b. Is executed by the applicant; and

c. Is executed by a state or federal savings and loan association, state bank or national bank which is doing business in Colorado and whose accounts are insured by a federal depositor's corporation.

5. In lieu of a surety bond, an applicant may file with the Division a timed certificate of deposit that:

a. Is issued by a state or federal savings and loan association, state bank or national bank which is doing business in Colorado and whose accounts are insured by a federal depositor's corporation;

b. Is either:

(1) Payable to the Division of Private Occupational Schools; or

(2) In the case of negotiable certificate of deposit, is properly assigned without restriction to the Division of Private Occupational Schools; or

(3) In the case of nonnegotiable certificate of deposit, is assigned to the Division of Private Occupational Schools by assignment in a form satisfactory to the Division of Private Occupational Schools.

6. In lieu of a surety bond, an applicant may file with the Division an irrevocable letter of credit that:

a. Is in a form acceptable to the Board; and

b. Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Private Occupational School Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Approval ceasing operation.

c. Is executed by a state or federal savings and loan association, state bank or national bank which is doing business in Colorado and whose accounts are insured by a federal depositor's corporation.

7. In lieu of a surety bond, an applicant may file with the Division of Private Occupational Schools a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of private occupational schools, which:

a. Is in a form acceptable to the Board; and

b. Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation or any minimum standard or as a result of a holder of a Certificate of Approval ceasing ~~operation, and~~operation and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

8. Whenever these Rules require a document to be executed by an applicant the following shall apply:

a. If the application is a corporation, the document must be executed by the president of the corporation or person(s) designated by the corporate Board.

b. If the applicant is a limited liability corporation the document must be executed by the members.

c. If the applicant is a partnership, the document must be executed by all general partners.

d. If the applicant is an individual, the document must be signed by the individual.

e. If the applicant is a state agency, the document must be signed by the Director of that Department.

f. If the applicant is a local government, the document must be signed by the major or Board president.

9. Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution.

10. Any bonding alternative entity must have resources equal to or exceeding the maximum bond required of any single school.

11. The Board may make demand on the surety of a school that has ceased operation as authorized in § 23-64-121(5), C.R.S.

a. To the extent that the school's records allow, the Division will provide written notice to students enrolled within two years of the time of the school closure. The notice will be sent to the students' last known address as provided by the school, and the student will have 30 days to request train-out assistance or file a claim with the Board for the student's prorated share of the prepaid, unearned tuition and fees paid by the student, Claims for refund must be accompanied by necessary documentation.

b. After the 30-day notice time has expired, the Division will use the amount of the surety to issue refunds for students' prorated share of the prepaid, unearned tuition and fees paid by the student, or for the implementation of a train-out for the students of the school,

c. If surety exceeds the amount necessary to satisfy ~~section~~ Rule IV.E.11.b~~. of this rule~~, the remainder may be retained by the Division within the Colorado Department of Higher Education as reimbursement up to the amount of any actual administrative costs incurred by the division that are associated with the school closure and documented as such.

F. Types of Certificates of Approval

1. Provisional certificate of approval

a. Initial applications may receive a provisional certificate of approval that is effective for more than one (1) year and less than two (2) years.

b. No more than two (2) consecutive provisional certificates of approval will be granted.

2. Standard certificate of approval

   a. Upon satisfactory demonstration of school operations during the provisional approval period schools may receive a standard certificate of approval, effective for three (3) years.

3. Application for change of ownership

   a. An application for change of ownership and control shall be filed for approval by the Board whenever a change of fifty-one (51) percent or more of the school's equity occurs. The seller, prior to the effective date of the change of ownership, shall notify the Board in writing of the pending sale. The buyer shall make application for change of ownership prior to or within thirty (30) days after the change of ownership. Said application shall be made on forms provided by the Division. Failure to do so shall result in the suspension of the school's Certificate of Approval by operation of law until such application has been received and approved by the Board. The Board may review or otherwise treat an application for a change of ownership as an application for a provisional certificate of approval.

   b. In addition, the new owners shall provide the new organizational chart and the names, addresses and corporate titles of all persons having a financial interest of ten (10) percent or more of the equity; copy of the sale agreement, agreement of new owners to assume responsibility for training or refunding of prepaid tuition and fees for students enrolled under previous ownership; and a report on any other changes made in the school's organization and operations.

V. ANNUAL FILINGS

Each school holding a Certificate of Approval shall file annually on or before July 31st a bond calculation, student enrollment and graduate/completion data, placement statistics, ~~and~~ instructional staff, and an attestation that all student records are maintained in electronic format as follows:

A. Bond Calculation

1. Each school holding a Certificate of Approval shall file annually a bond calculation justifying the continued adequacy of the bonding or alternative being maintained by the school. The calculation shall be based on the amount of maximum prepaid tuition and fees collected and held at any one time during the calendar year. The calculation shall be covered in the surety requirements as specified in Rule IV.E.

2. Upon the Board's request the school shall also file at a minimum a complete set of compiled financial statements which includes a cover sheet, balance sheet, income and expense statement, source and use statement and all supportive notes, prepared by an independent public accountant or a certified public accountant using a format which reflects generally accepted accounting principles and procedures.

B. Student Enrollment and Graduate/Completion Data

1. Any private occupational school holding a certificate of approval to operate, and which offers a program/course certificate, diploma, or associate degree as defined by rule Part I, "Definitions" of the Rules and Regulations Concerning The Private Occupational Education Act shall, on an annual basis, submit to the Division student enrollee and graduate data consistent with the following:

a. Name of the school;

b. Name/identification of the respective program(s) for which certificates, diplomas or associate degrees are awarded; and

c. The number only (not by names or by any other personally identifying student information) of graduates having successfully completed and been awarded either a certificate, diploma, or associate degree, within the annual reporting period. This graduate quantitative/number data shall be provided in respect to or reported by each program so identified by the school in fulfillment of this annual reporting requirement.

d. The race, ethnicity, and gender data of its post-admission enrollees and graduates. Schools should collect this data using the Division-approved prompts and definitions. An individual student may decline to provide their own data.

e. The printed name and written or electronic signature of the school representative submitting said annual report on behalf of the school, and an acknowledgement that with his or her signature this representative affirms under penalty of law that the school exercised due diligence in identifying, compiling, and reporting a true and complete graduate data report.

2. Violation of this rule by a school not exempt from this reporting requirement may be subject to disciplinary actions, fees, fining authority, or other powers of the Board as defined by statute and Board rule.

C. Placement Statistics

1. Each school which offers or advertises placement assistance for any course or instruction shall file with the Division its placement statistics as follows for each program for the preceding year.

a. The number of graduates who requested placement assistance.

b. The number of graduates who received job offers for which they were trained.

c. The number of graduates who received job offers in a related area for which they were trained.

2. For schools offering and marketing placement assistance, data on such activities shall be submitted on or before July 31st.

D. Reporting of Instructional Staff

1. All schools are required annually to submit, in a form prescribed by the Board, a list of all instructional staff employed to include the following:

a. The name of the instructor, date of hire, name of program and stand-alone courses taught and the signature of the school director or authorized school representative certifying that the instructor meets all minimum qualifications required by these rules. The instructional staff list must be submitted to the Division~~, along with the filing of the school's annual bond calculation (refer to Rule V.A)~~.

b. With respect to instructional staff of minor students (under the age of sixteen), the school must include in the annual filing, an affirmation stating that the school has exercised due diligence to determine whether the instructional staff has acquired a new criminal history since the last annual report. This may include requiring the instructional staff to resubmit a fingerprint background check in compliance with Rule III.E.2.

VI. AGENTS

A. Each school shall be responsible for the conduct of its agents in the performance of their duties and shall select each of them with the utmost care, provide them with adequate training and arrange for the regular and proper supervision of their work.

B. The agent shall not use the availability of student aid as an inducement.

C. No school shall conduct surveys for the purpose of developing enrollment leads near (3 blocks or less) any state or federal social services program center (i.e., welfare, food stamps, unemployment, etc.).

D. A school is allowed to solicit in public places provided that the name and address of the school is displayed.

E. Out-of-State Schools

1. Prior to the issuance of an agent's permit to any person representing a school located outside of this state, the school shall submit at least the following:

   a. Copies of documents relating to the school's authorization to operate in its home state and any accreditation's or other approvals held by the school.

   b. A published catalog containing the information required by these Rules and Regulations.

   c. Copies of all media advertising and promotional literature intended for use in Colorado must include the school name, address, telephone number and location(s) where training will be offered.

   d. Copies of all student enrollment agreements or other instruments evidencing indebtedness and intended for use in Colorado which must comply with the provisions specified in these Rules and Regulations.

   e. The name and Colorado physical address separate from that of the school of a real person who is a designated agent, or a designated agent service, upon whom any process, notice or demand may be served. The Division shall be notified in writing of any change in said agent within ten (10) days of the change.

2. The Board shall not be required to act upon an application for an agent's permit for any person desiring to engage in the performance of the duties of an agent for a school located outside this state until the school shall have complied with the provisions of this section.

3. Revisions to catalog or student enrollment agreement must be reviewed by Division staff and receive approval prior to utilizing same in Colorado.

4. The utilization by any agent of the school of any catalog or student enrollment agreement not specifically submitted to the Division for review will be viewed as a willful and deliberate violation of the Rules and the Board shall summarily suspend all agent permits for the school pending a hearing which shall be promptly initiated and determined.

F. An agent's permit is not required for referrals.

VII. DECEPTIVE TRADE AND SALES PRACTICES

As clarification and in furtherance of the protections against the deceptive trade and sales practices outlined in the Private Occupational Education Act of 1981, as amended, a school shall comply with the following:

A. A guarantee of placement shall not be falsely promised or implied.

B. If a school located within the State of Colorado refers to the fact that it is approved, the school will use the following phraseology as it pertains to its approved educational programs or courses only: "Approved and Regulated by the Colorado Department of Higher Education, Private Occupational School Board."

C. Distance education shall be disclosed in the school's advertising and promotional materials that distance education is the primary instructional methodology.

D. A school or other representative shall not falsely or deceptively represent that the school has restrictions on enrollment as to number, date of submission of application or similar false representations.

E. A school or its agents and representatives shall not make or perpetuate any false or deceptive statements in regard to any other postsecondary school or college, whether public or private, nor shall a school or agent recruit students who are currently enrolled in another school.

F. A school shall advertise only in its approved name.

G. All schools shall satisfy the requirements of this section by including the school name, a phone number, street address, city, and location where training is to be offered in all print advertising including electronic media.

H. A school shall not represent directly or by implication that there is a substantial demand for persons completing any of the programs offered by the institution unless the institution has a reasonable basis for the representation documented by competent, objective, and statistically valid data.

I. A school shall clearly indicate in its advertising and promotion materials that education and/or occupational training is being offered.

J. A school may use only testimonials that accurately reflect current practices of the institution or current conditions or current employment opportunities in the field. Such testimonials may be used if prior written consent is obtained and no remuneration or other consideration is made for either the consent or the use of the endorsement.

K. A school may advertise that it is endorsed by manufacturers, business establishments, organizations or individuals engaged in the line of work for which it provides training, if the school has written evidence of this fact and this evidence is made available to the student.

L. No school may advertise "accredited" unless such status has been received and maintained from an accrediting body currently listed as recognized by the U.S. Secretary of Education or is accredited by a programmatic accrediting body recognized by the Council for Higher Education Accreditation as having the ability to accredit the freestanding, single purpose institution of construction education. This refers to the U.S. Department of Education's List of Agencies (Eff. Oct. 2019), available electronically at https://ope.ed.gov/dapip/#/agency-list (later amendments not incorporated), or the Council for Higher Education Accreditation's Directory of Recognized Accrediting Organizations (Updated July 2021), available electronically at https://www.chea.org/chea-recognized-accrediting-organizations (later ~~. Later~~ amendments not incorporated. The U.S. Department of Education is located at 1244 Speer Blvd., Ste. 310, Denver, CO 80204. The Colorado Division of Private Occupational Schools maintains a copy available for public inspection at 1600 Broadway, Ste. 2200, Denver, CO 80202, during regular business hours. Upon request, the Colorado Division of Private Occupational Schools will provide an electronic copy for free or a printed copy for a reasonable per page charge.

M. No school may offer access to Title IV funds without approval to participate in the Title IV student federal fund program from the United States Department of Education. This refers to the Higher Education Act of 1965, P.L. 89-329, § 401, 79 Stat. 1219, 1232-1254 (1965), available electronically at https://www.govinfo.gov/content/pkg/STATUTE-79/pdf/STATUTE-79-Pg1219.pdf. Later amendments not incorporated. The U.S. Department of Education is located at 1244 Speer Blvd., Ste. 310, Denver, CO 80204. The Colorado Division of Private Occupational Schools maintains a copy available for public inspection at 1600 Broadway, Ste. 2200, Denver, CO 80202, during regular business hours. Upon request, the Colorado Division of Private Occupational Schools will provide an electronic copy for free or a printed copy for a reasonable per page charge.

N. A school shall not advertise as an employment agency or the equivalent.

O. A school shall not deceptively advertise in conjunction with any other business or establishment.

P. A school may not follow-up employer help wanted advertisement with offers of training.

Q. Any school which has an agency shall not advertise in the help wanted section for that agency.

R. Any school or agency which offers classes at "no charge" but receives direct or indirect payment of fees or other pecuniary benefits or considerations, "for other services including publications, photo sessions and workshops" is considered to be a school and is required to hold a Certificate of Approval from the Board.

S. Students who apply for and properly represent their financial aid application and do not qualify for financial aid within the first two weeks of classes and are accepted on the basis of forthcoming financial aid eligibility shall not be referred to a collection agency.

T. All flight schools/flying clubs/individuals advertising commercial advanced training and collecting prepaid tuition and fees must hold a Certificate of Approval.

U. All Federal Aviation Administration Part 141 and/or Part 147 approved flight schools and/or maintenance schools must hold a Certificate of Approval. This refers to the FFA Aeronautics and Space Rule, 14 C.F.R. §§ 141, 147 (2019), available electronically at https://www.ecfr.gov/cgi-bin/text-idx?SID=5704117b53d59554801670a843884cf4&mc=true&node=pt14.3.141&rgn=div5 and https://www.ecfr.gov/cgi-bin/text-idx?SID=197bd38b282991600e4da161e10e4fdf&mc=true&node=pt14.3.147&rgn=div5, respectively. Later amendments not incorporated. The Federal Aviation Administration's Flight Standards District Office is located at 26805 East 68th Ave., Ste. 200, Denver, CO 80249. The Colorado Division of Private Occupational Schools maintains a copy available for public inspection at 1600

Broadway, Ste. 2200, Denver, CO 80202, during regular business hours. Upon request, the Colorado Division of Private Occupational Schools will provide an electronic copy for free or a printed copy for a reasonable per page charge.

V. Institutions placing advertisements in classified columns of newspapers or other publications to attract students must use only classifications such as: "Education," "Schools," or "Instruction." Headings such as "Help Wanted," "Employment," "Career Opportunity," or "Business Opportunities" may be used only to procure employees for the institution.

VIII. REFUND POLICY

A. The official date of termination or withdrawal of a student shall be determined in the following manner:

1. The date on which the school is noticed to be the student's last date of actual attendance.

2. The date on which the student violates published school policy which provides for termination.

3. Should a student fail to return from an excused leave of absence, the effective date of termination for a student on an extended leave of absence or a leave of absence is the earlier of the date the school determines the student is not returning or the day following the expected return date.

B. Refunds must be calculated from the official date of termination or withdrawal and calculated on the period of time designated on the current agreement executed with the student and must be made within thirty (30) days from the official date of termination.

C. Application/registration fees may be collected in advance of a student signing an enrollment contract; however, all monies paid by the student will be refunded if the student does not sign an enrollment contract and does not enter school.

D. No student shall be continued on an inactive basis in violation of school policy without written consent of the student. Inactive students must be terminated within 30 days of the next available start date and refunded appropriate prepaid tuition and fees at that time.

E. Refunds, including bond claim refunds, will be made to sponsoring agencies or individuals rather than to students.

F. In the event of a school ceasing operation, the student shall be entitled to 100 percent of the prepaid, unearned tuition and fees at the time of closure unless a teach-out is available and accepted by the student.

IX. COMPLAINTS

A. The school shall attempt to resolve internally filed or noticed student complaints promptly and fairly in accordance with the procedures stated in its grievance policy and shall not subject a student to punitive action because the student filed a grievance/complaint with the school or the Board.

B. Complaints or claims pursuant to §§ 23-64-121(4)(a) or 23-64-124, C.R.S., may be filed in writing with the Board through the Division's established process within two years after the student's last date of attendance at the school, or at any time prior to the commencement of training.

C. The Board and/or Division may initiate an investigation. The Board may issue a notice of noncompliance and/or commence administrative or court action, with or without a complaint at any time that it has reason to believe that a school has violated or is violating the Act or Rules.

X. STATE ADMINISTRATIVE PROCEDURES ACT

All final decisions made by the Board regarding issuance, denial, and revocation of all types of Certificates of Approval, agent permits and instructor qualifications according to § 23-64-129. C.R.S., will be under the provisions of the "State Administrative Procedures Act", article 4 of title 24.

XI. DISCIPLINARY ACTIONS

A. The Board may issue a cease and desist order, deny, suspend, revoke or place on probation a school's Certificate of Approval or agent's permit if the applicant or holder:

1. Violates any provision of the Act or the Rules and Regulations established pursuant to the Act.

2. Fails to meet the requirements of the Act or the Rules and Regulations established pursuant to the Act; or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for approval.

3. Is convicted of, or has entered a plea of *nolo contendere* or guilty to, or has received a deferred sentence or a deferred prosecution for a felony.

4. Violates probation.

5. Uses deceptive advertising.

6. Fails to notify the Division in writing within seven (7) days of any action which changes the school's status with the United States Department of Education, any other state or federal regulatory body, accrediting body, trade or membership association, or any national association or organization. This includes any adverse or disciplinary action, including but not limited to, probationary status.

B. The Board may use an administrative law judge employed by the Office of Administrative Courts in the Department of Personnel and Administration to conduct hearings or hold the hearings itself if time is determined to be a factor.

C. The Board may enter into a voluntary agreement with any school or agent to suspend, revoke, or place on probation the school's certificate of approval or the agent's permit. Such agreements shall have the force and effect of an order of the Board and violation of the terms of such agreement by a school or agent shall be grounds for disciplinary action up to and including revocation of the school's certificate or the agent's permit.

D. Administrative Fines. In addition to or in lieu of seeking a temporary restraining order or an injunction pursuant to § 23-64-131(1), C.R.S., the Board may impose an administrative fine on a school or agent which violates the Act, the Rules, or an order of the Board. Fines for violations shall be determined by the Board pursuant to the Act and the Rules. There is no statutory minimum or maximum fine amount prescribed by the Act. Fines may be imposed by the Board, unless otherwise provided by the Act or the Rules.

1. Procedure.

a. Notice of Non-Compliance. Based upon a reasonable belief that a violation occurred, the Board shall issue a Notice of Non-Compliance to the school or agent requesting a response. After receiving the response, the Board shall deliberate and make a decision on the issuance of a fine and the fine amount.

b. Notice of Fine. If the Board decides to fine a school or agent, the Board shall issue a Notice of Fine, which shall:

(i) Identify the school or agent;

(ii) Provide a concise statement of the facts and/or conduct constituting the violation and the specific statutory provision or rule violated;

(iii) The fine assessed in accordance to this Rule;

(iv) A statement that the school or agent has a right to request a hearing of the Board's decision; and

(v) A statement of how and when the fine must be paid.

2. Factors Used to Determine Fine Amount. In determining whether to impose a fine and the amount of the fine, the Board shall consider and take into account the following aggravating and mitigating factors in establishing the degree of seriousness of the violation(s) for which to impose a fine on a school or agent:

(a) Aggravating Factors.

- The school or agent has failed to correct the violation or continues or repeats the violation;

- The violation involved intentional, ~~misleading~~misleading, and false representation, reporting and disclosure;

- The actual and potential damages suffered, and actual or potential costs incurred, by the Board, or by any other person as a result of the violation;

- The violation resulted in intentional and reckless willful and negligent conduct;

- The violation resulted in significant negative impact, threat, or harm to the public; and

- The school or agent has engaged in a pattern of noncompliance with Board laws, rules, and orders.

(b) Mitigating Factors:

- The school or agent self-reported the violation;

- The school or agent demonstrated prompt, effective and prudent response to the violation, to remedy and mitigate whatever harm might have been done as result of the violation;

- The school or agent cooperated with the Board, or other agencies and impacted parties with respect to addressing the violation; and

- The violation was outside of the entity's reasonable control and responsibility.

3. Schedule of Fines. Unless otherwise provided by the Act, the Board may utilize the following classification table in determining and imposing administrative fines on a school or agent:

Violation	**Fine**
Deceptive Trade or Sales Practice §§ 23-64-112(1)(k) and 23-64-123, C.R.S., and/or Board Rule VII.	$1000 minimum for each violation.
Operating after expiration date of certificate of approval, § 23-64-113(1)(a), C.R.S., and/or Board Rule IV.F.	$1000 minimum for violation and $50 each day in violation.
Operating without adequate Surety Coverage, § 23-64-121, C.R.S., and/or Board Rule IV.E.	$1000 minimum for violation and $50 each day in violation.
Offering Program/Courses without Board approval § 23-64-112(1)(c), C.R.S., and/or Rule III.B.1.	$500 minimum fine for each violation.
Unauthorized agent, § 23-64-111, C.R.S and/or Board Rule VI.	$500 minimum for violation and $50 per day in violation.
Failure to adhere to state refund policy upon student withdraw or termination, § 23-64-120, C.R.S., and/or Board Rule VIII.	1st violation: minimum $100; 2nd minimum $300; 3rd minimum $500, and each violation thereafter.
Unqualified instructional staff, § 23-64-112(1)(e), C.R.S., and/or Board Rule III.E.2.	1st violation: minimum $200; 2nd violation minimum $300; 3rd violation minimum $500 and each violation thereafter.
Failure to timely and adequately correct an on-site inspection deficiency and/or application/record review § 23-64-112, C.R.S.	1st Offense minimum $100 per violation; 2nd Offense minimum $300 per violation; 3rd Offense minimum $500 per violation, and each violation thereafter.
False statement about material fact in application, § 23-64-112, C.R.S., and/or Board Rule XI.	$500 minimum per violation
Failure to properly execute student enrollment agreement, § 23-64-126, C.R.S., and/or Board Rule III.~~I~~H.	$200 minimum per violation
Any other violation of the Act, Rule or order of the Board.	$100 to $5000 per violation

4. Administrative Hearing. In lieu of paying the imposed fine, the school or agent may request a hearing before an administrative law judge in accordance to the State Administrative Procedures Act. All final decisions of the Board regarding the issuance of fines and any other form of disciplinary action as set forth in the Act, including administrative fines, shall be in accordance to the State Administrative Procedures Act.

5. Payment of fines. Unless the school or agent requests a hearing pursuant to the State Administrative Procedures Act, any fine imposed pursuant to § 23-64-131, C.R.S., and this Rule shall be paid within 30 days of the date of the Notice of Fine. Any fine imposed subsequent to an administrative hearing and final Board order shall be paid within 30 days of a final Board order. All fines shall be paid by certified check, cashier's check, or money order, payable to the "Division of Private Occupational Schools." All fines collected pursuant to this Rule shall be transferred to the State Treasurer, who shall credit the same to the State General Fund.

6. Failure to Pay a Fine. Failure to pay an administrative fine by its due date may result in the suspension or revocation of the school's certificate of approval or the agent's permit in accordance with the Act, the Rules and the State Administrative Procedures Act.

Editor's Notes

History

Rule II-F eff. 03/02/2009.
Entire rule eff. 03/31/2009.
Rule V.C. eff. 11/01/2010.
Entire rule eff. 12/10/2011.
Fee Schedule emer. rule eff. 11/06/2013.
Entire rule eff. 12/30/2013.
Fee Schedule eff. 03/02/2014.
Fee Schedule eff. 09/14/2014.
Fee Schedule, Rules IV. E. 1. b, XI. D. 1-3 eff. 01/31/2017.
Entire rule eff. 06/14/2018.
Entire rule eff. 12/15/2019.
Rule II.H emer. rule eff. 06/16/2020; expired 10/14/2020.

COLORADO
Division of Private Occupational Schools
Department of Higher Education

Jared Polis
Governor

Dr. Angie Paccione
Executive Director

Lorna Candler
Chief Occupational Education Officer/Director

Colorado Board of Private Occupational Schools
Paul Garibay, Chair
Ryan Minic, Vice Chair
JoAnn Stevens
Jessica Houtz
Barbara Kearns
Ellen Wamser
Chad J. Nash

PUBLIC NOTICE

Notice of Proposed Rulemaking and Rulemaking Hearing

Pursuant to § 24-4-103 of the Colorado Revised Statutes, you are hereby notified that the Colorado Private Occupational School Board will be holding a public rulemaking hearing as follows:
January 25, 2022
Beginning at 9:30 A.M.

At the following location: Virtual Meeting

Join Zoom Meeting
https://us06web.zoom.us/j/87971978105?pwd=SmYyYTlIczN4czBVdzA4TUpGMHExUT09

Meeting ID: 879 7197 8105
Passcode: 651497
One tap mobile
+17207072699,,87971978105# US (Denver)
+13462487799,,87971978105# US (Houston)

Dial by your location
+1 720 707 2699 US (Denver)
+1 346 248 7799 US (Houston)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 879 7197 8105
Find your local number: https://us06web.zoom.us/u/kdT8zwT5Xz

The purpose of this meeting is: Pursuant to § 24-4-103 of the Colorado Revised Statutes, the Colorado Private Occupational School Board will be holding a public rulemaking hearing.

The statutory authority for the rules is found in § 23-64-108(1)(i), C.R.S.

Please be advised that the proposed rules may be changed after public comment and formal hearing. At the time and place stated in this notice, the Board will afford interested persons an opportunity to submit written data, views, or arguments, and to submit the same orally. The Board may limit the time allotted for oral submissions. **Written submissions should be filed with the Board at least two (2) business days prior to the hearing**. All submissions will be considered.

Written submissions may be filed at the following address:

Colorado Division of Private Occupational Schools
1600 Broadway, Suite 2200
Denver, CO 80202
OR
carrie.harding@dhe.state.co.us

The basis and purpose of the proposed amendments to the Private Occupational School Board Rules and Regulations (8 CCR 1504-1) is for non-substantive changes such as typos, punctuation corrections, and other non-substantive revisions, as well as the addition and clarification of definitions throughout the rules, along with the following proposed revisions:

Rule	**Revision**
RULE III. G – MINIMUM STANDARDS, Catalogs	Updated inclusion of course(s)/programs not regulated by DPOS be identified.
RULE III. I - MINIMUM STANDARDS, Student Records	Add the method of delivery to student transcripts.
RULE III. I - MINIMUM STANDARDS, Student Records	Clarify timeframe of student records required to be submitted upon closure.
RULE III. V – MINIMUM STANDARDS, Annual Filings	Clarify the expectation of schools maintaining student records in electronic format and submitting an attestation to confirm.
NEW: Rules to clarify changes made to statute in 2021 Legislative Session regarding programmatic accreditation for construction schools as outlined in C.R.S. § 23-64-104 2(a) and (b); C.R.S. § 23-64-112(1)(t); C.R.S. § 23-64-123(1)(l)	Clarify rules regarding Exemptions, Minimum Standards and Deceptive Sales and Trade in response to the changes in statute.

Notice of Proposed Rulemaking

Tracking number

2021-00811

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-1

Rule title

RULES AND REGULATIONS CONCERNING MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES

Rulemaking Hearing

Date

02/02/2022

Time

01:00 PM

Location

Zoom Virtual Hearing- Online

Subjects and issues involved

Pursuant to Section 42-4-235 (4)(a)(I), CRS, the Chief of the Colorado State Patrol has the authority to promulgate rules and regulations regarding the minimum operating standards for commercial vehicles within the State of Colorado.

Amendments being proposed to 8 CCR 1507-1 include:

*Adopting updated editions of the FMCSRs and CVSA Inspection and Out-of-Service Criteria;
*Updating references to websites and other applicable sections of the Colorado State Patrol;
*Further clarifying requirements related to appeals of Civil Penalties; and
*Updating references for all incorporated or adopted guidelines, publications and standards, and any applicable statutes.

Statutory authority

Section 42-4-235 (4)(a)(I), CRS.

Contact information

Name

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Title

Rulemaking Coordinator

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DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING MINIMUM STANDARDS FOR THE OPERATION OF COMMERCIAL VEHICLES

8 CCR 1507-1

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-4-235 (4) (a) (I), CRS, the Chief of the Colorado State Patrol has the authority to promulgate rules and regulations regarding the minimum operating standards for commercial vehicles within the state of Colorado.

Amendments being proposed to 8 CCR 1507-1 include:

- Adopting updated editions of the FMCSRs and CVSA Inspection and Out-of-Service Criteria;
- Updating references to websites and other applicable sections of the Colorado State Patrol;
- Further clarifying requirements related to appeals of Civil Penalties; and
- Updating references for all incorporated or adopted guidelines, publications and standards, and any applicable statutes.

It has been declared by the General Assembly that the safe operation of commercial vehicles is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes is contrary to the public health, peace, safety, and welfare of the state. For these reasons, it is necessary that these proposed amendments are adopted.

_____ _____

Colonel Matthew C. Packard
Chief, Colorado State Patrol

Date of Adoption

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL

RULES AND REGULATIONS
CONCERNING
MINIMUM STANDARDS FOR THE OPERATION
OF COMMERCIAL VEHICLES

MCS 1: **AUTHORITY TO ADOPT STANDARDS AND SPECIFICATIONS**. The Chief of the Colorado State Patrol is authorized by the provisions of §42-4-235 (4) (a) (I), CRS, to adopt rules and regulations for safety standards and specifications for the operation of all commercial vehicles in Colorado, both in interstate and intrastate transportation.

MCS 2: **APPLICABILITY.** These rules and regulations apply to individuals, corporations, Colorado government or governmental subdivisions or agencies, or other legal entities who operate commercial vehicles as they are defined in §42-4-235 (1) (a), CRS.

2.1. **COMPLIANCE WITH 8 CCR 1507-25 AS APPROPRIATE.** In addition to this rule, any person who transports hazardous materials as defined in 49 CFR 171.8 and §42-20-103 (3), CRS, and/or nuclear materials, as defined in §42-20-402 (3) (a) - (c), CRS, must operate consistent with 8 CCR 1507-25, the CSP Rules and Regulations Concerning the Permitting, Routing, and Safe Transportation of Hazardous and Nuclear Materials and the Intrastate Transportation of Agricultural Products in the State of Colorado.

2.2. **APPROVAL OF TEMPORARY RULE VARIANCE(S).** Provided a variance is not in violation of §42-4-235, CRS, the CSP Motor Carrier Safety Section (MCSS) may consider and grant requests of intrastate commercial motor carriers for temporary variances from these rules.

MCS 3: **GENERAL DEFINITIONS**. The following definitions apply throughout these rules unless otherwise specified. Definitions relevant to these rules are found in Title 49 of the Code of Federal Regulations. These definitions are amended, where necessary, to conform to the Colorado Revised Statutes. Those definitions controlled by the CRS that are generally applicable to these rules are set forth herein.

3.1. **CDL:** Commercial Driver's License.

3.2. **CDOR:** Colorado Department of Revenue.

3.3. **CDOT:** Colorado Department of Transportation.

3.4. **CDPS:** Colorado Department of Public Safety.

3.5. **CFR:** Code of Federal Regulations.

3.6. **CHIEF:** Means the Chief of the Colorado State Patrol, or his or her designee as appropriate, unless otherwise specified.

3.7. **Commercial Vehicle:** The definition of commercial vehicle will be as set forth in §42-4-235 (1) (a), CRS.

3.8. **CRS:** Colorado Revised Statutes.

3.9. **CRU:** Colorado State Patrol Central Records Unit.

3.10. **CSP:** Colorado State Patrol.

3.11. **CVSA:** Commercial Vehicle Safety Alliance.

3.12. **Enforcement Official:** The definition of enforcement official will be as it is defined by §§16-2.5-101, 16-2.5-114, 16-2.5-115, and 16-2.5-143, and also as set forth in §42-20-103 (2), CRS.

3.13. **FMCSA:** Federal Motor Carrier Safety Administration.

3.14. **FMCSR:** Federal Motor Carrier Safety Regulations, AKA 49 CFR 40 - 399 and its appendices.

3.15. **GCWR:** Gross Combined Weight Rating.

3.16. **GVWR:** Gross Vehicle Weight Rating.

3.17. **LLC:** Limited Liability Company or Limited Liability Corporation.

3.18. **MCSS:** Colorado State Patrol Motor Carrier Safety Section.

3.19. **Motor Carrier:** The definition of motor carrier will be as it is set forth in §42-4-235 (1) (c), CRS.

3.20. **MOU:** Memorandum of Understanding.

3.21. OOS: Out-of-Service.

3.22. PUC: Public Utilities Commission.

3.23. UFA: Uniform Fine Assessment.

3.24. USDOT Number: The number assigned to a motor carrier by the FMCSA. This number can be for intrastate or interstate use, depending upon the information provided by the motor carrier to the FMCSA at the time of application submission or the biannual update.

MCS 4: AUTHORITY TO INSPECT VEHICLES, DRIVERS, CARGO, BOOKS AND RECORDS. Authorized enforcement officials will at all times have the authority to inspect commercial vehicles, commercial vehicle drivers, cargo, and any required documents consistent with Part MCS 4 of these rules.

4.1. SAFETY INSPECTIONS. Enforcement officials who are authorized to perform motor vehicle safety inspections on commercial motor vehicles and ~~d~~rivers, are required to meet the inspector qualifications set forth in §42-4-235 (4) (a) (I), CRS, while performing a Level I North American Standard Safety Inspection.

4.1.1. All enforcement officials performing Level I – VI North American Standard Safety Inspections must maintain the certifications requirements prescribed in the current published CVSA Operations Manual.

4.2. AUTHORITY TO INSPECT. Authorized enforcement officials have the authority to inspect commercial vehicles, commercial vehicle drivers, cargo, and any required documents, as such documents are applicable to transport by 8 CCR 1507-25 and/or as are set forth in 49 CFR, Subchapter B, Parts 383, 387, 390, 391, 392, 393, 395, 396, 397, and 399, as revised October 1, ~~2020~~ 2021.

4.3. AUTHORITY TO CONDUCT COMPLIANCE REVIEWS AND SAFETY AUDITS. CSP enforcement officials who are certified by the FMCSA pursuant to 49 CFR 385, Subpart C, to perform compliance reviews and safety audits have the authority to enter the facilities of and ~~inspection~~ any motor carrier, as defined in §42-4-235 (1) (c), CRS. Inspection includes the review of any required records and supporting documents as may be applicable through 8 CCR 1507-25 and/or as they are identified and defined in 49 CFR, Subchapter B, Parts 40, 380, 382, 383, 385, 387, 390, 391, 392, 393, 395, 396, 397, 399 and Appendix G, revised October 1, ~~2020~~ 2021.

MCS 5: INSPECTIONS STANDARDS AND REPORTS. Through an MOU with the CVSA, dated October 1, 2019, the CSP adopts the standards and procedures established for the inspection of commercial vehicles, collectively known as the North American Uniform

Driver/Vehicle Inspection.

5.1. CVSA BYLAWS AS GENERAL INSPECTION GUIDELINES. Authorized enforcement officials performing safety inspections on commercial vehicles, drivers, and cargo will use as general guidelines the levels, methods of ~~i~~nspections, and OOS criteria found in the CVSA bylaws, as they are revised and effective April 1, ~~2021~~ 2022.

5.2. MINIMUM INFORMATION AND REPORT DISPOSITION. Authorized enforcement officials will, upon the completion of each inspection, prepare a report which, at a minimum, identifies the inspector, the inspector's agency, the name and address of the motor carrier, the date and time of the inspection, the location of the inspection, the vehicle, and the driver, any defects or violations found, and the disposition of the vehicle. A copy of the inspection report will be provided to the driver or motor carrier.

MCS 6: STATE ADOPTION OF FMCSR. All intrastate and interstate motor carriers, commercial vehicles, and drivers thereof, operating within Colorado must operate consistent with the safety regulations detailed within:

49 CFR 40	Procedures for Transportation Workplace Drug and Alcohol Testing Programs
49 CFR 380	Special Training Requirements
49 CFR 382	Controlled Substances and Alcohol Use and Testing
49 CFR 385 Subparts C & D	Safety Fitness Procedures
49 CFR 387	Minimum Levels of Financial Responsibility for Motor Carriers
49 CFR 390	Federal Motor Carrier Safety Regulations~~:~~; General
49 CFR 391	Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
49 CFR 392	Driving of Commercial Motor Vehicles
49 CFR 393	Parts & Accessories Necessary for Safe Operation
49 CFR 395	Hours of Service of Drivers
49 CFR 396	Inspections, Repair, and Maintenance
49 CFR 397	Transportation of Hazardous Materials~~,~~; Driving and

Parking Rules

49 CFR 399 Employee Safety and Health Standards

49 CFR Appendix G TO SUBCHAPTER B OF CHAPTER III Minimum Periodic Inspection Standards

of the FMCSR as the same were in effect on October 1, ~~2020~~ 2021 and published in Title 49 of the CFR, Subtitle B, Chapter III, Parts 200 through 399, with references therein, with modifications as are necessitated by state law and set forth by these rules:

6.1. INTRASTATE COMMERCE INCLUDED. Unless otherwise specified, all references to interstate commerce by the FMCSR also include intrastate commerce for the purposes of these rules.

6.2. ENTRY-LEVEL DRIVER TRAINING. 49 CFR 380.509 (a) is amended to read: "Each employer must ensure each entry-level driver, who first begins operating a commercial motor vehicle requiring a CDL under §42-2-404, CRS, receives the training required by 49 CFR 380.503."

6.3. NEW ENTRANT SAFETY PROGRAM. 49 CFR 385.301 (b) and (c), through 385.305 and 385.319 (b) through 385.337 are not applicable.

6.3.1. 49 CFR 385.309 through 385.319 (a), hereafter referred to collectively as the Colorado Intrastate New Entrant Safety Assurance Program, applies to intrastate motor carriers who are beginning in intrastate operations and are required to obtain an intrastate USDOT number from the FMCSA.

6.3.2. Intrastate motor carriers can confirm if they need a USDOT number and complete an intrastate application online by going to HTTPS://WWW.FMCSA.DOT.GOV/REGISTRATION/DO-I-NEED-USDOT-NUMBER.

6.3.3. All interstate motor carriers beginning operations in Colorado must submit to a safety audit as defined in 49 CFR 385.3. Interstate carriers beginning operations in Colorado must submit to a safety audit consistent with 49 CFR 385.3.

6.3.4. All intrastate motor carriers beginning operations in Colorado are eligible for the Colorado Intrastate New Entrant Safety Assurance Program. New intrastate carriers may schedule training by contacting the MCSS. A prior interstate safety audit or compliance review will meet the requirement for an intrastate safety audit.

6.4. FINANCIAL RESPONSIBILITY (INSURANCE) OF MOTOR CARRIERS. Pursuant to §42-4-235 (4) (a) (I), CRS, the financial responsibility and insurance provisions of these rules do not apply to commercial vehicles regulated by the

PUC. These provisions also do not apply to those commercial vehicles operated by river outfitters regulated by the Colorado Department of Natural Resources, Division of Wildlife, under 2 CCR 405-3. These noted exceptions aside, 49 CFR 387.1 through 387.17, 387.303, 387.305 and 387.309 are applicable to the operation of commercial vehicles in Colorado with the following exceptions:

6.4.1. 49 CFR 387.7 (e) and (g) do not apply.

6.4.2. 49 CFR 387.9 (4) applies only to interstate and foreign commerce.

6.4.3. Transportation carriers may obtain a certificate of self insurance issued pursuant to §42-7-501, CRS, or 49 CFR 387.

6.4.4. Motor carriers subject to these rules must carry a minimum level of cargo liability coverage of $10,000 for loss or damage to property carried on any one motor vehicle, or an amount adequate to cover the value of the property being transported, whichever is less, unless the shipper and the property carrier otherwise agree by written contract to a lesser amount.

6.5. AMENDED GENERAL APPLICABILITY OF THE FMCSR. 49 CFR 390.3T (f), (1) – (2) and (6) do not apply.

6.6. AMENDED APPLICABILITY OF FMCSR DEFINITIONS. The following definitions set forth within 49 CFR 390.5T are hereby amended by these rules:

6.6.1. The definitions of “Commercial Motor Vehicle” and “Motor Carrier” do not apply.

6.6.2. The definition of an “Emergency” is amended through the addition of the following: “A governmental agency has determined that a local emergency requires relief from the maximum driving time in 49 CFR 395.3 or 395.5.”

6.7. AMENDED MOTOR CARRIER IDENTIFICATION REQUIREMENTS. 49 CFR 390.19T (a) is amended to read: “Each motor carrier that conducts operations in intrastate commerce must apply for and receive an intrastate USDOT Number prior to beginning operations within the state. The motor carrier is required to update this information every 24 months.”

6.7.1. USDOT numbers for intrastate motor carriers are processed by the FMCSA.

6.7.2. 49 CFR 390.21T (b) is amended through the addition of the following: “Intrastate carriers must mark their vehicles with the assigned intrastate USDOT number, preceded by the letters “USDOT” and followed by the suffix “CO” (e.g.: USDOT 1234567 CO).

6.7.2.1. Motor carriers operating in intrastate commerce, not

transporting 16 or more passengers (including the driver) or transporting placarded hazardous materials and having a GVWR or GCWR equal to or in excess of 16,001 lbs., but not in excess of 26,000 lbs., may meet the marking requirements of 49 CFR 390.21T by marking the trailer or secondary unit, if the GVWR of the self-propelled unit itself is less than 16,001 lbs.

6.7.2.2. In the interests of public safety, intrastate motor carriers who operate as repossessors as defined within §42-6-146 (4), CRS, operating interstate, are not subject to the marking requirements of 49 CFR 390.21T.

6.8. AGE OF CDL DRIVERS OPERATING IN INTERSTATE COMMERCE. 49 CFR 391.11 (b) (1) is amended to read: "Is at least 21 years old if engaged in interstate commerce or transporting hazardous materials of a type or quantity that would require the vehicle to be marked or placarded under 49 CFR 177.823, with the exception of drivers operating interstate pursuant to a waiver issued through the FMCSA Military Pilot Program, or any other approved non-military extension thereof and as recognized consistent with §42-2-404 (4) (b), CRS. All other drivers operating intrastate only must be at least 18 years of age."

6.9. AMENDING HOURS OF SERVICE AND APPLICABILITY THEREOF. The Hours-of-Service regulations set forth within 49 CFR 395 are amended as follows:

6.9.1. Public transit agency carriers and their drivers operating in intrastate commerce may satisfy the requirements of 49 CFR 395.1 (e) (1) (ii) by either meeting the existing regulation, or by replacing 49 CFR 395.1 (e) (1) (2) with "the driver is released from work within 12 consecutive hours."

6.9.2. 49 CFR 395.3 or 395.5 do not apply to drivers of either Colorado governmental vehicles or tow trucks working an emergency, as defined in 49 CFR 390.

6.9.3. 49 CFR 395.3 does not apply to tow drivers who are towing a vehicle from a public roadway at the request of a public officer or other law enforcement purpose.

6.9.4. Drivers transporting livestock, poultry, slaughtered animals or the grain, corn feed, hay, etc., used to feed animals are eligible to use the agricultural operations exception in 49 CFR 395.1 (k).

6.9.5. 49 CFR 395.1 (k) is amended to read: "Is conducted during the planting and harvesting seasons within Colorado as determined by the Department of Agriculture to be from January 1 to December 31."

6.10. REFERENCES TO FEDERAL AGENCIES TO INCLUDE STATE AGENCIES. All references to federal agencies and authorized personnel are to be construed to include the CSP, PUC, and other state or local enforcement agencies having a signed MOU with the CSP and their authorized personnel.

6.11. FILING OF INFORMATION RELATED TO FMCSR REPORTING REQUIREMENTS. All motor carrier and driver reporting requirements adopted by 8 CCR 1507-25 and/or referred to in 49 CFR 40, 368, 380, 382, 383, 385, 387, 390, 391, 392, 393, 395, 396, 397, and 399 must be filed with or delivered by mutually agreed upon methods upon request to the MCSS at 15075 S. Golden Rd., Golden, CO., 80401.

6.12. CDL MEDICAL QUALIFICATIONS. These rules and regulations apply to all vehicles meeting the definition of a commercial vehicle set forth in §42-4-235 (1) (a), CRS, and drivers who meet the definition of "Driver" as described in 49 CFR 390.5, with the following exceptions:

6.12.1. Drivers of intrastate vehicles and vehicle combinations having a GVWR or GCWR of not more than 26,000 lbs., not requiring a CDL to operate, are not subject to 49 CFR 391, Subpart E, Physical Qualifications and Examinations.

6.12.2. Vehicles owned and operated by the Federal Government or state government or political subdivision thereof not domiciled in Colorado, not transporting hazardous materials of a type and quantity requiring the vehicle to be marked or placarded under 49 CFR 172.504.

6.12.3. The operation of authorized emergency vehicles, as defined in §42-1-102 (6), CRS, while in emergency and related operations.

6.12.4. The operations of snowplows, as defined in §42-1-102 (91), CRS, and all other vehicles engaged in supporting the use thereof when snowplows are removing snow/ice from the roadway or engaged in related snow/ice removal operations.

MCS 7. **TRACTION DEVICES REQUIRED.** Drivers operating a commercial vehicle as defined in CDOT rule 2 CCR 601-14, with the exception of mobile cranes, operated on Interstate 70 between mileposts 133 and 259 from September 1st to May 31st inclusive, must carry tire chains consistent with the requirements set forth within §42-4-106 (5) (a) (I), CRS. Alternative Traction Devices (ATDs), including tire cables, may also be used as are defined and as use is consistent with 2 CCR 601-14.

MCS 8. **INTRASTATE MEDICAL WAIVERS.** MCSS may grant variances/waivers to drivers unable to satisfy the requirements of 49 CFR 391, Subpart E, consistent with these rules.

8.1. **APPROVAL OF MEDICAL WAIVERS.** Individual applications requesting a variance/waiver of specific requirements may be approved when the approval of a variance/waiver is supported by the decisions of a certified medical examiner and the documented determination of an appropriate medical professional, combined with the satisfaction of any applicable performance standards, ~~to~~ supporting a decision that a medical condition has no adverse impact on safety.

8.2. **MEDICAL WAIVER APPLICATION ONLINE.** Medical waiver requirements, submission information, and documents are available online at HTTPS://WWW.COLORADO.GOV/PACIFIC/CSP/MEDICAL-WAIVERS. Medical waiver applications may also be requested in person, by fax, or by mail from the MCSS office at 15075 S. Golden Rd., Golden, CO., 80401.

8.3. **WRITTEN NOTICE OF TERMS AND CONDITIONS.** Medical waiver cardholders are provided written notice of relevant program terms and conditions at the time of card approval and subsequent renewal(s).

8.4. **DENIAL OF MEDICAL WAIVER APPLICATION.** An application for a medical waiver may be denied if:

8.4.1. The applicant does not currently possess or is not in the process of attaining a state of Colorado CDL;

8.4.2. The applicant has a medical condition for which a waiver or variance is not available; or

8.4.3. Either the certified medical examiner or the medical professional fail to complete or certify the required waiver form(s).

8.4.4. Upon review of relevant motor vehicle operation data available to the CSP at the time of receipt of paperwork to re-issue a medical waiver to an individual having an expired or expiring waiver, the CSP determines that to re-issue a medical waiver to an individual does not promote safety, protect human life, or preserve the highways of this state.

8.4.4.1. The denial of an application for the re-issue or renewal of a medical waiver to an individual based upon relevant motor vehicle operation data available to the CSP at the time of the receipt of paperwork will be afforded the same appeal rights as a waiver revocation.

8.4.5. Denial of a medical waiver application will be by written notice from the MCSS.

8.4.5.1. Medical waiver applications denied as a result of incomplete, insufficient, or ineligible information may be resubmitted at the convenience of an applicant upon correction, completion, or upon meeting requirements of eligibility without prejudice.

8.5. MEDICAL WAIVER REVOCATION. A medical waiver may be revoked where the CSP determines that its' issue does not promote safety, protect human life, or preserve the highways of this state.

8.5.1. A medical waiver may be revoked by the CSP when a waiver holder fails to comply with applicable terms and conditions of the CSP Medical Waiver Program.

8.5.2. A medical waiver may be revoked by the CSP when it is determined that, based upon relevant motor vehicle operations data available to the CSP, the continued use of the waiver by a holder fails to promote safety, protect human life, or preserve the highways of this state.

8.5.3. Revocation of any medical waiver will be by written notice from the MCSS consistent with §24-4-104, CRS.

8.6. RIGHT TO HEARING UPON MEDICAL WAIVER REVOCATION. Within 30 days of receiving written notice from the MCSS of a pending waiver revocation, the MCSS will provide the waiver holder an opportunity to attend a hearing consistent with §24-4-104, CRS.

8.7. RIGHT TO APPEAL MEDICAL WAIVER REVOCATION SUBSEQUENT INITIAL HEARING. Within 20 days of the completion of this hearing or the failure of the waiver holder to attend, the Chief will issue a written decision either sustaining or overturning the medical waiver revocation. Within 30 days of receiving written notice from the MCSS revoking a medical waiver, the holder of the waiver may submit an appeal.

8.7.1. ~~a~~Appeal requests by waiver holders must be made in writing.

8.7.2. ~~a~~Appeal requests must be addressed to the Chief at the MCSS at 15075 S. Golden Rd., Golden, CO., 80401.

8.7.3. The Chief will hold a hearing upon the appeal consistent with §24-4-105, CRS.

8.7.3.1. The scope of any hearing or appeal will be limited to whether the applicant or waiver card holder complied with terms and conditions applicable to the medical waiver program.

8.7.4. The Chief will issue a written decision within 20 business days of the completed hearing.

8.7.4.1. If the Chief finds that evidence of non-compliance and/or ineligibility is sufficient, the medical waiver revocation will be sustained.

8.7.4.2. If the Chief finds that evidence of non-compliance and/or

ineligibility is insufficient, the medical waiver revocation will be immediately overturned and the medical waiver reinstated.

8.7.5. The decision of the Chief upon appeal will constitute a final agency action and is subject to judicial review as described by §24-4-106, CRS.

MCS 9. **INTRASTATE SAFETY FITNESS RATINGS AND CIVIL PENALTIES.** The CDPS is authorized by the provisions of §42-4-235 (2) (a), CRS, to collect civil penalties levied against intrastate carriers found in violation of the rules adopted by the CDPS pursuant to §42-4-235 (4) (a), CRS. The procedure established by these rules applies to the determination and issuance of these civil penalties.

9.1. **INTRASTATE CARRIER SAFETY RATINGS.** The CSP will establish a Safety Fitness Rating for each motor carrier upon which it conducts a Compliance Review. The CSP will use as general guidelines the procedures and definitions contained in 49 CFR 385.

9.2. **SCOPE, AUTHORITY, AND APPLICATION.** §42-4-235 (2) (a), CRS, regarding the minimum standards for commercial vehicles, provides that no person will operate a commercial vehicle on a public highway of this state unless such vehicle is in compliance with the rules adopted by the CSP. Any person who violates such rules will be subject to the civil penalties authorized pursuant to 49 CFR 386, Subpart G.

9.3. **49 CFR 386, SUBPART G NOT APPLICABLE TO INTRASTATE MOTOR CARRIERS.** Intrastate motor carriers will not be subject to any of the provisions in 49 CFR 386, Subpart G, that relate the amount of a penalty to a violator's ability to pay. Civil penalties will be based upon the nature and gravity of the violation(s), the degree of culpability, and such other matters as justice and public safety may require.

9.4. **EXCLUSIVE AUTHORITY TO CONDUCT COMPLIANCE REVIEWS.** The CSP will have the exclusive authority to conduct Compliance Reviews, as defined in 49 CFR 385.3 and to impose civil penalties pursuant to such rules.

9.5. **APPLICATION OF CIVIL PENALTY.** The Civil Penalty will be applied at the completion of a Compliance Review by an MCSS Investigator certified by the FMCSA as a Compliance Review Investigator.

9.6. **CIVIL PENALTY DEFINITIONS.** Unless otherwise specified, the following definitions are applicable to this MCS 9.

9.6.1. **Civil Penalty Process:** The process and proceedings to collect civil penalties by the CSP for violations of §42-4-235 (4) (a), CRS.

9.6.2. **Notice of Claim Letter (NOC):** The written order informing the motor

carrier of their penalty, the rights associated with the penalty, and the process for responding to the penalty.

9.6.3. Commercial Vehicle: ~~w~~Will have the same meaning as described in §42-4-235 (1) (a), CRS.

9.6.4. Compliance Review: An examination of motor carrier operations, such as driver's hours of service, maintenance and inspection, driver qualifications, CDL requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard.

9.6.5. Conditional Safety Rating: Indicates that a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standards that could result in THE occurrences listed in 49 CFR 385.5.

9.6.6. Motor Carrier: Will have the same meaning as described in §42-4-235 (1) (c), CRS.

9.6.7. Served/Service: Indicates a NOC or other service document was sent by first class mail to the last address furnished to the MCSS by the motor carrier or was personally served upon the motor carrier by a uniformed member of the CSP.

9.6.7.1. Service of a NOC or document by first class mail is considered complete when it is mailed, not when it is received.

9.6.8. Satisfactory Safety Rating: Indicates a motor carrier has in place and functioning adequate Safety Fitness controls to meet the safety fitness standard prescribed in 49 CFR 385.5. Safety Fitness controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

9.6.9. Unrated Safety Rating: Indicates a safety rating has not been assigned to the motor carrier by the CSP.

9.6.10. Unsatisfactory Safety Rating: Indicates a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard, resulting in occurrences listed in 49 CFR 385.5.

9.7. **SAFETY FITNESS RATING ASSIGNMENT.** Upon completion of a Compliance Review, the CSP will assign a proposed Safety Fitness Rating that will be based on the degree of compliance with the federal motor carrier safety fitness standard for motor carriers found in 49 CFR 385.5.

9.7.1. The Safety Fitness Rating will be determined using the factors prescribed in 49 CFR 385.7. A motor carrier may determine their degree of compliance with the safety fitness standard by reviewing 49 CFR 385.5.

9.7.2. On the 61st day after the assignment of a proposed Safety Fitness Rating, the motor carrier's Safety Fitness Rating will become a final Safety Fitness Rating.

9.7.3. The final Safety Fitness Rating of an intrastate motor carrier will be available to the public upon request by contacting the CSP CRU office at:

Colorado State Patrol
Central Records Unit
700 Kipling St.
Lakewood, CO 80215
303-239-4500

9.8. **ADMINISTRATIVE REVIEW OF SAFETY FITNESS RATING.** If a motor carrier believes the CSP committed an error in assigning its Safety Fitness Rating, they may request an administrative review. The request must conform to the following provisions:

9.8.1. The request must be in writing, addressed to the Chief within 30 days of the assignment of the proposed Safety Fitness Rating.

9.8.2. The request must explain the error the motor carrier believes the CSP committed in issuing the Safety Fitness Rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documentation that supports its argument.

9.8.3. The Chief may request more information and/or require the motor carrier to attend a conference to discuss the rating. If the motor carrier does not provide the information requested or attend the conference, the Chief may dismiss the request.

9.8.4. The Chief will serve the decision in writing within 30 days of receiving the request.

9.8.5. The proposed Safety Fitness Rating will remain as a proposed Safety Fitness Rating until the decision of the Chief.

9.8.6. The decision will include the assignment of a final Safety Fitness Rating. The decision constitutes final action by the CSP.

9.9. **MOTOR CARRIER REQUEST TO CHANGE SAFETY FITNESS RATING FOR CORRECTIVE ACTION(S).** In the event a Safety Fitness Rating is assigned to

an intrastate motor carrier, the motor carrier may request a change to their Safety Fitness Rating based on corrective actions taken by the motor carrier. A request cannot be made by a motor carrier and will not be acted upon by the CSP sooner than 90 days after the assignment of a proposed Safety Fitness Rating. The request must be submitted in writing and addressed to the Chief. The request must conform to the following provisions:

9.9.1. The motor carrier must submit a description of corrective action(s) taken, hereinafter referred to as the Cooperative Safety Plan.

9.9.2. The Cooperative Safety Plan must address each violation on the most recent Compliance Review that was an acute and/or critical violation. It must also address factor six (crashes) of the Compliance Review when the rating for factor six is "unsatisfactory."

9.9.3. The Cooperative Safety Plan must identify why the violation(s) cited as acute and/or critical were permitted to occur.

9.9.4. The Cooperative Safety Plan must discuss the actions to be taken to correct the deficiency or deficiencies that allowed the acute and/or critical violations to occur.

9.9.5. Actions taken to ensure these critical and/or acute violations do not reoccur in the future.

9.9.6. If factor six (crashes) is rated unsatisfactory, an accident countermeasure program must be included as part of the Cooperative Safety Plan. The program must include, but not be limited to, defensive driving training.

9.9.7. If the Cooperative Safety Plan includes actions taken in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., a schedule of when the activity is to occur must be included.

9.9.8. Any additional documentation or information that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents must be included.

9.9.9. The Cooperative Safety Plan must include a written statement certifying that the motor carrier will operate in compliance with the motor carrier safety and hazardous materials regulations adopted by the CSP pursuant to §§42-4-235 and 42-20-108, CRS, and all applicable state and local laws.

9.9.10. The Cooperative Safety Plan must be signed by a corporate officer in the case of a corporation, a member or manager in the case of an LLC, by the general partner of a limited partnership, or by all the partners or proprietors in the case of a general partnership or proprietorship.

9.10. **MOTOR CARRIER REQUEST TO CHANGE SAFETY RATING THROUGH COMPLIANCE REVIEW.** A motor carrier may request a change in their Safety Fitness Rating by requesting a follow-up Compliance Review, as follows:

9.10.1. The request must be made to the Chief IN WRITING. The request cannot be made by the motor carrier and will not be acted upon by the CSP sooner than three months after the assignment of a proposed Safety Fitness Rating.

9.10.2. The Compliance Review investigator will review the corrective action(s) taken by the motor carrier since the last Compliance Review.

9.11. CIVIL PENALTY ASSESSMENT. A Compliance Review may result in the assessment of a Civil Penalty for violations discovered during the Compliance Review, as prescribed by §42-4-235 (2), CRS.

9.12. CIVIL PENALTY AMOUNT DETERMINATION. The amount of a Civil Penalty Assessment will be determined by considering the following factors:

9.12.1. The nature and gravity of the violation(s).

9.12.2. The degree of culpability.

9.12.3. The history of offenses within THE three years preceding the date of the Compliance Review.

9.12.4. Such other matters as justice and public safety may require, not to include any consideration of a violator's ability to pay the Civil Penalty.

9.13. IMPLEMENTS OF HUSBANDRY EXEMPTED. The intrastate operation of implements of husbandry will not be subject to the civil penalties provided in 49 CFR 386, Subpart G.

9.14. APPLICATION OF UFA. The Compliance Review investigator will use the UFA as it is codified within §42-4-235 (2) (a), CRS, to determine the Civil Penalty to be levied upon a motor carrier.

9.15. NOTIFICATION OF PENALTY. Upon determination of a Civil Penalty, the Compliance Review investigator will service written notification of the civil penalty assessment upon a motor carrier in the form of a NOC.

9.16. PAYMENT OR ADMINISTRATIVE REVIEW OF PENALTY. The motor carrier ~~will~~ MUST respond to the MCSS within 30 days of service of the NOC upon the carrier by the CSP in one of the following ways:

9.16.1. Paying the full amount of the Civil Penalty as instructed in the NOC; or

9.16.2. Submitting a written request for a payment plan to the Commander of

the MCSS; or

9.16.3. If a motor carrier believes the CSP committed an error in determining its Civil Penalty, they may request an administrative review of that penalty. The following provisions govern the administrative review:

9.16.3.1. The request must be in writing, addressed to the Chief within 30 days of the service of the NOC.

9.16.3.2. The request must explain the error the motor carrier believes the CSP committed in issuing the Civil Penalty. The motor carrier must include a list of issues in dispute, and any supporting information or documentation.

9.16.3.3. The Chief may request additional information and/or require the motor carrier to attend a conference to discuss the penalty. If the motor carrier does not provide the information requested or attend the conference, then the Chief may dismiss this request.

9.16.3.4. The Chief will serve the motor carrier with a written decision within 30 days after the Chief has determined that the administrative record is complete. This decision will constitute a final agency action.

9.16.3.5. A motor carrier has 30 days from the date of the service the decision to pay the penalty, to arrange for a payment plan as described within these rules, or 35 days from the date of a final agency action, ~~to~~ file an action in the appropriate district court pursuant to §24-4-106 (4), CRS.

9.17. CARRIER FAILURE TO RESPOND TO CIVIL PENALTY AND REGISTRATION REVOCATION. If, after the 30 days a carrier does not pay the penalty, request a payment plan, or file an action in the appropriate district court, the carrier will be deemed to have failed to pay.

9.17.1. The MCSS will forward notice to the CDOR of any carrier deemed to have failed to pay, consistent with §42-4-235 (2) (d) (I), CRS.

9.17.2. If the MCSS forwards notice to CDOR of a carrier which has failed to pay the assessed or adjudicated penalty, the registrations of the vehicle(s) registered to the carrier will be canceled pursuant to §42-3-120, CRS.

MCS 10. <u>INFORMATION ON THESE RULES.</u> All contact with the CSP regarding these rules or their applicability should be addressed to:

Colorado State Patrol
Motor Carrier Safety Section
15075 S. Golden Rd.
Golden, CO., 80401-3990
303-273-1875
303-273-1939 (Fax)
MCSAP@STATE.CO.US

MCS 11. INFORMATION, MAINTENANCE AND REFERENCE OF PUBLICATIONS, STANDARDS, GUIDELINES AND RULES. All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules are on file and available upon request for public inspection by contacting the MCSS at 15075 S. Golden Rd., Golden CO., 80401-3990. These rules are available upon request from the MCSS and online through the CDPS website at ~~HTTPS://WWW.COLORADO.GOV/PACIFIC/PUBLICSAFETY/RULES-AND-REGULATIONS-6~~ HTTPS://PUBLICSAFETY.COLORADO.GOV/GET-INVOLVED/RULES-AND-REGULATIONS.

11.1. **AVAILABLE FOR PUBLIC INSPECTION AND REFERENCED CONSISTENT WITH STATUTE**. All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules will be provided to and made available for examination at any state publications depository library as required by §24-4-103 (12.5), CRS. The following publications, standards, guidelines, and rules are adopted as amended within these three rules and consistent with §24-4-103 (12.5), CRS, references are here provided:

11.1.1. Commercial Vehicle Safety Alliance (~~2021~~ 2022). North American Standard Out-of-Service Criteria (OOSC). April 1, ~~2021~~ 2022. Greenbelt, MD: Author.

11.1.2. Federal Motor Carrier Safety Regulations, 49 CFR 40, 380, 382, 383, 385, 387, 391-397, 399, and Appendix G (October 1, ~~2020~~ 2021). This information is also available online through the Government Publishing Office website at HTTPS://WWW.EFCR.GOV/-CGI-BIN/ECFR?PAGE=BROWSE.

11.2. MAINTENANCE OF COPIES. The MCSS will maintain copies of the complete texts of each of the publications, standards, guidelines referenced herein and these rules. The MCSS will make each available for public inspection during regular business hours.

11.3. AVAILABILITY OF COPIES. Interested parties may access information about or these documents free of charge online. Interested parties may also inspect the referenced materials and/or obtain copies of the adopted standards for a reasonable fee by contracting the MCSS. Copies of the adopted publications,

standards, guidelines, and rules may also be available from the organizations or agencies of origin:

11.3.1. ~~2021 CVSA Out-of-Service Inspection Criteria.~~ Commercial Vehicle Safety Alliance (CVSA), 6303 Ivy Lane, Suite 310, Greenbelt, Maryland, 20770-6319. Phone: 301-830-6143. Email: CVSAHQ@CVSA.ORG.

11.3.2. Federal Motor Carrier Safety Administration (FMCSA), 1200 New Jersey Ave., SE, Room W-65-206, Washington, DC, 20590. Phone: 1-800-832-5660. Website: WWW.FMCSA.DOT.GOV.

11.4. LATER EDITIONS NOT INCLUDED. These rules do not include later amendments to or editions of any publications, standards, guidelines, or rules incorporated by reference herein.

MCS 12. SEVERABILITY. If any provision of these rules or the application thereof to any person or circumstance is determined to be unlawful or invalid, the remaining provisions of these rules will not be affected, absent a specific reference.

Notice of Proposed Rulemaking

Tracking number

2021-00814

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-22

Rule title

CLAIMS FOR REIMBURSEMENT FOR THE COSTS OF RESPONSE AND MITIGATION OF HAZARDOUS SUBSTANCE INCIDENTS

Rulemaking Hearing

Date

02/02/2022

Time

01:00 PM

Location

ZOOM Virtual Hearing- See Additional Information for Details

Subjects and issues involved

These rules are applicable to claims for reimbursement attributed to a hazardous substance incident. These rules are being amended as a consequence of routine department rule review to assess continued viability, applicability, accuracy, and effectiveness of these rules. As a consequence of this review, proposed changes include:

*Updates to websites applicable to federal and state information;
*Updates to the formatting of these rules in their entirety, introducing section and subparagraph titles and formatting elements consistent with general rule formatting recommendations and guidance from the Colorado Secretary of State;
*Updates to existing definitions applicable to these rules;
*Updates regarding the process of requesting copies of documents, referencing the Colorado State Patrol Central Records Unit; and
*Introducing a severability clause into these rules.

Statutory authority

Sections 29-22-104(6)(A) and 29-22-104(6)(B), CRS

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DEPARTMENT OF PUBLIC SAFETY
COLORADO STATE PATROL

RULES AND REGULATIONS CONCERNING CLAIMS FOR REIMBURSEMENT FOR THE COSTS OF RESPONSE AND MITIGATION OF HAZARDOUS SUBSTANCE INCIDENTS

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §29-22-104 (6) (A), CRS, the Executive Director of the Colorado Department of Public Safety will promulgate rules creating a process by which a public entity, political subdivision of the state, or unit of local government claiming reimbursement pursuant to this section must establish that costs attributed to a hazardous substance incident are reasonable, necessary, and documented.

Pursuant to §29-22-104 (6) (B), CRS, the Executive Director of the Colorado Department of Public Safety will also promulgate rules and regulations create a process by which the parties involved in a dispute may access and receive assistance from qualified, knowledgeable persons able to perform the role of a voluntary ombudsman, mediator, or arbitrator to resolve disputed claims for the reimbursement of cost resulting from response to a hazardous substance incident.

These rules are being amended as a consequence of routine department rule review to assess continued viability, applicability, accuracy, and effectiveness of these rules. As a consequence of this review, proposed changes include:

- Updates to websites applicable to federal and state information;
- Updates to the formatting of these rules in their entirety, introducing section and subparagraph titles and formatting elements consistent with general rule formatting recommendations and guidance from the Colorado Secretary of State;
- Updates to existing definitions applicable to these rules;
- Updates regarding the process of requesting copies of documents, referencing the Colorado State Patrol Central Records Unit; and
- Introducing a severability clause into these rules.

It has been declared by the General Assembly that the creating and establishing of these processes for hazardous incident response reimbursement claims is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes is contrary to the peace, health, safety, and welfare of the citizens of Colorado. For these reasons, it is necessary that these rule amendments be adopted.

_____ _____

Stan Hilkey, Executive Director
Colorado Department of Public Safety

Date of Adoption

PUBLICATION NOTE: ~~**DELETIONS APPEAR IN STRIKE-OUT TEXT**~~, **RELOCATED TEXT APPEARS IN BLUE TEXT**, AND **NEW TEXT APPEARS IN RED AND RED CAPITALIZED TEXT.**

DEPARTMENT OF PUBLIC SAFETY
COLORADO STATE PATROL

RULES AND REGULATIONS CONCERNING CLAIMS FOR REIMBURSEMENT FOR THE COSTS OF RESPONSE AND MITIGATION OF HAZARDOUS SUBSTANCE INCIDENTS

PART I

GENERAL STATEMENTS

1.0 AUTHORITY TO ADOPT RULES AND REGULATIONS. Pursuant to §29-22-104 (6) (A), CRS, the Executive Director of the Colorado Department of Public Safety (CDPS) is authorized to adopt rules and regulations establishing a process through which a public entity, political subdivision of the state, or unit of local government may claim reimbursement of reasonable, necessary, and documented response and/or mitigation costs attributable to a hazardous substance incident. The Executive Director is further authorized by §29-22-104 (6) (B), CRS, to establish access to qualified persons to assist in the mediation or arbitration of dispatched hazardous incident response claims.

1.1. APPLICABILITY. These rules and regulations are applicable to all public entities, political subdivisions of this state, and/or units of local government. These rules apply to the submission of reimbursement claims arising out of submission of reimbursement claims arising out of response and mitigation of hazardous materials incidents where the Colorado State Patrol (CSP) is the Designated Emergency Response Authority (DERA) as defined within §29-22-102, CRS, pursuant to he provisions of §29-22-104, CRS.

1.2. DEFINITIONS. Unless otherwise specified, the definitions provided in §29-22-101 (2), CRS, ~~shall~~ apply to these rules. The following definitions are also applicable:

1.2.1. ~~A.~~ COSTS: Means the amount of money and/or damages related to hazardous substance incident response and mitigation activities. Costs may be direct or indirect.

1.2.2. ~~1.~~ **DIRECT COSTS:** Include those costs specifically incurred as a result of responding to and/or mitigation of a hazardous substance incident. Direct costs may include costs related to personnel salaries (inclusive of benefits); equipment use/damage; vehicle use and/or damage; expenditure of response/mitigation supplies; use of contract services; laboratory testing; and disposal and/or storage of hazardous materials/substances.

1.2.3. ~~**2. INDIRECT COSTS:** Include costs resulting from responding to a hazardous substance incident that are not considered a direct cost. Indirect costs may include clerical, accounting and legal services; report preparation costs; hazardous substance incident planning; and those costs arising out of subsequent processing or resolution of a claim for reimbursement.~~**B. DEPARTMENT:** Means the Colorado Department of Public Safety (CDPS).

1.2.4. ~~**C.**~~ **DESIGNATED EMERGENCY RESPONSE AUTHORITY (DERA):** ~~Shall have~~ HAS the same meaning as set forth within §29-22-102, CRS.

1.2.5. ~~**D.**~~ **DIRECTOR:** Means the ~~CDPS~~ Director OF THE COLORADO DEPARTMENT OF PUBLIC SAFETY (CDPS).

1.2.6. **INDIRECT COSTS:** INCLUDE COSTS RESULTING FROM RESPONDING TO A HAZARDOUS SUBSTANCE INCIDENT THAT ARE NOT CONSIDERED A DIRECT COSTS. INDIRECT COSTS MAY INCLUDE CLERICAL, ACCOUNTING, AND LEGAL SERVICES; REPORT PREPARATION COSTS; HAZARDOUS SUBSTANCE INCIDENT PLANNING; AND THOSE COSTS ARISING OUT OF SUBSEQUENT PROCESSING OR RESOLUTION OF A CLAIM FOR HAZARDOUS RESPONSE INCIDENT REIMBURSEMENT.

1.2.7. ~~**E,**~~ **RESPONSIBLE PARTY:** Means the person or persons having care, custody, and/or control of a hazardous substance at the time it is involved in a hazardous substance incident.

PART II

HSCR ~~1~~ 2.0.: <u>HAZARDOUS SUBSTANCE INCIDENT RESPONSE DOCUMENTATION</u>.

~~**A.**~~Responding agencies must provide to the Hazardous Materials Training and Response Section of the CSP, hereinafter the CSP Hazardous Materials Section, written documentation of any hazardous substance incident response and/or mitigation activity. t~~T~~his written documentation must ~~details~~ INCLUDE, at minimum:

2.1.1. The date, time, and location of the hazardous substance incident;

2.1.2. Identification of the hazardous substance(s);

2.1.3. Identification of the DERA and all other PRIVATE OR PUBLIC agencies present at the scene of the incident;

2.1.4. A summary describing the incident and all mitigation activity performed by the responding agency;

2.1.5. The type and number of response personnel INVOLVED;

2.1.6. The type and number of response vehicles INVOLVED; and

2.1.7. The type of equipment used IN RESPONSE TO THE HAZARDOUS SUBSTANCE INCIDENT.

PART III

HSCR 2~~3~~3.0: ESTABLISHING REIMBURSABLE COSTS. ~~**A.**~~ ~~–~~Eligible reimbursement costs may include direct and/or indirect costs AS EACH COSTS ARE IDENTIFIED WITHIN THE DEFINITIONS OF THESE RULES. ~~All claims for direct and/or indirect costs must be in writing~~ REGARDLESS OF COSTS BEING DIRECT OR INDIRECT, ~~**B. A**~~all claims ~~for direct and/or indirect~~ REQUESTING REIMBURSEMENT OF COSTS RESULTING FROM RESPONSE TO A HAZARDOUS SUBSTANCE INCIDENT MUST BE IN WRITING.

3.1.1. CALCULATION OF DIRECT COSTS. When calculating HAZARDOUS SUBSTANCE INCIDENT reimbursement claims for direct costs, agencies should include in the~~ir~~ written claim the following information, as EACH IS applicable TO THE INCIDENT:

3.1.1.1. ~~**i.**~~ ~~–~~The actual hourly rate for personal salaries (regular and/or overtime);

3.1.1.2. ~~**ii.**~~ ~~–~~The actual cost of expended supplies;

3.1.1.3. ~~**iii.**~~ ~~–~~The actual cost to replace or repair equipment (not vehicles) used during a response to a hazardous substance incident;

3.1.1.4. ~~**iv.**~~ ~~–~~An amortization/depreciation schedule for vehicles INVOLVED or the Federal Emergency Management Agency (FEMA) schedule of equipment rates set forth in 44 CFR 206.228;

3.1.1.5. ~~**v.**~~ ~~–~~A reimbursement rates schedule for expenses incurred by the CSP when responding to or mitigating hazardous substance incidents referencing applicable FEMA schedule rates together with applicable, averaged CSP costs

~~shall~~ IS available TO THE PUBLIC upon request. ~~to the public.~~ The CSP ~~h~~Hazardous ~~m~~Materials ~~s~~Section will update this schedule biannually.

3.1.2. CALCULATION OF INDIRECT COSTS. When calculating claims for indirect costs ARISING OUT OF RESPONSE TO A HAZARDOUS SUBSTANCE INCIDENT, responding agencies may ~~either~~ calculate indirect costs:

3.1.2.1. ~~**i.**~~ Using a formula current in use by the responding agency to calculate indirect costs; or

3.1.2.2. ~~**ii.**~~ By electing a standard calculation for indirect costs that equal up to 10% of the total direct costs being claimed by the RESPONDING agency.

PART IV

HSCR 3~~.~~4.0: CLAIMS PROCESSING. ~~**A.**~~ Claims for reimbursement ~~shall~~ MUST be submitted to the ~~responsible~~ party RESPONSIBLE as soon as possible after a hazardous substance incident site is declared safe by the DERA.

4.0.1. ~~**i.**~~ All communications from an agency claiming reimbursement for response to a hazardous substance incident to a responsible party must be in writing. ~~i.~~ The initial delivery of a CLAIM FOR reimbursement claim from an agency to a responsible party must be by certified mail.

HSCR 4~~.~~5.0: DISPUTE RESOLUTION. ~~**A.**~~ The Director will maintain a list of qualified persons available to perform s volunteer ombudsmen, mediators, or arbitrators to resolve disputes related to ~~these~~ HAZARDOUS SUBSTANCE INCIDENT RESPONSE claims. This list ~~will be made~~ IS available upon ~~receipt of~~ a written request addressed to the Director or his or her designee.

5.1.1. Persons volunteering to act as an ombudsmen, mediators, or arbitrators for disputes related to hazardous substance incident RESPONSE reimbursement claims must meet the qualifications ~~listed~~ IDENTIFIED WITHIN ~~in~~ §29-22-104 (6) (B), CRS.

5.1.2. ~~**B.** The p~~Parties WHO BECOME SUBJECT ~~involved in the~~ TO dispute resolution CONSISTENT WITH §29-22-104 (6) (B), CRS, may either enter into such agreements or understandings as may be necessary to resolve A ~~the~~ HAZARDOUS SUBSTANCE INCIDENT RESPONSE REIMBURSEMENT ~~the~~ CLAIM.

PART VI

HSCR 5 6.0: DERA REPORTING RESPONSIBLITIES. ~~A.~~ Pursuant to §29-22-102 (3) (a) and (b), CRS, the designation of a DERA to respond to HAZARDOUS substance incidents occurring within the corporate limits of a town, city, city and county, or within unincorporated areas of a county ~~will~~ MUST be reported annually to the CSP Hazardous Materials Section. ~~B.~~ Annually reported DERA designation information ~~shall~~ SHOULD be submitted to the CSP Hazardous Materials Section electronically at dera@state.co.us.

PART VII

HSCR 7.0: PUBLICATIONS AND RULES INCORPORATED BY REFERENCE. ~~A.~~ All publications and rules referred to in these regulations are on file and available for public inspection by contacting the CSP Hazardous Materials Section, 15065 S. Golden Road, Golden, CO., 80401.

7.1.1. All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules will be provided to and made available for examination at any state publications depository library as required by §24-4-103 (12.5), CRS. t~~T~~he following publications, standards, guidelines, and rules are adopted as amended within these rules in accordance with §24-4-103 (12.5), CRS:

7.1.1.1. ~~**a.**~~ Federal Emergency Management Agency, Department of Homeland Security, 44 CFR §206.228 (2009). The amortization/depreciation schedule of equipment rates is available online through the FEMA website at: HTTPS://WWW.FEMA.GOV/ASSISTANCE/PUBLIC/SCHEDULE-EQUIPMENT- RATES. ~~FEMA.GOV/MEDIA-LIBRARY-DATA/1444398992310B45F4EE2503909C4550ECD20/2015EQUIPMENTRATES508.PDF.~~

7.1.2. The CSP Hazardous Materials Section ~~shall~~ WILL maintain copies of the complete texts of ~~each~~ ANY REFERENCED ~~aforementioned~~ publications, standards, guidelines, and rules and will make ~~them~~ SUCH DOCUMENTS available for public inspection during regular business hours.

7.1.2.1. Interested parties may access ANY REFERENCED PUBLICATIONS, STANDARDS, GUIDELINES, OR RULES ~~these documents~~ free of charge online AS INDICATED WITHIN SECTION 7.01 OF THESE RULES.

7.1.2.2. Interested parties may also inspect ~~the~~ ANY referenced ~~incorporated~~ materials and/or obtain copies for the adopted standards for a reasonable fee by FIRST contacting the CSP CENTRAL RECORDS UNIT (CRU) AT 700 KIPLING ST., LAKEWOOD CO., 80215 ~~15065 S. Golden Rd., Golden CO., 80401~~. Copies of ~~the~~ ANY adopted publications, standards, guidelines, and rules may also be available from the organization of original ~~issue~~ PUBLICATION.~~:~~

7.1.2.2.1. ~~a.~~ Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS). AMORTIZATION/DEPRECIATION SCHEDULE FOR EQUIPMENT RATES (2009). 500 C, ST., SW, WASHINGTON, DC 20472. PHONE: 1-800-621-3362. THIS SCHEDULE MAY ALSO BE FOUND ONLINE AT HTTPS://WWW.FEMA.GOV/ASSISTANCE/PUBLIC/SCHEDULE-EQUIPMENT-RATES.

7.1.3. ~~B.~~ These rules do not include later amendments to or editions of any publications, standards, guidelines, or rules incorporated by reference herein..

7.1.4. ~~C.~~ These rules are available online through the CSP Hazardous Materials Section webpage at HTTPS://WWW.COLORADO.GOV/PACIFIC/CSP/HAZARDOUSMATERIALS AND THROUGH THE CDPS RULEMAKING WEBPAGE, HTTPS://WWW._____. All contact with the CSP regarding these rules or their applicability should be addressed to:

Colorado State Patrol, Hazardous Materials Section
15065, S. Golden Rd.
Golden, CO., 80401
303-273-1900

HSCR 8.0.: SEVERABILITY. IF ANY PROVISION OF THESE RULES OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS DETERMINED TO BE UNLAWFUL OR INVALID, THE REMAINING PROVISIONS OF THESE RULES WILL NOT BE AFFECTED ABSENT A SPECIFIC REFERENCE.

Notice of Proposed Rulemaking

Tracking number

2021-00815

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-25

Rule title

THE PERMITTING, ROUTING AND TRANSPORTATION OF HAZARDOUS AND NUCLEAR MATERIALS AND THE INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS IN THE STATE OF COLORADO

Rulemaking Hearing

Date

02/02/2022

Time

01:00 PM

Location

ZOOM Virtual Hearing- See Additional Information

Subjects and issues involved

Pursuant to Section 42-20-108(1) and (2), CRS, the Chief of the CSP has the authority to promulgate rules and regulations for the permitting, routing, and safe transportation of hazardous materials by motor vehicles within the state of Colorado. Pursuant to Sections 42-20-403, 42-20-504 and 42-20-508, CRS, the Chief of the CSP has the authority to promulgate rules and regulations for the permitting, routing, and safe transportation of nuclear materials by motor vehicles within the state of Colorado. Pursuant to Section 42-20-108.5, CRS, the Chief of the Colorado State Patrol is authorized to also adopt rules and regulations which exempt agricultural products from the hazardous materials rules.

Amendments are being proposed to 8 CCR 1507-25:
*Updating existing definitions and references;
*Adopting updated editions of the FMCSRs and CVSA Inspector and OOS Criteria;
*Refining and reorganizing existing rules provisions applicable to the declaration and longevity of temporary hazardous materials routing determinations by the CSP;
*Updating information relevant to requests for documents;
*Updating information referencing state and federal sources alike;

Statutory authority

Sections 42-20-108 (1) and (2), CRS; 42-20-403, 42-20-504, and 42-20-508, CRS; and 42-20-108.5, CRS

Contact information

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Title

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303-815-9027

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DEPARTMENT OF PUBLIC SAFETY DIVISION OF STATE PATROL
RULES AND REGULATIONS CONCERNING THE
PERMITTING, ROUTING & TRANSPORTATION OF HAZARDOUS AND NUCLEAR MATERIALS
AND
THE INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS IN THE STATE OF COLORADO
STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-20-108 (1) and (2), CRS, the Chief of the Colorado State Patrol has the authority to promulgate rules and regulations for the permitting, routing, and safe transportation of hazardous materials by motor vehicles within the state of Colorado. Pursuant to §§42-20-403, 42-20-504 and 42-20-508, CRS, the Chief of the CSP has the authority to promulgate rules and regulations for the permitting, routing, and the safe transportation of nuclear materials by motor vehicles within the state of Colorado. Pursuant to §42-20-108.5, CRS, the Chief of the Colorado State Patrol is authorized to also adopt rules and regulations which exempt agricultural products from the hazardous materials rules.

Amendments are being proposed to 8 CCR 1507-25:

- Updating existing definitions and references applicable to these rules as necessary;
- Adopting updated editions of the FMCSRs and CVSA Inspector and OOS Criteria;
- Refining and reorganizing existing rule provisions applicable to the declaration and longevity of temporary hazardous materials routing determinations by the CSP;
- Updating information relevant to requests for documents, incorporating information identifying other relevant sections of the Colorado State Patrol supporting public information requests;
- Updating information referencing state and federal sources alike, including corrections to web address information and statutory references as necessary;
- Updating provisions applicable to the scheduling of nuclear materials transports consistent with and to accurately reflect current, existing patrol practices; and
- Addressing minor grammar and formatting issues.

It has been declared by the General Assembly that the permitting, routing, and transportation of hazardous and nuclear materials is a matter of statewide interest and concern. The absence of rules to carry out the purpose of the statutes applicable thereto is contrary to the public health, peace, safety, and the welfare of this state. For these reasons, it is necessary that these rules, inclusive of the revisions proposed, are adopted.

_____ _____

Colonel Matthew C. Packard
Chief, Colorado State Patrol

Date of Adoption

DEPARTMENT OF PUBLIC SAFETY DIVISION OF STATE PATROL

RULES AND REGULATIONS CONCERNING THE PERMITTING, ROUTING & TRANSPORTATION OF HAZARDOUS AND NUCLEAR MATERIALS

AND

THE INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS

IN THE STATE OF COLORADO

PART 1

GENERAL STATEMENTS

1.0 AUTHORITY. The Chief of the Colorado State Patrol is authorized by §42-20-108 (1) and (2), CRS, and §§ 42-20-403, 42-20-504, and 42-20-508, CRS, to promulgate rules and regulations for the permitting, routing, and safe transportation of hazardous and nuclear materials by motor vehicle within Colorado, in either interstate or intrastate transportation. Additionally, consistent with §42-20-108.5, CRS, the Chief of the ~~CSP~~ Colorado State Patrol is also authorized to adopt rules and regulations exempting agricultural products from hazardous materials rules.

1.1 APPLICABILITY. These rules and regulations apply to all persons who transport, ship or cause to be transported or shipped, ~~a~~ hazardous, nuclear, or agricultural materials or products by motor vehicle over the public roads of Colorado.

1.2 REQUIRED COMPLIANCE WITH 8 CCR 1507-1~~, MINIMUM STANDARDS FOR COMMERCIAL VEHICLE OPERATION IN COLORADO~~. All commercial vehicles that transport hazardous and/or nuclear materials must comply with 8 CCR 1507-1, the Rules and Regulations Concerning the Minimum Standards for the Operation of Commercial Vehicles~~, 8 CCR 1507-1~~.

1.3 GENERAL DEFINITIONS. Unless otherwise specified, definitions of general applicability throughout these rules are:

1.3.1 CDOT: Colorado Department of Transportation.

1.3.2 CDPHE: Colorado Department of Public Health and Environment.

1.3.3 **CDPS:** Colorado Department of Public Safety.

1.3.4 **CFR:** Code of Federal Regulations.

1.3.5 **CHIEF:** Means the Chief of the Colorado State Patrol. Unless otherwise specified, also includes the designees of the Chief of the Colorado State Patrol WHERE SUCH DESIGNATION IS PERMISSIBLE AND CONSISTENT WITH STATUTE AND APPLICABLE CDPS AND CSP RULES AND POLICIES.

1.3.6 **CSP:** Colorado State Patrol.

1.3.7 **CVSA:** Commercial Vehicle Safety Alliance.

1.3.8 **ENFORCEMENT OFFICIAL:** As identified within §42-20-103 (2), CRS, is limited to a peace officer who is an officer of the CSP as described in §§16-2.5-101 and 16-2.5-114, CRS; a certified peace officer who is a certified Port of Entry officer as described in §§16-2.5-101 and 16-2.5-115, CRS; a peace officer who is an investigating official of the Public Utilities Commission Transportation Section as described in §§ 16- 2.5-101 and 16-2.5-143, CRS; or any peace officer as described in §16-2.5-101, CRS.

1.3.9 **FMCSA:** Federal Motor Carrier Safety Administration.

1.3.10 **FMCSR:** Federal Motor Carrier Safety Regulations.

1.3.11 **HAZARDOUS MATERIALS:** As defined within §42-20-103 (3), CRS, are those materials listed in Tables 1 and 2~~,~~ OF 49 CFR 172.504, excluding highway route-controlled quantities of radioactive materials as defined in 49 CFR 173.403 (2), excluding ores~~,~~ and the wastes and tailing therefrom, and excluding special fireworks where the aggregate amount of flash powder does not exceed 50 pounds.

1.3.12 **MOTOR VEHICLE:** As defined within §42-20-103 (4), CRS, is any device capable of moving from place to place upon public roads. The term includes, but is not limited to, any motorized vehicle or any such vehicle with a trailer or semi-trailer attached thereto.

1.3.13 **MOU:** Memorandum of Understanding.

1.3.14 **OOS:** Out-of-Service.

1.3.15 **PERSON:** As defined within §42-20-103 (6), CRS, is an individual, a corporation, a government or governmental subdivision or agency, a partnership, an association, or any other legal entity; except that separate divisions of the same corporation may, at their request, be treated as separate persons.

1.3.16 **POE:** Port of Entry, a branch of the CSP.

1.3.17 **PUC:** Public Utilities Commission.

PART 2

HAZARDOUS MATERIALS TRANSPORTATION

(HMT)

HMT2.0 **APPLICATION OF 49 CFR TO THE TRANSPORTATION OF HAZARDOUS MATERIALS.** The transportation of hazardous materials by motor vehicle must occur consistent with the regulations contained in:

49 CFR 107	Hazardous Materials Program Procedures
49 CFR 171	General Information, Regulations and Definitions
49 CFR 172	Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans
49 CFR 173	Shippers- General Requirements for Shipments and Packagings
49 CFR 177	Carriage by Public Highway
49 CFR 178	Specifications for Packagings
49 CFR 180	Continuing Qualification and Maintenance of Packagings
49 CFR 387	Minimum Levels of Financial Responsibility for Motor Carriers
49 CFR 397	Transportation of Hazardous Materials; Driving and Parking Rules

of the United State Department of Transportation Hazardous Materials Regulations as the same were in effect on October 1, ~~2020~~ 2021. §42-20-108 (3), CRS, provides that these federal regulations may be ~~are~~ used as general guidelines by the Chief in the promulgation of these rules. These rules adopt the aforementioned sections of the CFR to support the enforcement of regulations applicable to the transportation of hazardous materials, with the following modifications:

HMT2.0.1 **DEFINITION OF PERSON.** The definition of person is as it is described within these rules. The definition of person set forth within §49 CFR 107.1 is not applicable.

HMT2.0.2 **INAPPLICABILITY OF FEDERAL HAZARDOUS MATERIALS REGULATIONS EXEMPTION TO PERSONS AND FUNCTIONS.** §49 CFR 171.1 (d) (5), as it exempts specific functions from the hazardous materials regulations, is specifically not adopted by these rules and does not apply.

HMT2.1 **CVSA INSPECTION STANDARDS.** Through an MOU~~,~~ dated October 1, 2019, with the CVSA, the CSP, as a division of CDPS, adopts the CVSA inspection procedures, decal application policies, and OOS criteria established for the inspection of commercial motor vehicles.

HMT2.2 **APPLICABILITY OF CVSA OPERATIONS MANUAL.** Enforcement officials performing safety inspections upon motor vehicles transporting hazardous materials will use the inspection

procedures, decal application policies, and OOS criteria, as it appears in the CVSA Operations Manual, effective April 1, ~~2021~~ 2022.

HMT2.3 **HAZARDOUS MATERIALS INCIDENT NOTIFICATION.** A driver of a motor vehicle transporting hazardous materials as cargo involved in a hazardous material spill or incident must immediately provide notice of the nature and location of the hazardous materials spill or incident to the law enforcement agency in closest proximity thereto, consistent with the requirements of §42-20-113 (3), CRS.

HMT2.3.1 **IMMEDIATE NOTICE REGARDING HAZARDOUS MATERIALS AS CARGO.** A driver of a motor vehicle involved in an incident having the potential to result in or that does result in the potential spilling or release of cargo classified as hazardous material(s) will immediately notify–the nearest law enforcement agency of the location of the incident and any other information minimally necessary for an informed response.

HMT2.3.2 **IMMEDIATE NOTICE REGARDING SPILL OR RELEASE OF FUEL FROM VEHICLE FUEL TANK.** A driver of a motor vehicle involved in a spill of hazardous material from a fuel tank providing fuel for the motor vehicle and/or equipment thereon, will give immediate notice of the spill or release location and any other information minimally necessary for an informed response to the nearest law enforcement agency.

HMT2.3.3 **MINIMALLY NECESSARY INFORMATION REQUIRED.** As it applies within these rules, "minimally necessary" includes, but is not limited to the following:

HMT2.3.3.1 The name of the person reporting the incident;

HMT2.3.3.2 The phone number at which the person reporting the incident can be contacted;

HMT2.3.3.3 The type of incident;

HMT2.3.3.4 The type of motor vehicle involved;

HMT2.3.3.5 The name of the motor carrier involved, if applicable;

HMT2.3.3.6 The extent of injuries, if any;

HMT2.3.3.7 The classification, name, and quantity of the hazardous materials involved; and

HMT2.3.3.8 If a continuing danger to public safety or the environment exists at the scene.

HMT2.3.4 **NOTICE TO CSP AND CDPHE.** As soon as possible after making an initial notification of a hazardous material spill/incident to the nearest law enforcement agency, the driver or a company representative will provide the same minimally necessary information to the:

HMT2.3.4.1 CSP at (303) 239-4501; and

HMT2.3.4.2 The CDPHE Environmental Spill Reporting Line at (877) 518-5608.

HMT2.4 AUTHORITY TO INSPECT MOTOR VEHICLES, BOOKS, AND RECORDS. Enforcement officials, as are identified within these rules or as is consistent with 8 CCR 1507-1, are authorized by §42-4-235 (1) (a), CRS, to perform commercial motor vehicle safety inspections.

HMT2.4.1 ENFORCEMENT OFFICIALS MUST MEET INSPECTOR QUALIFICATIONS. Enforcement officials ~~who are~~ authorized to perform commercial motor vehicle safety inspections by §42-4-235 (1) (a), CRS, and upon the drivers thereof, are required to meet the inspector qualifications referenced in §42-4-235 (4) (a) (I), CRS, when performing Level I North American Standard Safety Inspections. All enforcement officials performing Level I-VI North American Standard Safety Inspections must also maintain the certification requirements prescribed in the current CVSA Operations Manual referenced by these rules and incorporated as part of 8 CCR 1507-1.

HMT2.4.2 AUTHORITY TO INSPECT. Enforcement officials have the authority to inspect motor vehicles, motor vehicle drivers, cargo, and any required documents set forth in 49 CFR 368, 387, 390, 391, 392, 393, 395, 396, 397, and 399, as revised October 1, ~~2020~~ 2021, where and when motor vehicles are transporting hazardous materials on public streets and roads within Colorado.

HMT2.4.3 CSP ENFORCEMENT OFFICIALS AND COMPLIANCE REVIEWS. CSP Enforcement officials certified by the FMCSA pursuant to 49 CFR 385, Subpart C to perform Compliance Reviews and Safety Audits have the authority to enter the facilities of and inspect any motor carrier ~~as~~ consistent with §42-4-235 (1) (c), CRS, and any required records and supporting documents as are set forth in 49 CFR 40, 368, 380, 382, 383, 385, 387, 390, 391, 392, 392, 393, 395, 396, 397, and 399, and Appendix G, revised October 1, ~~2020~~ 2021.

HMT2.4.4 MOTOR VEHICLE OOS CRITERIA. The CSP incorporates by reference for enforcement purposes the CVSA North American Uniform OOS Criteria, as revised and effective April 1, ~~2021~~ 2022. Enforcement officials will use the CVSA North American Uniform OOS Criteria when determining whether a motor vehicle or driver should be placed OOS pursuant to §42-20-110, CRS.

HMT2.4.5 SHARING OF VIOLATION DATA WITH CDOT. The CSP will inform the CDOT in writing of information relevant to violations identified and assessed against a person having a hazardous materials transport permit and engaged in the transportation of hazardous materials. Violations discovered during inspections or compliance reviews are shared to promote the joint interests of public safety and effective enforcement of hazardous materials transport permit conditions, these rules, applicable statutes, and regulations.

HMT2.4.6 ~~PENALTY~~ PENALTIES FOR VIOLATIONS. Any person shipping or transporting hazardous materials in violation of any of the rules of this part is guilty of a misdemeanor. Upon conviction thereof, a person will be subject to fine and/or imprisonment, as each is indicated within §42-20-109, CRS.

PART 3

HAZARDOUS MATERIALS PERMITS

(HMP)

HMP3.0 **DEFINITIONS.** For purposes of this part, the following definitions apply:

HMP3.0.1 **LIABILITY INSURANCE OR SURETY:** As used in these rules, means insurance or surety for public liability.

HMP3.0.2 **LONGER VEHICLE COMBINATION (LVC):** Is any number of vehicle configurations, including a truck tractor as a power unit and multiple trailer combinations, as identified within §42-4-505 (2) (a) – (d), CRS.

HMP3.0.3 **PEACE OFFICER:** Is as defined in §16-2.5-101, CRS, and will include certified Peace Officers who are certified Port of Entry Officers as are described in §§16-2.5-101 and 16-2.5-115, CRS.

HMP3.0.4 **PUBLIC LIABILITY:** Is liability for bodily injury or property damage, including liability for environmental restoration, as discussed within 49 CFR 387.5.

HMP3.0.5 **TRANSMIX:** Also known as Petroleum Distillates, N.O.S., and only as used within this section, is a mixture of refined products specifically and individually exempted under HMP 3.4.3 of these rules. Transmix, as defined by these rules, is a combination of gasoline, diesel, jet fuel, and/or other refined petroleum products transported to processing plants for purposes of distillation and product separation. Transmix falls under UN1268 and is placarded as class 3 hazardous materials.

HMP3.1 **ANNUAL HAZARDOUS MATERIALS PERMIT APPLICATIONS AND FEES.** The fees assessed for hazardous materials permits, annually or per trip, are set within statute and are found in §42-20-202 (1) (b) and (c), CRS. The annual hazardous materials transport permit fee schedule is based on the number of motor vehicles an applicant operates within Colorado and is found within §42-20-202 (1) (b), CRS. Consistent with §42-20-201, CRS, the CDOT is responsible for the review and approval of any submitted applications and renewals for annual hazardous materials transport permits.

HMP3.1.1 **ALL ANNUAL APPLICATIONS PROCESSED BY CDOT.** All applications and renewals for Hazardous Materials Transportation Permits and all applicable fees due therefore are to be submitted to the CDOT Freight office. The CDOT Freight office may be contacted at 2829 W. Howard Pl, Denver, Colorado, 80204 or by phone at 303-757-9539. Information may also be found online at HTTPS://WWW. COOPR.CDOT.GOV. All applicable fees must be paid in a manner acceptable to the CDOT.

HMP3.2 CONDITIONS APPLICABLE TO HAZARDOUS MATERIALS PERMITS. Several conditions are applicable to the issue and use of annual hazardous materials permits. ~~t~~These conditions, detailed within applicable statutes, also include but are not limited to the following specifically identified requirements:

HMP3.2.1 USDOT NUMBER REQUIRED. Hazardous materials transporters within the state of Colorado are required to obtain a USDOT identification number pursuant to the provisions of 49 CFR 390.19T prior to the submission of an annual permit application.

HMP3.2.2 ANNUAL PERMIT FEE AFFECTED BY NUMBER OF VEHICLES. The fee assessed by the CDOT for an annual permit is determined by the number of vehicles being permitted and will be as described within §42-20-202 (1) (b), CRS.

HMP3.2.3 MUST COMMUNICATE INCREASE IN VEHICLES TO CDOT. Any increase in the total number of declared vehicles permitted to be operating within or through ~~the state of~~ Colorado must be communicated in writing through the completion of an amend request and the payment of any additional fees determined to be due to the CDOT.

HMP3.2.4 MUST OBTAIN AND MAINTAIN PUBLIC LIABILITY INSURANCE CONSISTENT WITH §42-20-202 (2) (a) AND (3) (a), CRS. Persons submitting an application for and receiving an annual hazardous materials transport permit must obtain and maintain public liability insurance or a surety at all times that must not be less than the minimum limits established within 49 CFR 387 with schedules and endorsements covering all vehicles that may be operated by, for, or under the control of the applicant or permit holder. Applicant must cause to file~~d~~ with the CDOT one of the following:

HMP3.2.4.1 A National Association of Regulatory Utility Commission (NARUC) "FORM E," Uniform Major Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, executed by a duly authorized agent of the insurer. Also required with this filing is the MCS-90, "Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980," issued by an insurer or insurers, and signed by an authorized representative of the insurance company or companies;

HMP3.2.4.2 A Form MCS-82, "Motor Carrier Surety Bond for Public Liability under Section 30 of the Motor Carrier Safety Act of 1980," issued by a surety, and signed by an "Attorney-in-Fact," with a copy of the Power of Attorney attached; or

HMP3.2.4.3 A copy of a written decision, order, or authorization of the FMCSA authorizing the motor carrier to self-insure pursuant to 49 CFR 387.309.

HMP3.2.5 ALL LIABILITY OR INSURANCE COVERAGE MUST MATCH NAME. All insurance and surety forms coverage must be filed with the exact name, initial, corporate and trade name, if any, and address as is included in the annual hazardous materials permit application filed with and maintained by the CDOT.

HMP3.2.6 NOTICE OF INSURANCE OR SURETY CANCELLATION OR NON-RENEWAL REQUIRED. e~~E~~very insurance certificate or surety bond required by and filed with the

CDOT must be kept in full force and effect, unless and until canceled by a 30-day written notice or not renewed by a 90-day written notice on a NARUC "FORM K," Uniform Notice of Cancellation of Motor Carrier Insurance Policies; "FORM BMC 35," Notice of Cancellation of Motor Carrier Insurance; or "FORM BMC 36," Notice of Cancellation of Motor Carrier Surety Bond, as may be appropriate, from the insurer or surety to the CDOT. The 30-day and 90-day notice will commence from the date the notice is received by the CDOT and the insurance certificate or surety bond must contain a statement to this effect.

HMP3.2.7 **NO UNAUTHORIZED ALTERATIONS.** No annual permit is to be altered, amended, or copied, unless authorized in writing by the CDOT or, in the case of a single trip permit (discussed within HMP3.3 of these rules), by an enforcement official.

HMP3.2.8 **PERMITS MUST BE AVAILABLE FOR INSPECTION.** The required permits must be readily available for inspection as required by §42-20-203, CRS. This requirement is met if a peace officer or enforcement official is able to electronically verify the permit is valid at the time of contact.

HMP3.3 **SINGLE TRIP HAZARDOUS MATERIALS PERMITS.** Pursuant to §42-20-202 (1) (c), CRS, single trip permits may be obtained from the CSP at all CSP POE weigh stations. Each person transporting hazardous materials in, to, from, or through Colorado who has not previously obtained a valid annual hazardous materials transport permit from the CDOT must apply and pay for a single trip hazardous materials transport permit at the nearest CSP POE weigh station or to a CSP POE officer or office.

HMP3.3.1 **VALID FOR 72 HOURS.** Each single trip permit will be valid for a single continuous business venture, but in no event will the permit be valid for more than 72 hours, unless extended by any enforcement official for any reason the official deems advisable. Reasons for extension by an enforcement official may include mechanical difficulties and road and weather conditions.

HMP3.3.2 **ISSUED UPON APPROVAL AND PAYMENT.** A single trip hazardous materials permit will be issued upon the approval of a complete single trip permit application and the payment of a $25 ~~dollar~~ permit fee.

HMP3.3.3 **PROOF OF LIABILITY INSURANCE OR SURETY REQUIRED.** Persons submitting an application for a hazardous materials transportation single trip permit are required by §42-20-202 (3) (a), CRS, to supply proof of liability insurance or surety or sign a verification at time of the permit application.

HMP3.3.4 **SUBSEQUENT PROOF REQUIRED WHERE VERIFICATION STATEMENT SUBMITTED- SINGLE TRIP HAZARDOUS MATERIALS PERMIT.** Applicants who sign a verification in lieu of supplying acceptable proof of financial responsibility (liability insurance or surety) must forward to the CDOT Freight Office within 30 days of issuance of the permit:

HMP3.3.4.1 Their copy of the single trip hazardous materials permit; and~~,~~

HMP3.3.4.2 A legible copy of acceptable proof of financial responsibility as is required by §42-20-202, CRS, having matching information as is defined in paragraph HMP3.2.5 ~~HMP 4~~ of these rules.

HMP3.4 **LVCs AND THE TRANSPORTATION OF HAZARDOUS MATERIALS.** "LVCs" operating under the provisions of the CDOT Rules and Regulations promulgated pursuant to the provisions of §43-4-505, CRS, are prohibited from transporting the following specified hazardous material types and quantities:

HMP3.4.1 **TABLE 1, 49 CFR 172.504.** Any quantity of hazardous material within the hazard classes specified in 49 CFR 172.504, Table 1.

HMP3.4.2 **TABLE 2, 49 CFR 172.504.** Any material, unless otherwise specified herein, within the hazardous classes specified in 49 CFR 172.504, Table 2, that:

HMP3.4.2.1 Exceeds 55 gallons per package.

HMP3.4.2.2 Is transported in bulk quantities (containment system in excess of 3,500 water gallons), except as provided in HMP3.4.3.

HMP3.4.2.3 Is classified as a "Material Poisonous by Inhalation" as it is defined in 49 CFR~~, Part~~ 171.8.

HMP3.4.2.4 Requires evacuation of populated areas as specified in the most current version of the North American Emergency Response Guidebook in publication as of April 1, 2020.

HMP3.4.3 **PETROLEUM-BASED PRODUCTS EXEMPTED FROM LVC TRANSPORT PROHIBITION.** The prohibition of subparagraph HMP3.4.2.2 does not apply to the following petroleum-based products when transported in bulk quantities in an LVC of the type described in §42-4-505 (c) and (d), CRS:

HMP3.4.3.1 Gasoline, UN1203;

HMP3.4.3.2 Diesel Fuel, NA1993;

HMP3.4.3.3 Crude Oil, UN1267;

HMP3.4.3.4 Liquefied Petroleum Gas (LPG), UN1075;

HMP3.4.3.5 Aviation Fuel, UN1863; or

HMP3.4.3.6 Transmix, UN1268

HMP3.4.4 **COMPLIANCE WITH OTHER APPLICABLE LAW.** Persons operating LVCs must operate consistent with all other applicable provisions of state law, rules, and regulations.

HMP3.5 **PENALTIES FOR VIOLATIONS.** Upon conviction, any person shipping or transporting hazardous materials in violation of any rule in this Part 3 is subject to the penalties set forth within §42-20-204, CRS.

PART 4

HAZARDOUS MATERIALS ROUTE DESIGNATION

(HMR)

HMR4.0 **DEFINITIONS.** The definitions provided in §§42-20-103 and 29-22-101, CRS, apply to these rules and regulations. The following definitions also apply:

HMR4.0.1 **PETITION:** As used within these rules, means a CSP Hazardous Material Route Designation Petition Packet, including the route analysis process, worksheets, and petition resolution.

HMR4.0.2 **PETITIONING ENTITY OR ENTITIES:** As used within these rules, means local governmental entities, CDOT, a public highway authority, and any governmental entity that is a partner in a public-private partnership with respect to any highway, road, or street it maintains~~,~~ when making an application to the CSP for a new hazardous materials route designation, or for a change to an existing route designation as it is allowed under §42-20-302 (1) (a) – (e), CRS.

HMR4.0.3 **ROUTING FACTORS:** As used within these rules, are factors that must be considered and specifically addressed as part of any application petitioning the CSP for a new hazardous materials route designation or ~~a~~ to change an existing route designation. As it applies to petitions submitted to the CSP, Petitioning Entities must address each of the routing factors referenced by these rules and/or identified by 49 CFR 397.71 (b) (9). If a factor is inapplicable to a route petition, the ~~p~~Petitioning ~~e~~Entity must specifically indicate the factor and the basis for inapplicability.

HMR4.0.4 **SENSITIVE AREAS:** Sensitive Areas are areas that may experience a disparate impact in the event of exposure to the release of hazardous materials. This disparate impact may be environmental, social, etc., and could result in a greater demand upon emergency and public resources in the event of an emergency related to the release of hazardous materials. Sensitive Areas include, but are not limited to private homes; commercial buildings; special populations in hospitals, schools, prisons, stadiums, senior or group homes; communities having a higher number of ESL-speaking individuals, or individuals having physical, and/or mental disabilities, as compared to surrounding communities; water sources; and natural areas such as parks, wetlands, and wildlife reserves.

HMR4.0.5 **SPECIAL POPULATIONS:** Groups, individuals, or institutions included in a population that could be potentially exposed in the event of a hazardous materials incident that are also members of groups that may not be able or are unable to mobilize effectively in response to a threat to public health or safety without the assistance of emergency or other public services personnel.

HMR4.1 **PETITION APPLICATIONS FOR ROUTE DESIGNATIONS.** Petitioning Entities seeking to petition for a new or change to an existing hazardous materials route designation should consult with

and request guidance from the CDOT Freight Unit and the CSP Hazardous Materials Section regarding the applicable process, format, and substance of the route petition.

HMR4.1.1. **INTRODUCTORY INFORMATION FROM CDOT.** Introductory information on the process, FAQs, and unit contact information from CDOT are available online at HTTPS://WWW.CODOT.GOV/BUSINESS/HAZMAT-ROUTING. Correspondence to CDOT may be addressed to the CDOT Freight Unit at 2829 W. Howard Pl., Denver, CO., 80204.

HMR4.1.2 **GUIDANCE DOCUMENT AVAILABLE FROM THE CSP HAZARDOUS MATERIALS SECTION.** A guidance document, outlining the minimum required elements and documentation that should be included as part of a hazardous materials route designation petition application is available from the CSP Hazardous Materials Section upon request by calling 303-273-1900 or online at HTTPS://WWW.COLORADO.GOV/PACIFIC/CSP/HAZARDOUS-MATERIALS.

HMR4.2 **PETITION APPLICATION SUBMISSION PURSUANT TO §42-20-302, CRS.** Petitioning Entities making application to the CSP for a new hazardous materials route designation or for a change in an existing route designation consistent with §42-20-302, CRS, may submit a petition application for either to the CSP, no more than once a year.

HMR4.3. **CONSIDERATION FACTORS OF 49 CFR 397 ADOPTED.** 49 CFR 397 is adopted without amendment by these rules. The factors identified for consideration by 49 CFR 397.71 (b) (9) are applicable to all new and existing hazardous materialS routing petitions. 49 CFR 397.71 sets forth 13 categories of factors that must be considered when any hazardous materialS route, new or existing, is the subject of a hazardous materials routing petition application. Any petition applications delivered to the CSP subsequent to an initial CSP petition application review not including a discussion of these factors will not be deemed to be received, will be determined incomplete, and will be returned to the submitting entity for correction and resubmission without prejudice. Broadly, these 13 categories are:

HMR4.3.1 **POPULATION DENSITY:** The population that will be potentially exposed in the event hazardous materials are released, inclusive of residents, employees, motorists, and other persons in the area, with specific discussion of any of those persons or groups that may be considered to be special populations. The relationship of population density levels and the potential release of hazardous materials must also be addressed.

HMR4.3.2 **TYPE OF HIGHWAY:** The type and characteristics of the highway to be travelled must be identified.

HMR4.3.3 **TYPES AND QUANTITIES OF HAZARDOUS MATERIALS:** The type and amount of the hazardous materials that will or are normally transported along the petitioned route.

HMR4.3.4 **EMERGENCY RESPONSE CAPABILITIES:** An analysis of the emergency response capabilities resulting from consultation with the appropriate fire, law enforcement, and highway safety agencies. Analysis must consider and identify the proximity of facilities and resources to the potential impact zone in the event hazardous materials are released and must be included with the petition. Furthermore, local governmental authorities petitioning for a new or changes to an existing hazardous materials route designation must provide the CSP Hazardous Materials Section with the following information on the hazardous materials emergency response services within their jurisdiction:

HMR4.3.4.1 The names, addresses, points of contact, radio frequencies, call signs, and emergency and non-emergency phone numbers of all agencies who provide emergency services along the proposed route(s) and available alternatives;

HMR4.3.4.2 Which of the agencies identified respond to hazardous materials incidents and during what periods of time services are available;

HMR4.3.4.3 Which of the agencies identified have emergency response teams and the total number of teams each agency has;

HMR4.3.4.4 The total number of emergency response personnel available for each agency, and their level of hazardous materials training; and

HMR4.3.4.5 An inventory, list, or other information identifying the hazardous materials response equipment available from each agency.

HMR4.3.5 **RESULTS OF COMMUNITY OUTREACH/CONSULTATION:** Petitioning Entity must include the results of any consultation conducted in accordance with persons and/or entities who will be affected by the petitioned-for routing or routing change.

HMR4.3.6 **DISCUSSION OF SPECIFIC EXPOSURE AND RISK FACTORS:** Petitioning Entity must include a discussion specifying the exposure and risk factors associated with any of the hazardous materials likely to be transported along the petitioned route. Exposure risks for sensitive areas must be addressed.

HMR4.3.7 **TERRAIN CONSIDERATIONS:** Discussion of topography along and adjacent to the petitioned routing that may affect severity of an accident, control of hazardous materials in the event of a release, and impact the control and clean up of the release of any hazardous materials must be included.

HMR4.3.8 **CONTINUITY OF ROUTES:** Information on any outreach ~~E~~efforts to adjacent jurisdictions to consult and ensure routing continuity should be Included.

HMR4.3.9 **ALTERNATE ROUTES:** Information relevant to any alternate routes considered ~~and~~ must be included. Petitioning Entities should include detailed and specific information as to why the route being petitioned for is the most appropriate option and is safer than the alternative option(s) or, in the event of an existing route, the current route. Any references to statistical data, published works, or written analysis requires full reference information and may require a copy of the referenced information to be included as part of the petition application.

HMR4.3.10 **EFFECTS ON COMMERCE:** The routing proposed will not impose an unreasonable burden upon interstate or intrastate commerce.

HMR4.3.11 **DELAYS IN TRANSPORTATION:** The routing proposed will not create unnecessary delays in the transport of hazardous materials.

HMR4.3.12 **CLIMATIC CONDITIONS:** Weather conditions that are unique to a proposed route must be addressed within the petition application, including the impact of the weather conditions upon the potential release of any hazardous materials, control of a hazardous materials release, and clean-up thereof.

HMR4.3.13 **CONGESTION AND ACCIDENT HISTORY:** Petitioning Entities should also consider the congestion and accident history of the specific route they are petitioning to become a hazardous materials route or to make changes to and the impact of these factors upon the public emergency response, and to general transportation in the event of a potential hazardous materials release.

HMR4.4 **INITIAL PETITION APPLICATION REVIEW PRIOR TO CSP "RECEIPT."** Prior to formal submission and receipt of a hazardous materials petition, Petitioning Entities may request an initial review of the application draft from the CSP Hazardous Materials Section. The initial review is limited only to determining that all required elements of the hazardous materials petition application are addressed by the applicant and to identify the need for any additional supporting documentation regarding statements and information set forth within the application.

HMR4.4.1 **INITIAL REVIEW NOT AN OPINION.** The initial review will not indicate an opinion of the CSP regarding the potential success of the petition regarding the specified route designation or route designation amendment(s) proposed.

HMR4.4.2 **RESULTS OF INITIAL REVIEW COMMUNICATED BY EMAIL.** Any findings resulting out of an initial petition review will be informally communicated to the Petitioning Entity by email at an address provided by the Petitioning Entity to the CSP Hazardous Materials Section.

HMR4.4.3 **FAILURE TO REQUEST REVIEW NOT PREJUDICIAL.** The decision of a Petitioning Entity to not request and make available a hazardous materials routing petition to the CSP Hazardous Materials Section for initial review will not prejudice the receipt of the petition application. Petition applications submitted by Petitioning Entities that do not receive an initial review and are returned as not received for being incomplete will be encouraged to seek initial review of the application upon resubmission in the written response of the CSP Hazardous Materials Section returning the application.

HMR4.5 **INCOMPLETE HAZARDOUS MATERIALS ROUTING PETITION APPLICATIONS.** Hazardous materials routing petition applications delivered to the CSP will only be determined complete consistent with §42-20-302 (4), CRS, if the application satisfies all application criteria set forth within these rules, applicable statutes, and federal regulations.

HMR.4.5.1 **RETURN FOR COMPLETION.** Applications determined to be incomplete will be returned to the Petitioning Entity with a written statement from the CSP Hazardous Materials Section within 20 calendar days of receipt. The written statement from the CSP included with the returned application will provide information identifying what information is missing from the petition application.

HMR4.5.2 **APPLICATIONS REQUIRING ADDITIONAL DOCUMENTATION.** Upon submission, the CSP Hazardous Materials Section may determine that additional information supporting statements, conclusions, or efforts related to the petition may be required. Petitioning Entities will have 14 calendar days to respond to any request from the CSP Hazardous Materials Section for this information. Failure to provide information within 14 calendar days as requested may result in the petition application being determined incomplete and returned to the Petitioning

Entity, consistent with these rules. Satisfactory receipt of the requested information will result in the petition application being determined complete as is set forth within these rules.

HMR4.5.3 **SINGLE APPLICATION PER YEAR PROHIBITION INAPPLICABLE.** Petition applications determined to be incomplete and returned to Petitioning Entities for completion and resubmission are not subject to the statutory one application per year limitation established by these rules and set forth within §42-20-302, CRS. This limitation only applies to petition applications submitted to the CSP Hazardous Materials Section consistent with §42-20-302(1), CRS, and determined to be complete pursuant to §42-20-302 (4), CRS. All petition applications received by the CSP are considered to be "submitted" as is required by §42-20-302 (1), CRS, but a petition application is not considered to be accepted by the CSP until the petition is determined to be "complete" pursuant to §42-20-303 (4), CRS.

HMR4.6 **COMPLETE PETITION APPLICATION FILING DATE.** The filing date for a "complete" hazardous materials routing petition application, as it is presented within §42-20-302 (4), CRS, is the date of its acceptance by the CSP. Petitioning Entities will be notified in writing of the date of acceptance/filing date. Additional details regarding statutory requirements applicable to the petitioning process and relevant timelines thereto will also be included.

HMR4.7 **DELIVERY OF DRAFT OR FINAL HAZARDOUS ROUTE PETITION APPLICATIONS.** Petitioning Entities should deliver prepared petitions for initial review or to be considered as complete petition applications to the Colorado State Patrol Hazardous Materials Section, 15065 S. Golden Rd., Golden, CO., 80401-3990. Petitioning Entities may also arrange for electronic delivery of hazardous materials route petition applications by first calling the CSP Hazardous Materials Section at 303-273-1900.

HMR4.8 **HAZARDOUS MATERIALS ROUTE DESIGNATION SIGNS.** Pursuant to §42-20-303, CRS, local government authorities electing to use signs to provide notice of approved hazardous materials route designations within their jurisdiction must use the hazardous materials ROUTE designation and/or restriction sign standards adopted by CDOT.

HMR 4.8.1 **LOCATION OF SIGNAGE MUST BE SPECIFIED.** Local governmental authorities must specify the location of each sign erected to mark an approved hazardous materials route in writing to the CSP Hazardous Materials Section within 60 days of a route designation approval.

HMR4.9 **USE OF PROFESSIONAL QUALITY MAPS.** Local governmental authorities must submit copies of their professional quality maps within 60 days of an approved hazardous materials route designation to the CSP Hazardous Materials Section for approval. Local governmental authorities electing to use professional quality maps to identify approved hazardous materials route designations within their jurisdictions consistent with §42-20-302 (8), CRS, must meet the following minimum requirements:

HMR4.9.1 **MAP SCALE:** The map scale should be of sufficient proportions to clearly show the passage of a designated hazardous materials route within or through the jurisdiction.

HMR4.9.2 **MAP COLORS:** Designated hazardous materials routes or other approved route restrictions must be printed in red on a white background. All other printing should be in black.

HMR4.9.3 **MAP LEGEND:** The map legend should clearly describe the graphic representations used within the map.

HMR4.9.4 **MAP GRAPHICS:** The map should use graphic symbols that clearly represent the differences between designated hazardous materials and other routes, other highways, and jurisdiction boundaries.

HMR4.9.5 **MAP ROUTE INFORMATION:** The map should include a telephone number where the operator of a motor vehicle transporting hazardous materials can obtain additional information on hazardous materials and other routes, guidance regarding restrictions within the jurisdiction, or emergency assistance on a 24-hour basis.

HMR4.10 **DATA CHANGES AFFECTING APPROVED HAZARDOUS MATERIALS ROUTE PETITIONS.** Petitioning Entities must communicate changes in the original data and/or information relied upon to evaluate the risk level associated with an approved route to the CSP Hazardous MaterialS SECTION immediately, or as soon as is practicable, following the change. A change would be considered to be, but not be limited to:

HMR4.10.1 **ACCIDENT RATE.** A substantial change in the accident rate initially reported; or

HMR4.10.2 **CONSIDERATION FACTORS.** A substantial change in the mandatory or subjective factors affecting the route or required to be considered by 49 CFR 397.71 (b) (9) and/or applicable statutes or these rules.

HMR4.10.3 **EMERGENCY SERVICES INFORMATION.** Any changes to information relevant to available emergency services. Any changes regarding emergency services identified by a Petitioning Entity must be communicated in writing as soon as possible, but no later than 45 days following the change, to the CSP Hazardous Materials Section.

HMR4.10.3.1 **CDOT EXEMPTED.** CDOT is generally not required to provide notice of changes to relevant emergency services along designated hazardous materials routes. ~~h~~However, where CDOT~~, by agreement,~~ submits a petition for a local governmental authority BY AGREEMENT pursuant to §42-20-302 (9), CRS, provisions must be made within the agreement between CDOT and the local governmental authority for compliance with this reporting requirement.

HMR4.11 **DESIGNATED ROUTE REVIEWS, SURVEYS, AND EXEMPTIONS.** The CSP will periodically review the status of designated routes to determine if the approval terms of §42- 20-302 (8) (a) (I) – (IV), CRS, continue to be met. Upon review, routes demonstrating a change in the risk level of the route toward a higher risk factor, or that are impacted significantly by a change to a mandatory or subject factor, may be subject to reevaluation by the CSP.

HMR4.11.1 **ROUTE DETERMINED TO NO LONGER MEET §42-20-302 (8) (a) (I) – (IV), CRS.** The CSP will notify Petitioning Entities in writing if any designated hazardous materials route within their jurisdiction no longer meets the acceptance terms specified within §42-20-302 (8) (a) (I) – (IV), CRS, following reevaluation or a route review.

HMR4.11.1.1 **CSP CONSULTATION REGARDING ROUTE STATUS.** If a designated hazardous materials route no longer meets the approval terms of §42-20-302 (8) (a) (I) –

(IV), CRS, the CSP will consult with the Petitioning Entity to coordinate the submission of a revised petition. Petitions submitted for a change in an existing route designation are subject to the conditions and procedures of §42-20-302, CRS.

HMR4.11.2 **COMPLETION OF DESIGNATED ROUTE ROAD SURVEYS.** The CSP will conduct complete route surveys on designated hazardous materials routes on an as-needed basis. These surveys will be conducted to determine the type and quantity of materials being transported and the frequency of such transportation. Surveys conducted in incorporated areas will only be done after consultation with the appropriate local governmental agency.

HMR4.11.3 **NO ADDITIONAL EXCEPTIONS OR EXEMPTIONS.** There will be no exceptions and/or exemptions to designated hazardous materials routes other than those already specified within Title 42, Article 20, CRS.

HMR4.12 **HAZARDOUS MATERIALS PARKING REGULATIONS AND ORDINANCES.** The approval criteria set forth by these rules herein applies only to those parking regulations and ordinances submitted by local governmental jurisdictions which affect vehicles transporting hazardous materials operating in conjunction with the use of a designated hazardous materials route or routes. ~~l~~Local governmental jurisdictions requiring approval of parking regulations or ordinances pursuant to §42-20-302, CRS, must submit a copy of the proposed regulations or ordinances to the CSP Hazardous Materials Section for review consistent with these rules.

HMR4.12.1 **MUST NOT UNREASONABLY LIMIT PARKING.** For purposes of these rules, parking regulations or ordinances may be deemed to unreasonably limit parking of vehicles transporting hazardous materials when they are at variance with and more stringent than the regulations of the United States Department of Transportation published in 49 CFR 397, as revised October 1, ~~2020~~ 2021. Parking regulations or ordinances adopted by local governmental jurisdictions pursuant to the authority provided in §42-20-302 (2), CRS, as it is amended, must not unreasonably limit parking:

HMR4.12.1.1 On or near a designated hazardous materials route;

HMR4.12.1.2 For the purpose of pick up or delivery of hazardous materials;

HMR4.12.1.3 In an emergency, i.e., breakdown or accident; or

HMR4.12.1.4 For the purpose of a rest stop, i.e., meals, restroom breaks, or to comply with the driver's hours of service requirements as they are defined in 49 CFR 395, revised October 1, ~~2020~~ 2021.

HMR4.12.2 **NO SPECIAL PAYMENT OR PERMIT REQUIRED.** No parking regulation or ordinance will require a permit or payment of a fee for parking which is necessary and incident to the transportation of hazardous materials on or near a hazardous materials route. This provision does not apply where fees are collected from all motor vehicles, regardless of the type of commodity being transported, i.e. metered parking.

HMR4.13 **ROUTES DESIGNATED FOR THE TRANSPORTATION OF HAZARDOUS MATERIALS.** Permanently designated hazardous materials routes for the transportation of hazardous materials are as specified herein:

HMR4.13.1 NORTH - SOUTH HAZARDOUS MATERIALS ROUTES DESIGNATED PURSUANT TO §42-20-305, CRS:

HMR4.13.1.1 Colorado 9 from US 40 in Kremmling to Interstate 70 in Silverthorne.

HMR4.13.1.2 Colorado 13 from Wyoming to Moffat County Road 183 North of Craig.

HMR4.13.1.3 Colorado 13 from US 40 West of Craig South to US 6 West of Rifle.

HMR4.13.1.4 Colorado 17 from US 285 near Mineral Hot Springs to US 160 near Alamosa.

HMR4.13.1.5 Interstate 25 from Wyoming to New Mexico.

HMR4.13.1.6 Colorado 47 from Interstate 25 to the junction of US 50.

HMR4.13.1.7 Colorado 71 from Colorado 14 to US 24 in Limon (East junction).

HMR4.13.1.8 Colorado 71 from US 24 in Limon (West junction) to US 50 near Rocky Ford.

HMR4.13.1.9 Colorado 79 from Colorado 52 to Interstate 70 at Bennet.

HMR4.13.1.10 Colorado 83 from US 24 to Colorado 115.

HMR4.13.1.11 Colorado 91 from Interstate 70 to US 24 near Leadville.

HMR4.13.1.12 Colorado 113 from Nebraska to US 138.

HMR4.13.1.13 Colorado 115 from Colorado 83 to US 50.

HMR4.13.1.14 Colorado 119 from Colorado 157 to Colorado 52.

HMR4.13.1.15 Colorado 125 from Wyoming to US 40 West of Granby.

HMR4.13.1.16 Colorado 127 from Wyoming to Colorado 125.

HMR4.13.1.17 US 138 from Colorado 113 to US 6 (Chestnut St.) in Sterling.

HMR4.13.1.18 Colorado 139 from Colorado 64 in Rangely to Interstate 70 near Loma.

HMR4.13.1.19 Colorado 141 from Interstate 70 business loop near Grand Junction to US 50.

HMR4.13.1.20 Colorado 141 from US 50 to US 491.

HMR4.13.1.21 Colorado 157 from US 36 to Colorado 119.

HMR4.13.1.22 Interstate 225 from Interstate 70 to Interstate 25.

HMR4.13.1.23 US 287 from US 40 in Kit Carson to Oklahoma.

HMR4.13.1.24 US 285 from US 160 in Alamosa to New Mexico.

HMR4.13.1.25 US 285 from Colorado 470 to Colorado 112.

HMR4.13.1.26 US 491 from Utah to New Mexico.

HMR4.13.1.27 US 285 from Colorado 112 to US 160.

HMR4.13.1.28 US 85 from Wyoming to Interstate 76.

HMR4.13.1.29 Colorado 71 from Nebraska to Colorado 14.

HMR4.13.1.30 US 385 from Interstate 76 in Julesburg to US 40 in Cheyenne Wells.

HMR4.13.1.31 The City of Lamar's Second Street from US 50/385 to Maple Street.

HMR4.13.1.32 The City of Lamar's Maple Street from Second Street to US 50/287.

HMR4.13.1.33 The City of Craig's Great Divide Road from US 40 North to the city limits.

HMR4.13.1.34 Moffat County Road 7 (Great Divide Road) from Craig city limits North to Moffat County Road.

HMR4.13.1.35 Moffat County Road 183 from Moffat County Road 7 (Great Divide Road) East to Colorado 13.

HMR4.13.2 <u>EAST – WEST HAZARDOUS MATERIALS ROUTES DESIGNATED PURSUANT TO §42-20-305, CRS:</u>

HMR4. 13.2.1 US 6 (Loveland Pass) from Interstate 70 just East of the Eisenhower/Johnson Tunnels to Interstate 70 at Silverthorne.

HMR4.13.2.2 US 6 from Colorado 13 West of Rifle West to exit/entrance number 87 on Interstate 70.

HMR4.13.2.3 US 6 from State Highway 14 (Main St.) in Sterling to Nebraska.

HMR4.13.2.4 Colorado 10 from Interstate 25 in Walsenburg to US 50 in La Junta.

HMR4.13.2.5 Colorado 14 from US 40 to Colorado 125.

HMR4.13.2.6 Colorado 14 from Interstate 25 to US 6 in Sterling.

HMR4.13.2.7 US 24 from Colorado 91 at Leadville to Interstate 25 in Colorado Springs.

HMR4.13.2.8 US 24 from Colorado 83 to Interstate 70 at West Limon (Exit 359).

HMR4.13.2.9 US 24 business route from US 24 on the West side of Limon to the West junction of Colorado 71.

HMR4.13.2.10 US 24 business route from the East junction of Colorado 71 (in Limon) to I-70 (Exit 363).

HMR4.13.2.11 US 34 from Interstate 25 to Interstate 76.

HMR4.13.2.12 US 34 from the West junction of Colorado 71 to Nebraska.

HMR4.13.2.13 US 36 from Interstate 25 to Colorado 157.

HMR4.13.2.14 US 36 from Interstate 70 in Byers to Kansas.

HMR4.13.2.15 US 40 from Utah to the intersection of Colorado 13 west of Craig.

HMR4.13.2.16 US 40 from Moffat County Road CG 2 (First Street) just East of Craig to Interstate 70.

HMR4.13.2.17 US 40 from I-70 (Exit 363) in Limon to Kansas.

HMR4.13.2.18 US 50 from the North junction of Colorado 141 near Grand Junction to Kansas.

HMR4.13.2.19 Colorado 52 from Colorado 119 to Colorado 79.

HMR4.13.2.20 Colorado 64 from US 40 in Dinosaur to Colorado 13.

HMR4.13.2.21 Interstate 70 from Utah to US 6 at Silverthorne (Loveland Pass).

HMR4.13.2.22 Interstate 70 from US 6 just East of Loveland Pass to Interstate 25.

HMR4.13.2.23 Interstate 70 from Interstate 27 to Kansas.

HMR4.13.2.24 Interstate 70 business route from Interstate 70 East of Grand Junction to Colorado 141.

HMR4.13.2.25 Interstate 76 from Interstate 25 to Nebraska.

HMR4.13.2.26 Colorado 112 from US 285 to US 160.

HMR4.13.2.27 US 160 from New Mexico to Interstate 25 business route in Walsenburg, South to Exit 49 on Interstate 25.

HMR4.13.2.28 Interstate 270 from Interstate 70 to Interstate 76.

HMR4.13.2.29 Colorado 470 from US 285 to Interstate 70.

HMR4.13.2.30 US 550 from US 160 to New Mexico.

HMR4.13.2.31 The City of Craig's First Street from Colorado 13 East to the city limits at Colorado 394.

HMR4.13.2.32 Moffat County Road CG 2 (First Street) from the Craig city limits at Colorado 394 East to US 40.

HMR4.13.3 ADDITIONAL ROUTES FOR GASOLINE DIESEL FUEL AND LIQUEFIED PETROLEUM GAS. While generally required to employ designated state, federal, and interstate roadways, transporters of Gasoline, Diesel Fuel and Liquified Petroleum Gas may routinely travel on the following state and federal highways:

HMR4.13.3.1 US 160 from Interstate-25 to the Kansas border.

HMR4.13.3.2 US 350 from US 160 to US 50.

HMR4.13.3.3 US 385 from US 50 US 40.

HMR4.13.3.4 SH 96 from SH 71 to the Kansas Border, and

HMR4.13.3.5 SH 109 from US 160 to East 3rd Street in La Junta.

HMR4.13.4 ADDITIONAL ROUTE FOR GASOLINE, DIESEL FUEL, LIQUEFIED PETROLEUM GAS AND CRUDE OIL. While generally required to employ designated state, federal, and interstate roadways, transporters of gasoline, diesel fuel, liquefied petroleum gas and crude oil may routinely travel on Weld County Road 49, also identified as the Weld County Highway, between Interstate 76 and US 34.

HMR4.14 CLOSING OF DESIGNATED HAZARDOUS MATERIALS ROUTES MUST BE COMMUNICATED. The closing of a public road that is designated as a hazardous materials route, or restriction on the movement of traffic over the same due to highway construction, severe weather, or other factors, must be communicated by the CDOT or the affected county road and bridge office as soon as possible to the CSP Hazardous Materials Section during normal business hours at (303) 273-1900. The CSP Denver Regional Communications Center must be contacted when these events occur outside of normal business hours at (303) 273-4501.

HMR4.15 CSP DECLARATION OF EMERGENCY, TEMPORARY, OR ALTERNATE HAZARDOUS MATERIALS ROUTES. Pursuant to §42-20-301 (1) (a), CRS, the CSP has the sole authority to designate which public roads are permitted to be used by motor vehicles transporting hazardous materials and which are not. Included in this authority is the ability to apply conditions to the use of hazardous materials routes consistent with the scope of authority provided to the CSP through §42-20-301, CRS.

HMR4.15.1. ROUTING IN RESPONSE TO EMERGENCY DECLARATION. In the event of a declaration of emergency, the Chief may determine a temporary alternate hazardous materials transportation route or routes which then may remain in effect for a period not to exceed the duration of the declared emergency.

HMR4.15.2. TEMPORARY ROUTING IN RESPONSE TO EVENTS. Consistent with the authority granted by §42-20-301 (1) (b), CRS, the CSP may include or apply conditions or restrictions to vehicles transporting hazardous materials not defined as agricultural products, and listed in Tables 1 and 2 of 49 CFR 172.504 that are consistent with the restrictions of §42-20-301 (1)(b) and (2), CRS.

HMR4.15.2.1. CONSTRUCTION, WEATHER, AND OTHER LIMITED EVENTS. The CSP may temporarily declare an alternate route when a hazardous materials route is restricted and/or closed due to highway construction, weather, or other restrictions or conditions affecting the movement of traffic (i.e., traffic incidents, motorcades, other special events). The temporary route declaration will be for a set period of time not to exceed the activity or event affecting the ability to use a designated hazardous materials route.

HMR4.15.3 TEMPORARY ROUTING IN RESPONSE TO OTHER CONDITIONS. As may be advisable and in the interest of public welfare and safety, the CSP may exercise its authority under §42-20-301 (b), CRS, to temporarily designate public roads or to apply conditions to the use of existing designated hazardous materials routes in response to specific conditions reasonably determined by the CSP to present an immediate negative impact to public welfare and safety. NOTICE OF ANY TEMPORARY HAZARDOUS MATERIAL ROUTING DESIGNATION WILL BE FORWARDED TO THE CDOT AND TO THE AFFECTED MUNICIPALITY, CITY, CITY AND COUNTY, AND/OR THE AFFECTED ROAD AND BRIDGE AUTHORITY.

HMR4.15.3.1 EFFECTIVE INITIAL DESIGNATION PERIOD ~~UP TO 12 MONTHS~~. An initial temporary hazardous materials route designation or initial temporary conditions designated by the CSP will remain in effect for a period not to exceed the duration of the condition nor to exceed 12 months absent subsequent review by the CSP.

HMR4.15.3.2 CONDITION REVIEW, EXTENSION, AND RESOLUTION. A temporary hazardous materials route designation or conditions upon an existing hazardous materials route determined by the CSP may not remain in effect beyond 12 months without a review to evaluate if the condition(S) reasonably determined to present the immediate negative impact(S) to public welfare and safety ~~persists~~ REMAIN. If this evaluation results in a determination that the condition(S) persist~~s~~, the CSP will extend the temporary designation INITIALLY FOR up to 180 days.

HMR4.15.3.2.1 OPPORTUNITY TO PETITION OR CORRECT. A ~~local~~ Petitioning Entity or CDOT is encouraged to EITHER take appropriate action consistent with resolving the condition(S) necessitating the ~~designation of an alternate at any point prior to or subsequent to a~~ temporary ALTERNATE route designation or ~~application of temporary conditions~~ to PETITION THE CSP FOR A PERMANENT ROUTING DESIGNATION. EITHER MAY BE ACCOMPLISHED AT ANY POINT PRIOR OR SUBSEQUENT TO A TEMPORARY ~~an existing~~ route DESIGNATION. IT IS ENCOURAGED THAT SUCH ACTIONS COMMENCE PRIOR TO THE EXPIRATION OF ANY 180-DAY EXTENSION.

HMR 4.15.3.2.2 ACTION DURING TEMPORARY DESIGNATION PERIOD. ~~Local entities and/or the CDOT will be encouraged to do so p~~Prior to the expiration of any ~~180-day extension applied to a CSP~~ temporary, ALTERNATE ROUTING DESIGNATION, CSP MAY CONSIDER ANY SUBSTANTIVE STEPS TAKEN TO EITHER ~~designation finding a negative condition to exist or persist. Failing the submission of an application, local entities and/or the CDOT will be encouraged to take actions to either eliminate,~~ correct ~~or mitigate a condition reasonably determined by~~ the CONDITIONS(S) WHICH RESULTED IN THE TEMPORARY, ALTERNATE DESIGNATION OR AN IMPENDING ROUTING PETITION WHEN DETERMINING IF IT IS APPROPRIATE TO EXTEND A DESIGNATION FOR AN ADDITIONAL PERIOD OF TIME. ~~CSP pursuant to statute and these rules to represent an immediate negative impact to public welfare or safety.~~

HMR4.15.3.3 TEMPORARY DESIGNATION OR CONDITIONS REPRESENT INFORMAL NOTICE. Temporary designation of a hazardous materials route or the determination to apply temporary restrictions to an existing hazardous materials route by the CSP in response to a condition reasonably determined to represent an immediate negative impact to public welfare and safety represents informal notice that an existing route designation may no longer satisfy statutory approval requirements referenced within these rules. Temporary route designations or temporary conditions placed upon existing route designations will result in a route review within 12 months from the CSP that may

result in permanent changes to existing routing or alternate route determination(s), consistent with the route review process outlined in these rules.

HMR4.15.3.3.1 PETITION CONSULTATION. IF DETERMINED APPROPRIATE, THE CSP WILL CONSULT WITH AN AFFECTED PETITIONING ENTITY TO SUBMIT A PETITION CONSISTENT WITH §42-20-302, CRS, AND THESE RULES.

HMR4.15.3.4 NO CURFEWS. Consistent with §42-20-301 (1) (b) and (c), CRS, the CSP will not impose curfews or conditions affecting the hours of operation or to motor vehicles being used to transport to or from a farm or ranch products necessary for agricultural production.

HMR4.15.3.5 APPLICABLE TO TABLES 1 AND 2, 49 CFR 172.504, AS LIMITED BY STATUTE. Any CSP hazardous materials route designations or conditions thereupon apply only to those materials listed in Tables 1 and 2 of 49 CFR 172.504 as specifically provided within §42-20-301 (2), CRS.

HMR4.15.3.6 NOTICE TEMPORARY ROUTE DESIGNATION NO LONGER VALID. UPON DETERMINATION THAT CONDITIONS NO LONGER REASONABLY WARRANT A TEMPORARY HAZARDOUS MATERIALS ROUTE DESIGNATION BY THE CSP, THE CSP WILL PROVIDE NOTICE TO THE CDOT AND TO ANY AFFECTED MUNICIPALITY, CITY, CITY AND COUNTY, AND OR AFFECTED ROAD/BRIDGE AUTHORITY.

HMR4.16 VIOLATION PENALTY. Any person convicted of shipping or transporting hazardous materials in violation of any of the rules of this part will be subject to the penalties set forth within §42-20-305, CRS.

PART 5

TRANSPORTATION OF NUCLEAR MATERIALS

(NMT)

NMT5.0 DEFINITIONS. The definitions provided in §§42-20-103 and §42-20-402, CRS, apply to these rules and regulations. The following additional definition will also apply:

NMT5.0.1 Complaint: A written document stating the essential facts and supporting documentation regarding any offense(s) charged.

NMT5.1 APPLICATION OF ARTICLES 10 AND 49 CFR TO NUCLEAR MATERIALS TRANSPORTATION. The transportation of nuclear materials, as they are defined within §42-20-402 (3) (a) – (c), CRS, by motor vehicles in Colorado must comply with the regulations contained in:

49 CFR 107	Hazardous Materials Program Procedures
49 CFR 171	General Information, Regulations, and Definitions
49 CFR 172	Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements and Security Plans
49 CFR 172	Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements and Security Plans
49 CFR 173	Shippers- General Requirements for Shipments and Packagings
49 CFR 177	Carriage by Public Highway
49 CFR 178	Specifications for Packagings
49 CFR 180	Continuing Qualification and Maintenance of Packagings
49 CFR 387	Minimum Levels of Financial Responsibility for Motor Carriers
~~**49 CFR 387**~~	~~Minimum Levels of Financial Responsibility for Motor Carriers~~
49 CFR 397	Transportation of Hazardous Materials Driving; and Parking Rules

of the United States Department of Transportation Hazardous Materials Regulations as the same were in effect on October 1, ~~2020~~ 2021. Authorized by §42-20-403, CRS, these rules are promulgated by the Chief for the safe transportation of nuclear materials with the following modifications:

NMT5.1.1 The definition of person provided within 49 CFR 107.1 does not apply.

NMT 5.2 **INSPECTION REQUIREMENTS.** Inspection procedures by the CSP are consistent with the CVSA inspection procedures, decal application policies, and OOS criteria as are published and in effect on April 1, ~~2021~~ 2022.

NMT5.2.1 **SHIPMENTS ENTERING COLORADO.** All motor vehicles carrying nuclear materials and entering Colorado on public roads must be inspected by an authorized enforcement official of the CSP nearest to the point at which the nuclear materials shipment enters the state or at a location specified by the CSP.

NMT5.2.2 **SHIPMENTS ORIGINATING IN COLORADO.** All motor vehicles carrying nuclear materials where the shipment thereof originates within Colorado must be inspected by an authorized enforcement official of the CSP at the point of origin.

NMT5.2.3 **TRANSPORT SUBSEQUENT TO CRASH.** Before being authorized to continue subsequent to a crash, ~~a~~ motor vehicle and shipping container transporting nuclear materials

must be inspected by a qualified inspector consistent ~~in accordance~~ with NMT5 of these rules and applicable statutes.

NMT5.2.4 **NO TRANSPORT OF NUCLEAR MATERIALS ABSENT PERMIT.** No person will transport nuclear materials into, within, through, or out of Colorado unless and until a permit authorizing the transportation of the nuclear materials is issued consistent with statute, these rules, and applicable rules adopted by the CDOT.

NMT5.3 **NUCLEAR MATERIALS ANNUAL PERMIT APPLICATIONS AND FEES.** Upon review and approval of an annual nuclear materials transportation permit application, the CDOT will issue an annual nuclear materials transportation permit pursuant to the authority provided by §42-20-501, CRS. All annual nuclear materials transportation permit applications and fees must be submitted to the CDOT Freight office AT 2829 W. Howard Place, Denver, Colorado, 80204. Information about the application, fees, terms and process may be downloaded from CDOT online at HTTPS://WWW.COOPR.CODOT.GOV.

NMT5.3.1 **ANNUAL COST AND TERM.** The annual ~~N~~nuclear materials transport permit fee is $500 unless otherwise indicated and each permit will be valid for one-year from the date of issuance. All applicable fees due must be paid in a manner acceptable to the CDOT.

NMT5.3.2 **ADDITIONAL APPLICABLE NUCLEAR TRANSPORT FEES.** In addition to the annual permit fee, each carrier ~~shall~~ MUST pay a $200 fee for each shipment that is transported. Payment of these fees must occur consistent with §42-20-502, CRS.

NMT5.3.2.1 **REGULAR MONTHLY SHIPMENTS.** If a regularly scheduled nuclear materials shipment is to be~~ing~~ made, the carrier may make arrangements with the CDOT to pay shipment fees on a monthly basis.

NMT5.4 **CONDITIONS APPLICABLE TO NUCLEAR MATERIALS PERMITS.** The following conditions are applicable to the use of nuclear materials permits in Colorado:

NMT5.4.1 **SHIPPING PAPERS REQUIRED.** Each person transporting nuclear materials within this state must carry a copy of the shipping papers required in 49 CFR 172, Subpart C, as revised October 1, ~~2020~~ 2021, and a paper or electronic copy of the nuclear materials transportation permit in the motor vehicle.

NMT5.4.2 **USDOT NUMBER REQUIRED.** Nuclear materials transporters operating within the state of Colorado are required to obtain a USDOT identification number pursuant to the provisions of 49 CFR 390.19T prior to the submission of a nuclear materials transport application.

NMT5.4.3 **NUCLEAR TRANSPORTATION PERMIT COPY REQUIRED.** A copy of the nuclear materials transportation permit must be placed in each motor vehicle operated within or through Colorado except that, if a peace officer or any other enforcement official may determine that the nuclear materials transportation permit can be electronically verified at the time of the contact, a copy of the permit need not be carried by the person transporting nuclear materials.

NMT5.4.4 **NUCLEAR TRANSPORTATION PERMIT NOT TO BE ALTERED.** No nuclear materials transportation permit is to be altered, amended, or copied unless authorized in writing by the CDOT, or, in the instance of a single permit, by any law enforcement official.

NMT5.5 AUTHORITY TO INSPECT~~ION~~ MOTOR VEHICLES, BOOKS, AND RECORDS RELATED TO THE TRANSPORT OF NUCLEAR MATERIALS. Enforcement officials of the CSP and/or the PUC have the authority to and may inspect motor vehicles, drivers, books, and records relevant to the transport of nuclear materials.

NMT5.5.1 CSP INSPECTION OF NUCLEAR MATERIALS TRANSPORTERS. CSP Enforcement Officials have the authority to and may at any time inspect any vehicle, driver, cargo, shipping papers, nuclear materials transportation permit, and any other papers required by law or rule to be carried when transporting nuclear materials on public roads in Colorado.

NMT5.5.2 CSP AND PUC INSPECTION OF RECORDS RELEVANT TO NUCLEAR MATERIALS TRANSPORTATION. CSP and PUC Enforcement officials have the authority to and may inspect any and all books and records of any carrier, shipper, or person who transports, ships, or causes to be transported or shipped any nuclear materials within Colorado.

NMT5.5.3 SHARING OF VIOLATION DATA WITH CDOT. The CSP will inform CDOT in writing of information relevant to violations identified and assessed against a person having a nuclear materials transport permit and engaged in the transportation of nuclear materials. Violations discovered during inspections or compliance reviews are shared to promote the joint interests of public safety and effective enforcement of nuclear materials transport permit conditions, these rules, applicable statutes, and regulations.

NMT5.6 VIOLATIONS- CIVIL PENALTIES: Any person who violates any provision of Article 20, Title 42, Parts 4 and 5, CRS, or these rules and regulations, except for the violations enumerated in ~~the~~ subsection (3) of §42-20-406, CRS, and of §42-20-505, CRS, is subject to a civil penalty of not more than $10,000 per day for each day during which a violation occurs. The penalty will be assessed by the Chief upon receipt of a complaint by any investigative personnel of the PUC or CSP, and after written notice and opportunity for a hearing pursuant to §24- 4-105, CRS.

NMT5.6.1 VIOLATIONS OF §§42-20-406 (3) AND 42-20-505, CRS. Civil penalties for violations of §§42-20-406 (3)~~,~~ and ~~§~~42-20-505 (2), CRS, will be assessed pursuant to statute and will appear on the complaint prior to service.

NMT5.6.2 VIOLATIONS SUBJECT TO PENALTIES WITHIN §42-20-505, CRS. Any person who violates any of the provisions of NMT5.3 or 5.4 of these rules is subject to the civil penalties listed in §42-20-505, CRS.

NMT5.6.3 PENALTIES ASSESSED DAILY FOR VIOLATION OF COMPLIANCE ORDER ISSUED PURSUANT §42-20-~~2~~408, CRS. Any person who violates a compliance order of the Chief which is not subject to a ~~state~~ STAY pending judicial review and which has been issued pursuant to §42-20-~~2~~408, CRS, will be subject to a civil penalty of not more than ~~§~~$10,000 per day for each day during which the violation occurs.

NMT5.7 CIVIL PENALTY ASSESSMENT PROCEDURES. All violations of statutes ~~cited~~ REFERENCED in NMT5.6, NMT5.6.2 and NMT5.6.3 will be investigated and summarized in a complaint filed by an authorized investigator of the PUC or the CSP. The investigation will include, as applicable, the nature and gravity of any violations, the degree of culpability, any history of violations, and other public safety concerns. The complaint will be served in person or by certified mail at the motor carrier's last known

address on file with the CSP or the CDOT. ~~The complaint will be served in person or by certified mail at the most recent current address on file with either the CSP or the CDOT.~~

NMT5.7.1 **CIVIL PENALTIES ASSESSED PURSUANT §§42-20-406 (3) AND 42-20-505 (2), CRS.** Civil penalties for violations of §§42-20-406 (3) and 42- 20-505 (2), CRS, will be assessed pursuant to statute and will appear on the complaint prior to service.

NMT5.7.2 **NOTICE AND RESPONSE FOR VIOLATIONS OF NMT5.6 AND §42-20-505 (1), CRS.** Complaints containing violations of NMT 4, ~~(A)~~ NMT5.6, and §42-20-505 (1), CRS, must provide notice of an opportunity to appear before the Chief for the purpose of contesting the violation or for providing mitigating factors to be considered in determining the amount of the civil penalty to be assessed.

NMT5.7.2.1 **CARRIER RESPONSE TO COMPLAINT.** Within 30 days of service of the complaint, the carrier must file a written response containing:

NMT5.7.2.1.1 A request for a formal hearing before the Chief pursuant to §24-4-105, CRS;

NMT5.7.2.1.2 A request for an informal hearing before the Chief; or

NMT5.7.2.1.3 A waiver of the right to a hearing before the Chief.

NMT5.7.2.2 **REQUEST FOR INFORMAL HEARING WAIVES FORMAL HEARING.** A request for an informal hearing before the Chief will constitute a waiver of the right to a FORMAL hearing pursuant to §24-4-105, CRS.

NMT5.7.2.3 **FAILURE TO FILE TIMELY RESPONSE TO COMPLAINT.** Failure to timely file a written response will constitute a default. Upon entry of a default, the Chief will assess a civil penalty against the carrier. For good cause shown, the entry of default may be set aside by the Chief within 10 days of the default.

NMT5.7.3 **CHIEF WILL ISSUE FINAL WRITTEN AGENCY DECISION.** Within 30 days of receiving all relevant information, the Chief will issue a final written agency decision to include the specific violations and civil penalties assessed. The final agency decision will be served upon the carrier in person, or by first class mail at the last known address on file at the CSP or CDOT, whichever is more current.

NMT5.8 **SCHEDULING OF NUCLEAR MATERIALS TRANSPORTS.** Motor vehicles transporting nuclear materials must schedule trips through all Colorado municipalities of over 50,000 in population so as to avoid rush-hour traffic.

NMT5.8.1 **RUSH-HOUR DEFINED.** For purposes of these rules, rush-hour is defined to be between 6:00 am to 9:00 am and 3:00 pm to 6:00 pm, Monday through Friday.

NMT5.8.2 **APPLICABILITY.** As a practical matter, this applies to the cities of Ft. Collins, Denver (greater metropolitan area), Colorado Springs, and Pueblo.

NMT5.8.3 **ACCESS OF ~~FORT~~ FT. COLLINS WEIGH STATION DURING RUSH-HOUR.** Motor vehicles transporting nuclear materials may access the CSP POE weigh station on Interstate 25 in

~~Fort~~ FT. Collins during rush-hour periods for the purpose of being inspected as required by §42-20-404, CRS.

NMR5.8.4 **TEMPORARY SCHEDULE VARIANCES.** PROVIDED A VARIANCE IS NOT IN VIOLATION OF APPLICABLE STATE STATUTES, APPROPRIATE FEDERAL REGULATIONS, OR THESE RULES, AND IS IN THE BEST INTEREST OF PUBLIC SAFETY, THE CSP HAZARDOUS MATERIALS SECTION MAY CONSIDER AND GRANT REQUESTS ALLOWING FOR THE TRANSPORT OF NUCLEAR MATERIALS THROUGH AREAS IDENTIFIED IN NMT5.8.2 DURING HOURS OTHERWISE PROHIBITED BY NMT5.8 AND NMT5.8.1.

NMT5.9 **ESCORT REQUIREMENTS FOR NUCLEAR MATERIAL TRANSPORTS.** Based upon security and/or emergency response concerns, the CSP may require motor vehicles transporting nuclear materials to be escorted by a CSP Hazardous Materials Team when traveling within or through ~~the state~~ Colorado.

NMT5.9.1 **HAZARDOUS MATERIALS TEAM NOT A REPLACEMENT FOR SHIPMENTS OF IRRADIATED REACTOR FUEL.** When required, the CSP Hazardous Materials Team escort will supplement, but not replace, the escort(s) required for a shipment of irradiated reactor fuel under the provisions of 10 CFR 73.37 (b) and (c).

NMT5.9.2 **LICENSEE WILL BE NOTIFIED.** A licensee, as defined within 10 CFR 2.4, will be notified that a CSP Hazardous Materials Team escort is required following the receipt of the shipment notification by the Governor or Governor's designee, consistent with the provisions of 10 CFR 73.37 (b) and (c).

NMT5.10 **NOTIFICATION OF NUCLEAR MATERIALS INCIDENTS.** A driver of a motor vehicle involved in a spill or potential spill of nuclear materials must comply with the incident notification provisions contained in HMT2.3.

NMT5.10.1 **NOTIFICATION REGARDLESS OF DAMAGE.** IF ~~T~~the driver of a motor vehicle transporting nuclear materials as cargo is involved in a motor vehicle crash, regardless of whether there is damage to the transporting motor vehicle, must immediately notify the CSP at (303) 239-4501.

PART 6

NUCLEAR MATERIAL ROUTE DESIGNATION

(NMR)

NMR6.0 **ROUTES TO BE USED FOR THE TRANSPORTATION OF NUCLEAR MATERIALS.** In order to ensure safe and environmentally acceptable, transportation of nuclear materials within the Colorado, motor vehicles transporting nuclear materials must travel only on the following highway segments:

NMR6.01 **N I-25 TO E I-70 AND ITS REVERSE.** For vehicles traveling North on Interstate Highway 25 and then going East on Interstate Highway 70, the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

NMR6.01.1 On Interstate Highway 25 between the Colorado – New Mexico state line and the junction with Interstate Highway 225; then,

NMR6.01.2 On Interstate Highway 225 between the junction with Interstate Highway 25 and the junction with Interstate Highway 70; then,

NMR6.01.3 On Interstate Highway 70 between the junction with Interstate Highway 225 and the Colorado – Kansas state line.

NMR6.02 **W I-70 to N I-25 AND ITS REVERSE.** For vehicles traveling West on Interstate Highway 70 and then going North on Interstate Highway 25, the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

NMR6.02.1 On Interstate Highway 70 between the Colorado – Kansas state line and the junction with Interstate Highway 270; then,

NMR6.02.2 On Interstate Highway 270 between the junction with Interstate Highway 70 and the junction with Interstate Highway 25; then,

NMR6.02.3 On Interstate Highway 25 between the junction with Interstate Highway 270 and the Colorado – Wyoming state line.

NMR6.03 **N I-25 AT CO – WY AND CO – NM AND ITS REVERSE.** For vehicles traveling North on Interstate Highway 25 between the Colorado – New Mexico state line and the Colorado – Wyoming state line, the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

NMR6.03.1 On Highway 25 between the Colorado – New Mexico state line and the Colorado – Wyoming state line.

NMR6.04 **N I-25 TO N I-76 AND ITS REVERSE.** For vehicles traveling North on Interstate Highway 25 and then going North on Interstate Highway 76, the following route will be used. Vehicles following the opposite direction will use the same routing in the opposite direction:

NMR6.04.1 On Interstate Highway 25 between the Colorado – New Mexico state line and the junction with Interstate Highway 76; then,

NMR6.04.2 On Interstate Highway 76 between the junction with Interstate Highway 25 and the Colorado – Nebraska state line.

NMR6.1 **PROHIBITED HIGHWAY SEGMENTS.** Motor vehicles transporting nuclear materials shall under no circumstances travel on those state highway segments designated as follows:

NMR6.1.1 **MILEPOST 361.630.** On Interstate Highway 70 between the Colorado-Utah state line and the junction with US 40, at milepost 361.630.

NMR6.1.2 **MILEPOSTS 274.039 AND 276.572.** On Interstate Highway 70 between the junction with Interstate Highway 25 at milepost 274.039 and the junction with State Highway 2 at milepost 276.572.

NMR6.2 **ROUTE DEVIATION EXCEPTIONS.** No carrier shall deviate from the routes designated in this rule except for:

NMR6.2.1 **EMERGENCY SAFETY.** In cases of emergency conditions making continued use of the designated route unsafe.

NMR6.2.2 **ROAD CLOSURE.** When the designated route is closed due to road conditions, road construction, or maintenance operations.

NMR6.2.3 **LOCAL OPERATION.** To make local pickups and deliveries; or

NMR6.2.4 **REFUELING.** When making local pickups and deliveries or when refueling, the carrier must minimize the distance traveled on non- designated routes.

NMR6.3 **EMERGENCY ROAD CLOSURE.** The closing of a public road that is designated as a nuclear materials route, or restrictions on the movement of traffic over the same due to highway construction, severe weather, or other factors must be communicated by the CDOT or the affected county road and bridge office as soon as possible to the CSP Hazardous Materials Section during normal business hours at (303) 273-1900. The CSP Denver Regional Communication Center must be contacted where these events occur outside of normal business hours at (303) 239-4501.

NMR6.3.1 **DETERMINATION OF ALTERNATE ROUTE.** When a nuclear materials route is restricted and/or closed, the CSP will determine if a temporary alternative route should be identified.

NMR6.3.2 **NOTIFICATION OF TEMPORARY DESIGNATION.** The CSP will notify the appropriate local law enforcement agencies regarding any temporary closure and if an alternate route has been temporarily designated. THE CSP WILL SIMILARLY NOTIFY THE SAME UPON THE TERMINATION OF A TEMPORARY CLOSURE AND/OR TEMPORARY ALTERNATE ROUTE DESIGNATION.

NMR6.3.3 **ESCORT REQUIRED.** Vehicles transporting nuclear materials are required to be escorted while traveling off a designated nuclear materials route due to an emergency road closure or other condition that restricts the movement of traffic over the same. The escort will be provided by the CSP, or when previously arranged by the CSP, by the local law enforcement agency in whose jurisdiction the closure or restriction occurs.

PART 7

INTRASTATE TRANSPORTATION OF AGRICULTURAL PRODUCTS

(HMA)

HMA7.0 **AUTHORITY.** The CSP is mandated by the provisions of §42-20-108.5, CRS, to adopt rules and regulations concerning the intrastate transportation of agricultural products in Colorado.

HMA7.1 **APPLICABILITY.** These rules and regulations apply to any person transporting an agricultural product in accordance with 49 CFR 173.5, as revised October 1, ~~2020~~ 2021.

HMA7.2 **DEFINITIONS.** For purposes of this Part 7, the following definitions apply:

HMA7.2.1 **Agricultural Product:** As defined by §42-20-108.5 (2) (a), CRS, a hazardous material, other than hazardous waste, whose end use directly supports the production of an agricultural commodity including, but not limited to~~,~~ a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in Class 3, 8, or 9, division 2.1, 2.2, 5.1, 6.1 or an ORM-D material as set forth in 49 CFR 172 and 173.

HMA7.2.2 **Farmer:** As defined by §42-20-108.5 (2) (b), CRS, a person or such person's agent or contractor engaged in the production or raising of crops, poultry, or livestock.

HMA7.3 **EXEMPTIONS FROM THE FEDERAL RULES IN 49 CFR 173.5.** The Chief hereby adopts by rule and regulation the federal agricultural product exemption provisions of 49 CFR 173.5, as authorized by §42- 20-108.5, CRS.

PART 8

PUBLICATIONS, RESOURCES, AND SEVERABILITY

(HPR)

HPR8.0 **PUBLICATIONS AND RULES INCORPORATED BY REFERENCE.** All publications, standards, guidelines and rules adopted and incorporated by reference in these rules are on file and available upon request for public inspection by contacting the CSP Hazardous Materials Section.

HPR8.01 **COMPLIANCE WITH §24-4-103, CRS.** All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules will be provided to and made available for examination at any state publications depository library as is required by §24-4-103 (12.5), CRS. The following publications, standards, guidelines, and rules are adopted as each may be amended within these rules, consistent with §24-4-103 (12.5), CRS:

HMP8.01.1 Commercial Vehicle Safety Alliance (~~2021~~ 2022). **North American Standard Out-of-Service Criteria (OOSC)**. April 1, ~~2021~~ 2022. Greenbelt, MD: Author.

HMP8.01.2 **Federal Motor Carrier Safety Regulations**, 49 CFR 40, 380, 382, 385, 387, 390, 397, 399, and Appendix G (~~2020~~ 2021). This information is also available online through the government publishing office website at: HTTPS://WWW.EFCR.GOV/CGI-BIN/ECFR?PAGE=BROWSE.

HMP8.01.3 **Pipeline and Hazardous Materials Safety Regulations**, 49 CFR 107, 171 – 173, 177, 178, and 180 (~~2020~~ 2021). This information is also available online through the Government Publishing Office website at: HTTPS://WWW.ECFR.GOV/CGI-BIN/ECFR?PAGE=BROWSE.

HMP8.01.4 **Nuclear Regulatory Commission Regulations**, 10 CFR 71.97, 73.27, and 180 (~~2020~~ 2021). This information is also available online through the Government Publishing Office website at HTTPS://WWW/ECFR.GOV/CGI- BIN/ECFR?PAGE=BROWSE.

HMP8.01.5 US Department of Transportation Pipeline and Hazardous Materials Safety Administration. **2020 Emergency Response Guidebook** (~~2020~~ 2021). Washington, DC: Author.

HMP8.1 **COPIES OF PUBLICATIONS MAINTAINED BY THE CSP.** The CSP Hazardous Materials Section will maintain copies of the complete texts of each of the aforementioned publications, standards, guidelines, and rules and will make them available for public inspection during regular business hours. Interested parties may access these documents free of charge online. Interested parties may also inspect referenced incorporated materials and/or obtain copies of the adopted standards for a reasonable fee by contacting the CSP CENTRAL RECORDS UNIT AT 700 KIPLING ST., LAKEWOOD, CO., 80215. ~~Hazardous Materials Section~~. Copies of the adopted publications, standards, guidelines and rules may also be available from the organizations of original issue:

HMP8.1.1 ~~**2021**~~ **2022 CVSA Out-of-Service Inspection Criteria:** Commercial Vehicle Safety Alliance (CVSA), 6303 Ivy Lane, Suite 310, Greenbelt, Maryland 20770- 6319. Phone: 301-830-6143. Email: CVSAHQ@CVSA.ORG.

HMP8.1.2 **Federal Motor Carrier Safety Administration (FMCSA)**, US Department of Transportation, 1200 New Jersey Ave., SE Room W-65-206, Washington, DC, 20590. Phone: 1-800-832-5660. Website: WWW.FMCSA.DOT.GOV.

HMP8.1.3 **Pipeline and Hazardous Materials Safety Administration**, US Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC, 20590. Phone: 2020-366-4433. Website: WWW.PHMSA.DOT.GOV.

HMP8.1.4 **US Nuclear Regulatory Commission**, Washington, DC, 20555-0001. Phone: 1-800-368-5642 or 301-415-7000. Website: WWW.NRC.GOV.

HMP8.1.5 **2020 Emergency Response Guidebook**: Hazardous Materials Training Program, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Ave., SE, Washington, DC, 20590. Phone: 202-366-4900. Website: WWW.PHMSA.DOT.GOV.

HMP8.2 **LATER EDITIONS NOT INCORPORATED BY REFERENCE.** These rules do not include later amendments to or editions of any publications, standards, guidelines, or rules incorporated by reference herein.

HMP8.3 **RULES AVAILABLE ONLINE.** These rules are available online through the CDPS website at HTTPS://PUBLICSAFETY.COLORADO.GOV/GET-INVOLVED/RULES-AND-REGULATIONS~~WWW.COLORADO.GOV/PACIFIC/CSP/HAZARDOUSMATERIALSPUBLICSAFETY.COLORADO.GOV/GET-INVOLVED/RULES-AND-REGULATIONS~~.

HMP8.4 **INQUIRIES ABOUT RULES.** All contact with the CSP regarding these rules should be addressed to: Colorado State Patrol Hazardous Materials Section, 15065 S. Golden Rd., Golden, CO.. 80401 303-273-1900.

HMP8.5 **SEVERABILITY.** If any provision of these rules or the application thereof to any person or circumstance is determined to be unlawful or invalid, the remaining provisions of these rules will not be affected, absent a specific reference.

Notice of Proposed Rulemaking

Tracking number

2021-00812

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-28

Rule title

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

Rulemaking Hearing

Date

02/02/2022

Time

01:00 PM

Location

ZOOM Virtual Hearing- See Additional Information for Details

Subjects and issues involved

Pursuant to Section 42-8-104(1), CRS, the Chief of the Colorado State Patrol has authority to promulgate rules necessary to implement the enforcement of applicable statutes and regulations concerning commercial motor carriers, owners and operators through the operation of Port of Entry weigh stations on public highways within the state of Colorado.

Amendments are being proposed to 8 CCR 1507-28:

*Ensuring compliance and consistency with applicable state law and federal regulations;
*Updating information as it relates to the request of information through other patrol sections;
*Correcting inaccuracies in website and physical address information;
*Updating and/or correcting references to federal regulations and documents used to support review of Special Revocable Permits; and
*To correct minor grammatical issues.

Statutory authority

Section 42-8-104(1), CRS

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DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL- PORT OF ENTRY
PORT OF ENTRY RULES FOR
COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to §42-8-104(1), CRS, the Chief of the Colorado State Patrol has authority to promulgate rules necessary to implement the enforcement of applicable statutes and regulations concerning commercial motor carriers, owners and operators through the operation of Port of Entry weigh stations on public highways within the state of Colorado.

Amendments are being proposed to 8 CCR 1507-28:

- Ensuring compliance and consistency with applicable state law and federal regulations;
- Updating information as it relates to the request of information through other patrol sections;
- Correcting inaccuracies in website and physical address information;
- Updating and/or correcting references to federal regulations and documents used to support review of Special Revocable Permits; and
- To correct minor grammatical issues.

It has been declared by the General Assembly that the safe operation of commercial vehicles is a matter of statewide concern. It has also been declared, by the General Assembly, that ensuring compliance with state law and ensuring the equal distribution of fee payments, licenses, and taxes on motor carriers and the owners and operators of motor vehicles is an important state interest. The non-implementation of rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is necessary that these proposed amendments be adopted.

_____ _____

Colonel Matthew C. Packard
Colorado State Patrol

Date of Adoption

DEPARTMENT OF PUBLIC SAFETY
COLORADO STATE PATROL- PORT OF ENTRY

PORT OF ENTRY RULES FOR COMMERCIAL MOTOR CARRIER SIZE, WEIGHT AND CLEARANCE

POE 1. **AUTHORITY TO ADOPT STANDARDS AND SPECIFICATIONS.** The Chief is authorized by the provisions of §42-8-104 (1), CRS, to adopt rules and regulations deemed necessary to enforce applicable statutes and regulations regarding commercial motor carriers, owners and operators through the operation of Port of Entry weigh stations on public highways within Colorado.

POE 2. **GENERAL DEFINITIONS.** With respect to these rules, the following definitions are applicable unless otherwise specified:

2.1. **AFFECTED POE:** A permanent weigh station that is identified within a Special Revocable Permit (SRP). An SRP may affect more than one POE weigh station.

2.2. **ALTERNATIVE FUEL:** Includes Compressed Natural Gas (CNG), propane, ethanol, or any mixture of ethanol containing 85% or more ethanol by volume with gasoline, electricity or other fuels, including clean diesel and reformulated gasoline so long as these other fuels make comparable reductions in carbon monoxide emissions and brown cloud pollutants as determined by the air quality control commission.

2.3. **APPURTENANCE:** A non-cargo bearing piece of equipment that is affixed or attached to a motor vehicle or trailer and is used for a specific purpose or task. Includes awnings, support hardware and retractable equipment. Does not include any item or equipment that is temporarily affixed or attached to the exterior of a motor vehicle for the purpose of transporting such vehicle.

2.4. **CARGO:** The goods carried as freight by a commercial vehicle.

2.5. **CDOR:** Colorado Department of Revenue.-

2.6. **CDOT:** Colorado Department of Transportation.

2.7. **CDPS:** Colorado Department of Public Safety.

2.8. **CHIEF:** The Chief of the Colorado State Patrol, or his or her designees, unless otherwise specified.

2.9. **COOPR:** The CDOT Colorado Oversize/Overweight Permitting and Routing System.

2.10. **CSP:** Colorado State Patrol.

2.11. **GCW:** Gross Combined Weight.

2.12. **GCWR:** Gross Combined Weight Rating.

2.13. **GVW:** Gross Vehicle Weight.

2.14. **GVWR:** Gross Vehicle Weight Rating.

2.15. **HIGH-RISK MOTOR CARRIER:** A non-passenger carrier that:

2.15.1. Has a ranking at or above the 90th percentile in the unsafe driving, hours of service (HOS) compliance, vehicle maintenance, or crash indicator, Behavior Analysis Safety Improvement Categories (collectively referred to as "BASICs") for two or more consecutive months as reported by information received by the FMCSA; and

2.15.2. Has not received an onsite investigation in the previous 18 months for property-carrying motor carriers or in the previous 12 months for passenger-carrying motor carriers.

2.16. **OVER-THE-ROAD BUS:** A bus characterized by an elevated passenger deck located over a baggage compartment and typically operated on the interstate highway system or on roads previously designated as making up the federal-aid primary system.

2.17. **PERMIT HOLDER:** A carrier, owner or operator to whom a permit is issued is a permit holder. Permit holders are responsible for any violations received by vehicle operators who operate vehicles affected by a permit on behalf of the permit holder.

2.18. **PORT OF ENTRY (POE) OFFICER:** A law enforcement officer and a uniformed member of the CSP who is not a trooper nor a civilian member. The scope of authority and the duties of a POE officer are described within §42-8-104 (2), CRS, and also as discussed within these rules.

2.19. **PROBATIONARY SPECIAL REVOCABLE PERMIT:** An SRP that may be issued for a period of 12 months or less to a carrier, owner or operator who is:

2.19.1. ~~d~~Determined eligible, but unsatisfactory following review of their application, and violation, safety, and/or port clearance records; or

2.19.2. ~~a~~An SRP permit holder applying for a new SRP following the revocation of a prior SRP.

2.20. **REGULARLY SCHEDULED ROUTE:** A route provided to the CSP POE by an applicant for an SRP. Factors considered in whether the route traveled by an SRP applicant is regular include times or places of repeated normal departure, arrival, delivery, and/or loading activity. To be eligible for an SRP, a regularly scheduled route provided by an applicant to the CSP POE must come within five (5) road miles of a permanent weigh station not directly located or along the regular route provided.

2.21. **SINGLE AXLE:** All wheels, whose centers may be included within two (2)-parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle.

2.22. **SINGLE AXLE WEIGHT:** The total weight transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes not more than 40 inches apart, extending across the full width of the vehicle.

2.23. **SPECIAL REVOCABLE PERMIT (SRP):** Waives the requirement of §42-8-105 (1), CRS, for a period of 36 months or less to seek and obtain clearance at a POE weigh station that is not directly located on a carrier or operator's regularly scheduled route. Eligibility for an SRP is based, in

part, on the applicant's or permit holder's safety record and "BASICs" scores reported by the FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION(FMCSA).

2.24. **SPECIALIZED AUTOMOBILE TRANSPORTER:** Vehicle combination designed and used specifically for the transport of assembled highway vehicles, including truck camper units. A specialized automobile transporter is designed to carry vehicles on the power unit behind the cab or on an over-cab rack.

2.25. **TANDEM AXLE:** Two or more consecutive axles, the centers of which may be included between parallel vertical planes, spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle, all of which are in contact with the ground.

2.25.1. If only one of a set of multiple axles of a motor vehicle is in contact with the ground, the configuration is not a tandem axle until it is actually used as such.

2.26. **TANDEM AXLE WEIGHT:** The total weight transmitted to the road by two (2) or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

POE 3 PORT OF ENTRY OPERATIONS AND AUTHORITY

3.1. **DELEGATION OF AUTHORITY.** Delegation of any authority held by the CSP POE Branch Director relevant to POE Operations will be in conformity with CSP and CDPS policies.

3.2. **PERMANENT AND MOBILE POE OPERATIONS**. The Chief authorizes the establishment and operation of permanent POE weigh stations. The Chief will also authorize the establishment and operation of mobile POE operations.

3.2.1. Permanent POE weigh stations will be established and operated at such points along public highways of this state as are determined necessary.

3.2.2. The location or relocation of permanent weigh stations will be determined by the Chief.

3.2.3. All permanent POE weigh stations will be operated at times determined by the Chief so as to reasonably allow owners and operators of motor vehicles subject to fees, licenses, taxes, or to rules imposed by the state of Colorado to comply with all such laws and rules by clearance at a POE weigh station.

3.2.4. Mobile POE weigh stations will be established and operated at such points along public highways of this state as are determined to be necessary.

3.2.4.1. ~~**3.2.5.1.**~~ Mobile POE weigh stations will post signs giving notice of their operations. This notice will inform owners and operators of vehicles required to stop and obtain clearance of their need to clear the mobile weigh station.

3.2.5. Mobile POE weigh stations have the same duties and authority as permanent POE weigh stations.

3.3. **AUTHORITY OF POE OFFICERS.** A POE officer, during the time that he or she is actually engaged in performing his or her duties and while acting under proper orders or rules issued by the Chief will have and exercise all powers invested in peace officers in connection with the direction of traffic and the enforcement of §42-8-101, et al., CRS; Articles 2, 3, and 20 of Title 42, CRS; §42-4-501, et al., CRS; §42-4-209, CRS; §42-4-225 (1.5), CRS; §42-4-235, CRS; §42-4-1407, CRS; §42-4-1409, CRS; and §42-4-1414, CRS.

3.3.1. **DETENTION OF OPERATORS, VEHICLES AND VEHICLE IMPOUND.** Within the scope of their authority, POE officers may restrain or detain persons and/or vehicles, impound vehicles or collect outstanding taxes on behalf of the state of Colorado.

3.3.1.1. POE officers may also restrain or detain persons and/or vehicles, impound vehicles, or collect outstanding taxes pursuant to a lawful request from any other law enforcement agency recognized by this state.

3.3.1.2. An agency requesting detention must provide sufficient verifiable information that can be reliably used to identify the person or vehicle to be restrained, detained or impounded, in addition to providing a reasonable basis by rule of law for the detention, restraint, or impoundment.

3.3.1.3. Information supplied by a requesting agency for the detention or impoundment of any person or vehicle may be communicated verbally or in writing, and must include:

3.3.1.3.1. The name of the agency requesting the detention or impoundment;

3.3.1.3.2. The name of the agency official requesting the detention or impoundment;

3.3.1.3.3. The rule of law that is being violated or suspected of being violated; and

3.3.1.3.4. The maximum time that a vehicle or operator is to be detained.

3.3.1.4. Motor vehicles detained or impounded by POE officers at the request of the DOR may be released promptly UPON:

3.3.1.4.1. Payment of taxes and fees due;

3.3.1.4.2. Making a deposit sufficient to pay the same in full, after proper computations and adjustments have been made; or

3.3.1.4.3. Request of DOR.

3.3.1.5. The cargo of any impounded vehicle may be transferred to any properly licensed and qualified motor vehicle and permitted to proceed.

POE 4. REGULATIONS

4.1. **POE CLEARANCE AND THE DUTY TO STOP AND WEIGH**. Owners or operators of motor vehicles required to obtain clearance from the CSP POE pursuant to §42-8-105 (1), CRS, include:

4.1.1. Owners or operators of motor vehicles that are subject to payment of registration fees pursuant to §42-3-306 (5) (b), CRS;

4.1.2. Owners or operators of motor vehicles displaying apportioned or GVW license plates; or

4.1.3. Owners or operators of motor vehicles or motor vehicle combinations having a GVWR or GCWR in excess of 26,000 LBS. ~~pounds~~.

4.1.4. Owners or operators of motor vehicles may obtain required clearance by:

4.1.4.1. Securing a valid clearance from a CSP officer or POE weigh station before operating or causing the operation of the vehicle or combination of vehicles on the public highways of this state; or

4.1.4.2. Obtaining clearance from the first POE weigh station located within five (5) road miles of the route that the owner or operator would normally follow from their point of departure to the point of destination if a previous clearance or SRP has not been secured. To be valid, clearance must occur prior to arriving at the point of destination and before removing the load from the motor vehicle.

4.1.4.2.1. The route which a reasonable commercial vehicle owner or operator would take from the same points of departure and destination is considered to be the "route that an owner or operator would normally follow."

4.1.4.3. Any owner or operator is in violation of §42-8-105, CRS, if they fail to seek out a permanent POE weigh station that is located within five (5) road miles of the route that the owner or operator would normally follow.

4.1.5. Every owner or operator of a motor vehicle required to obtain clearance must stop at every POE weigh station located within five (5) road miles of their route of travel.

4.1.5.1. Vehicles with a seating capacity of 14 or more passengers registered under the requirements of §§42-3-304 (13) or 42-3-306 (2) (c) (I), CRS, are not required to secure a valid clearance.

4.2. **VEHICLE WEIGHT REQUIREMENTS- WHEEL AND AXLE LOADS.** Vehicles having a single drive-axle configuration and equipped with pneumatic tires are not subject to the axle weight limitations set forth within §42-4-507 (2) (b), CRS, and may operate in excess of 20,000 ~~pounds~~ LBS. axle weight when:

4.2.1. The single drive-axle vehicle is equipped with a self-compactor; and

4.2.2. Is used solely for the transporting of trash.

4.2.3. Vehicles equipped with, but not using a tandem drive-axle configuration, will not be permitted to operate in excess of an axle weight of 20,000 ~~pounds~~ LBS. and must comply with the axle weight limitations set forth within §42-4-507 (2) (B), CRS.

4.3. **AUXILIARY POWER UNITS (APU) AND IDLE REDUCTION TECHNOLOGY UNITS.** Any vehicle that uses an APU or idle reduction technology unit in order to reduce fuel use and emissions resulting from engine idling will have the actual weight of the APU or idle reduction technology unit exempted from the calculation of the actual axle and GVW, up to 550 LBS. ~~pounds.~~ To be eligible for this weight exemption, the operator of the vehicle must provide:

4.3.1. Written certification of the actual weight of the APU or idle reduction technology unit; and

4.3.2. Written certification or demonstration that confirms the idle reduction technology unit is fully functional at all times.

4.4. **BUSES.** Any over-the-road bus, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus, is exempted from compliance with the axle limits set forth within §42-4-507 (2) (b), CRS.

4.5. **GROSS VEHICLE WEIGHT (GVW) - DETERMINATION OF GVW.** The legal GVW or GCW limit for any vehicle or combination of vehicles specified within §42-4-508 (1), CRS, will be determined by the actual number of axles in contact with the road surface and the applicable Bridge Weight Formula.

4.5.1. Except where otherwise provided by §§42-4-508 or 42-4-510, CRS, vehicles or vehicle combinations operating on any highway or bridge that is part of the national system of interstate and defense highways (otherwise known as the interstate highway system) must:

4.5.1.1. Have their total weight distributed so that no axle exceeds the legal axle weight limit for the highway traveled;

4.5.1.2. Comply with the federal bridge formula set forth within §42-4-508 (1) (c), CRS; and

4.5.1.3. Not exceed a maximum of 80,000 ~~pounds~~ LBS. in the calculation of the federal bridge formula.

4.5.1.3.1. Natural gas alternative fuel system vehicles may operate up to a GVW of 82,000 lbs., as is consistent with applicable state law, the exemption set forth within 23 USC 127 (S), and FHWA guidance regarding natural gas alternative fuel system vehicles.

4.5.1.3.2. Alternative fuel vehicles not operating natural gas systems may operate up to a maximum ~~Gross Vehicle Weight~~ GVW of 80,000 lbs., consistent with §§42-4-508 (1.5), 25-7-106.8 ~~AND~~ and 25-7-139, CRS.

4.5.2. Except where otherwise provided by §§42-4-508 or 42-4-510, CRS, vehicles or vehicle combinations operating on any highway other than a highway identified as part of the interstate highway system must:

4.5.2.1. Have their total weight distributed so that no axle exceeds the legal axle weight limit for the highway traveled;

4.5.2.2. Comply with the state bridge formula set forth within §42-4-508 (1) (b), CRS; and

4.5.2.3. Not exceed a maximum of 85,000 LBS. ~~pounds~~ in the calculation of the state bridge formula.

4.6. **VEHICLE WIDTH - MEASUREMENT OF COMMERCIAL MOTOR VEHICLE WIDTH.** Vehicle width will be measured from the point farthest from the center of the motor vehicle or combination of motor vehicles on each side OF THE VEHICLE OR COMBINATION OF VEHICLES.

4.6.1. Vehicle components not excluded by law or regulation are included in the measurement of commercial motor vehicle width. Components that are excluded from the measured width of a commercial motor vehicle include, but are not limited to:

4.6.1.1. Rear view mirrors, turn signal lamps, handholds for cab entry/egress, splash and spray suppressant devices, load induced tire bulge; and

4.6.1.2. All non-property carrying devices, or components thereof, that do not extend more than three (3) inches beyond each side of the vehicle.

4.7. **VEHICLE LENGTH - MEASUREMENT OF COMMERCIAL MOTOR VEHICLE LENGTH.** Vehicle length is generally measured from the front-most fixed point (generally the front bumper) to the rear-most fixed point (generally where the brake lights are located).

4.7.1. Any permanently mounted appurtenance that extends beyond the front or rear of the vehicle to which it is mounted becomes part of the vehicle. A permanently mounted appurtenance is included in the overall measurement of vehicle length.

4.7.2. Vehicle components not excluded by law or regulation will be included in the measurement of the length of commercial motor vehicles. Components that are excluded from the measured length of a commercial motor vehicle include, but will not be limited to:

4.7.2.1. Rear view mirrors, turn signal lamps, handholds for entry/egress, splash and spray suppressant devices;

4.7.2.2. All non-property-carrying devices, or components thereof that do not exceed 24 inches beyond the rear of the vehicle as stated within 23 CFR 658.16;

4.7.2.3. Resilient bumpers that do not extend more than six (6) inches beyond the front or rear of the vehicle;

4.7.2.4. Lamps or flags on projecting loads pursuant to §42-4-209, CRS, or devices exempted from length are not considered a projection or overhang.

4.7.3. **LENGTH MEASUREMENT OF SPECIALIZED AUTOMOBILE TRANSPORTERS.** The overall length measurement of a specialized automobile transporter is calculated exclusive of:

4.7.3.1. Front and rear cargo overhang;

4.7.3.2. Safety devices not designed or used for carrying cargo; and

4.7.3.3. Any extension device (ramp or "flippers") that may be used for loading beyond the extreme front or rear end of a vehicle or combination of vehicles.

4.7.3.3.1. Extendable ramps or "flippers" on specialized automobile transporters that have not been retracted and are not supporting vehicles will be included in the measurement of vehicle length.

4.7.4. **MEASUREMENT OF TRAILERS - TRAILER DRAWBAR OR TONGUE LENGTH.**

4.7.4.1. Where the TRAILER drawbar or tongue is of rigid construction, the measurement will be taken from the rear-most point of the power unit's cargo box to the front-most point of the trailer's mainframe.

4.7.4.2. Where the TRAILER drawbar is hinged, the measurement will be taken from the rear-most of the power unit's cargo box to the front-most point of the DRAWBAR hinge.

4.7.4.3. A tool or accessory box that is welded or attached to the TRAILER drawbar or tongue is not included in the calculation of the drawbar or tongue length of a trailer.

4.7.4.4. A TRAILER drawbar may not exceed 15 feet between two (2) vehicle units except when:

4.7.4.4.1. The connection is between any two (2) vehicles transporting poles, pipe, machinery or other objects of a structural nature which cannot be readily dismembered; or

4.7.4.4.2. Connections between vehicles are of rigid construction, are ~~is~~ included as part of the structural design of the towed vehicle, and the overall combined length of the vehicles and the connection does not exceed 55 feet.

4.7.4.5. Adjustable pole trailers that are primarily designed for the transportation of cargo must have the connection between vehicles reduced to 15 feet or less when operating without cargo if the overall vehicle combination exceeds 55 feet.

4.8. **VEHICLE HEIGHT.** Maximum height limits are as designated by the CDOT and as are available online from the CDOT freight website, HTTPS://FTCDOT.OPENDATA.ARCGIC/COM/PAGES/VERTICAL-CLEARANCE.

4.8.1. Vehicles, laden or unladen, must not exceed a height of 14 feet, six inches, and must be operated in compliance with §42-4-504 (1), CRS.

POE 5 **PERMITS -SPECIAL REVOCABLE PERMITS (SRP).** An SRP may be issued to an owner or operator of any vehicle being operated over a regularly scheduled route within five (5) road miles of a permanent POE weigh station pursuant to §42-8-105 (1), CRS.

5.1. An SRP waives the requirement that an owner or operator seek out and secure a valid clearance at a permanent POE that is located within five (5) road miles of an identified regularly scheduled route.

5.2. The use or issuance of any SRP is contingent upon an applicant's or permit holder's compliance with any applicable rules, laws (federal, state, county and local), and the requirements set forth within these rules.

5.3. **APPLICATION FOR SRP.** Application for an SRP is made by completing and submitting an application to the CSP POE BRANCH.

5.3.1. SRP applications are provided by the CSP POE BRANCH upon request, online, and may also be submitted to the CSP POE BRANCH online through the COOPR website.

5.3.2. The CSP POE BRANCH will collect any information identified as necessary to determine an applicant's eligibility for an SRP. Information necessary to determine an applicant's eligibility includes:

5.3.2.1. The legal name of the applicant and the name under which the applicant conducts business, if applicable;

5.3.2.2. The physical and mailing addresses of the applicant;

5.3.2.3. The USDOT# assigned to and used by the applicant;

5.3.2.4. The number of vehicles proposed to be subject to the SRP if it is issued and the VINs for each vehicle;

5.3.2.5. The POE weigh station location(s) the applicant would like the SRP to affect;

5.3.2.6. The names and signature of the person submitting the SRP application on behalf of the applicant; and

5.3.2.7. A detailed description of the applicant's regularly scheduled route. This description should, at minimum, identify the points of origin and destination(s) for the route.

5.3.2.8. If the information initially provided by the applicant is insufficient, additional information will be requested.

5.4. **SRP APPROVAL.** When an application for an SRP is approved, the SRP will be issued by the CSP POE BRANCH upon the recommendation and with the approval of the POE Director or designee.

5.4.1. Within its discretion, the CSP POE BRANCH reserves the right to attach special conditions to the issuance of any SRP where the CSP POE BRANCH determines that it is necessary or advisable to include specific conditions beyond those generally applicable to SRP use.

5.4.2. Any SRP issued to an applicant/permit holder must be:

5.4.2.1. Carried at all times in any authorized vehicle when being operated over the approved regularly scheduled route; and

5.4.2.2. Available upon demand for inspection by the CSP POE or any other state or law enforcement officer.

5.4.2.3. Electronic copies of the permit are acceptable.

5.4.3. An SRP issued to an eligible SRP applicant by the CSP POE BRANCH may be valid up to 36 months, except where an otherwise eligible applicant is determined unsatisfactory following a review of their violation, safety, and/or port clearance records.

5.4.3.1. Eligibility for an SRP is based in part on the applicant's safety record and "BASICs" reported by the FMCSA.

5.4.3.2. The number and type of violation convictions received by drivers operating vehicles for the applicant within the state of Colorado is considered when determining applicant eligibility.

5.4.3.3. The number of port clearances during the 12-month period prior to the SRP application date is relevant in determining eligibility.

5.4.3.4. The permit holder's compliance with the conditions of any previously issued SRP will factor into the decision to issue any subsequent SRP to the applicant.

5.4.4. An SRP applicant determined to be an unsatisfactory applicant may be eligible for a Probationary SRP where:

5.4.4.1. The applicant does not meet the definition of a "High-Risk Motor Carrier"; or

5.4.4.2. The applicant meets the definition of "High-Risk Motor Carrier," but the applicant's ~~carrier~~ COMPANY ~~s~~Snapshot AVAILABLE THROUGH THE USDOT FMCSA SAFETY AND FITNESS ELECTRONIC RECORDS (SAFER) SYSTEM WEBSITE confirms a conditional or satisfactory rating for the applicant.

5.4.5. An SRP applicant who is issued a Probationary SRP:

5.4.5.1. Must demonstrate that corrective actions are IN PROGRESS OR IN PLACE ~~being made~~ to maintain or improve SRP eligibility.

5.4.5.2. May apply for an SRP at the conclusion of the Probationary SRP period.

5.4.5.2.1. The permit holder's compliance with the conditions of the Probationary SRP factor into the decision to issue any subsequent SRP to the applicant.

5.4.5.2.2. An SRP applicant applying for an SRP following the revocation of their prior SRP will first be eligible to apply for a Probationary SRP.

5.4.6. An SRP:

5.4.6.1. Is not transferable from company to company or between vehicles without prior approval of THE CSP POE BRANCH;

5.4.6.2. Does not THE affect the right of any lawful authority to stop a vehicle to check for:

5.4.6.2.1. Operating credentials;

5.4.6.2.2. Applicable oversize or overweight violations; or

5.4.6.2.3. Violations of other motor vehicle laws.

5.4.6.3. Is valid only when used by an authorized vehicle operating within the scope of the approved regularly scheduled route.

5.4.7. The CSP POE BRANCH will respond to all complete SRP applications with a decision to either issue or deny an SRP within 7 calendar days of receipt.

5.5. **DENIAL OF SRP.** An application for an SRP may be denied if:

5.5.1. The applicant has failed to pay taxes or registration fees when due;

5.5.2. The applicant is subject to the payment of recurrent distraint penalties as set forth within §39-21-114 (7), CRS;

5.5.3. In the 12-month period prior to the SRP application date, any vehicle operator of the applicant demonstrates a pattern of non-compliance with the duty to stop and weigh or the duty to obtain clearance imposed by §§42-4-509 (3) and 42-8-105, CRS, respectively;

5.5.4. In the 12-month period prior to the SRP application date, any vehicle operator of the applicant has been convicted of three (3) or more violations of size and weight requirements as are set forth within §42-4-501, et seq., CRS;

5.5.5. The applicant meets the definition of a "High-Risk Motor Carrier" and the FMCSA SAFER ~~c~~Company ~~s~~Snapshot does not have a carrier rating or has a rating of "unsatisfactory";

5.5.6. In the 12-month period prior to the SRP application date, violation convictions received by any vehicle operator of an applicant demonstrates a pattern of non-compliance with applicable laws;

5.5.7. Following suspension or revocation of an SRP, vehicle operators of an applicant continue to violate the laws that resulted in the suspension or revocation of the SRP;

5.5.8. The applicant has misused, or used in a fraudulent manner, or has otherwise failed to comply with the conditions of any previously issued valid permit or license;

5.5.9. The application for the SRP misrepresents or provides inaccurate information regarding the regularly scheduled route; or

5.5.10. A request for additional information deemed necessary to consider the eligibility of an SRP applicant by the CSP POE BRANCH is not responded to BY THE SRP APPLICANT within 30 calendar days.

5.5.10.1. An applicant whose SRP application is denied due to the applicant's failure to respond to a request from THE CSP POE BRANCH to provide additional information may resubmit their application without prejudice.

5.5.10.2. The CSP POE BRANCH will have 7 calendar days to respond to the resubmitted SRP application.

5.6. **PERMIT SUSPENSION AND REVOCATION.** A permit holder's SRP(s) may be suspended when:

5.6.1. A permit holder fails to pay taxes or registration fees when due;

5.6.2. A permit holder is subject to the payment of recurrent distraint penalties as described within §39-21-114 (7), CRS;

5.6.3. A permit holder used the permit for the purposes of evading any law;

5.6.4. In a 12-month period during which an SRP has been issued, any vehicle operator of a permit holder has been convicted of three (3) or more violations in a vehicle assigned an SRP of the size and weight requirements of §42-4-501, et seq., CRS;

5.6.5. In a 12-month period during which an SRP has been issued, any vehicle operator of a permit holder demonstrates a pattern of non-compliance with either the duties to stop and weigh or obtain clearance as set forth within §§ 42-4-509 (3) and 42-8-105, CRS, respectively;

5.6.6. In a 12-month period during which an SRP has been issued, violation convictions received by any vehicle operator for a permit holder demonstrates a pattern of non-compliance with applicable laws;

5.6.7. Any authorized vehicle utilizing an SRP does not obtain port clearance from the affected POE weigh station(s) at least once per quarter during the period the SRP is valid;

5.6.7.1. The quarterly clearance requirement cannot be satisfied using PrePass, Drivewyze, or any other electronic clearance program.

5.6.8. The approved regularly scheduled route for which an SRP is issued to a permit holder is altered or discontinued;

5.6.9. A permit holder is identified as a "High-Risk Motor Carrier" and their FMCSA SAFER ~~s~~Company ~~S~~Snapshot does not have a carrier rating or reports an "unsatisfactory" carrier rating;

5.6.10. THE permit holder violates any conditions applicable to an SRP; or

5.6.11. The permit holder misuses any permit or license.

5.7. A Permit holder's SRP(s) may be revoked when:

5.7.1. A permit holder who has been subject to SRP suspension continues to demonstrate a pattern of non-compliance with applicable laws and rules;

5.7.2. A permit holder fails to comply with the terms of any Probationary SRP; and/or

5.7.3. A permit holder fails to take any steps as may be directed by the CSP POE BRANCH to improve or achieve compliance within a prescribed time period.

5.8. **APPEAL OF SRP APPLICATION DENIAL, SRP SUSPENSION OR SRP REVOCATION BY WRITTEN NOTICE.** Denial, suspension or revocation of any SRP will be by written notice from the CSP POE BRANCH.

5.9. **RIGHT TO APPEAL SRP APPLICATION OR PERMIT DENIAL, SUSPENSION, OR REVOCATION AND TO REQUEST A HEARING.** Within 30 days of receiving written notice from the CSP POE BRANCH denying, suspending, or revoking an SRP, an applicant or permit holder may request a hearing.

5.9.1. Hearing requests by applicants or permit holders must be:

5.9.1.1. Made in writing; and

5.9.1.2. Addressed to the Chief at the CSP POE Branch at 15075 S. Golden Rd., Golden CO, 80401.

5.10. **HEARING AND REVIEW.** The Chief will hold the hearing.

5.10.1. The scope of the hearing will be limited to whether the applicant or permit holder has complied with these rules.

5.10.2. The Chief will issue a written decision within 20 business days of the completed hearing.

5.10.2.1. If the Chief finds that evidence of non-compliance and ineligibility is sufficient, the SRP application denial, suspension or revocation will be sustained.

5.10.2.2. If the Chief finds that evidence of compliance and ineligibility is insufficient, the SRP application denial, suspension or revocation will be immediately overturned and the SRP or previous SRP(s) will be issued or reinstated.

5.10.2.3. If the Chief finds that evidence of non-compliance and ineligibility is insufficient to support application denial, permit suspension or revocation but is sufficient to find an SRP applicant or permit holder to be unsatisfactory, it is within the discretion of the Chief to issue or reinstate any SRP as a Probationary SRP for a period not to exceed one (1) year.

5.10.3. The decision by the Chief will constitute a final agency action and is subject to judicial review as described by §24-4-106, CRS.

POE 6 **INQUIRIES, PUBLICATIONS, AND SEVERABILITY.** All contact with the CSP POE BRANCH with regard to these rules or their applicability should be addressed to the

Colorado State Patrol Port of Entry Branch
15075 S Golden Rd., Golden, CO 80401
303-273-1870 (Main Phone)
303-278-2434 (Fax)

6.1. **PUBLICATIONS.** All publications, standards or guidelines adopted and incorporated by reference in these rules are on file and available upon request for public inspection by contacting the CSP POE Branch at 15075 S. Golden Rd., Golden, CO., 80401-3990. These rules are available online through the CDPS RULEMAKING website at HTTPS://WWW.PUBLICSAFETY.COLORADO.GOV/GET-INVOLVED/RULES-AND-REGULATIONS~~COLORADO.GOV/PACIFIC/CSPPUBLICSAFETY/RULES-AND-REGULA TIONS-6MCSAP~~.

6.1.1. All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules will be provided and made available for examination at any state publication depository library as required by §24-4-103 (12.5), CRS. The following publications, standards, and guidelines have been referenced within these rules in accordance with §24-4-103 (12.5), CRS:

6.1.1.1. United States Department of Transportation, Federal Motor Carrier Safety Administration (2018). High Risk Carriers Investigations Report. Status of High-Risk Carrier Investigations. Retrieved January 9, 2019 from HTTPS://WWW. FMCSA. DOT.GOV/MISSION/POLICY/HIGH-RISK-CARRI ERS-INVESTIGATION-REPORT.

6.1.2. The CSP POE Branch will maintain copies of the complete texts of the aforementioned publications, standards, guidelines, and rules and will make them available for public inspection during regular business hours. Interested parties may access these documents free of charge online. Interested parties may also inspect the referenced materials and/or obtain copies of the adopted standards for a reasonable fee by contacting the CSP CENTRAL RECORDS UNIT (CRU) AT 700 KIPLING ST., LAKEWOOD, CO., 80215 ~~POE Branch at 15075 S. Golden Rd., Golden, CO., 80401~~. Copies of the adopted publications, standards, guidelines, and rules may also be available from the organization of original issue:

6.1.2.1. United States Department of Transportation, Federal Motor Carrier Safety Administration, (FMCSA), 1200 New Jersey Ave., SE Room W-65-206, Washington, DC, 20590. Phone: 1-800-832-5660. Website: WWW.FMCSA.DOT.GOV.

6.1.3. These rules do not include later amendments to or editions of any publications, standards, guidelines or rules incorporated by reference herein.

6.2. **SEVERABILITY.** If any provision of these rules or the application thereof to any person or circumstance is determined to be unlawful or invalid, the remaining provisions of these rules will not be affected, absent a specific reference.

Notice of Proposed Rulemaking

Tracking number

2021-00794

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Executive Director of Health Care Policy and Financing

CCR number

10 CCR 2505-5

Rule title

EXECUTIVE DIRECTOR OF HEALTH CARE POLICY AND FINANCING RULES

Rulemaking Hearing

Date

01/27/2022

Time

11:00 AM

Location

1570 Grant St, Hibiscus, Denver, CO 80203

Subjects and issues involved

see attached

Statutory authority

25.5-1-108, C.R.S. (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
1570 Grant Street
Denver, CO 80203

NOTICE OF PROPOSED RULES

The Executive Director of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, January 27, 2022, beginning at 11:00 a.m. at 1570 Grant Street, Denver, CO 80203 and virtually. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Rules Administrator 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 Rules Administration Office, 1570 Grant Street, Denver, Colorado 80203, tel. (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Rules Administration Office on or before close of business the Thursday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the internet at the Executive Director Administrative Rules Hearing Schedule page.

ED 21-12-02-A, Revision to the Executive Director of the Department of Health Care Policy and Financing Rule Concerning All-Payers Claims Database, Section 1.200

Executive Director. As the Colorado All Payer Claims Database (CO APCD) administrator, CIVHC began conversations with the submitters regarding the rule change in the fall of 2021. The goals of the proposed updates to the Data Submissions Guide (DSG) are to:

- Improve the quality and completeness of submitted data in order to effectively affirm the integrity and credibility of the Colorado All Payer Claim Database (CO APCD);
- Allow for the collection of the Drug Rebate (DR), Alternative Payment Models (APM), and APM Control Total files to be collected through the submission portal feed; and
- Collect additional information to advance the Triple Aim of health care to lower costs, improve outcomes, and improve care across Colorado.

The statutory authority for this rule change is contained in 25.5-1-108, C.R.S. (2021).

Permanent Rules Adopted

Department

Department of Revenue

Agency

Motor Vehicle Dealer Board

CCR number

1 CCR 205-2

Rule title

1 CCR 205-2 DEALING IN POWERSPORTS VEHICLES 1 - eff 01/14/2022

Effective date

01/14/2022

COLORADO DEPARTMENT OF REVENUE
MOTOR VEHICLE DEALER BOARD

RECORD FOR BOARD REVIEW
2021 RULE GROUP 1

PROPOSED REVISED REGULATION 44-20-417(7)(f)(I)
STATEMENT OF AUTHORITY, BASIS AND PURPOSE

STATUTORY AUTHORITY:
The Board promulgates the amendments to this rule pursuant to the authority granted in subsections Colorado motor vehicle dealer board regulation law, 44-20-104(3)(a), of the Colorado Revised Statutes and section 24-4-103, C.R.S., of the Administrative Procedure Act.

BASIS AND PURPOSE:
The statutory basis for the regulation is 44-20-104(3)(a), C.R.S. The proposed amendment and/or addition to this rule is designed to bring the Pre-licensing Education Program curriculum into compliance with Title 33 of the Colorado Revised Statutes.

PROPOSED REVISED REGULATION 44-20-417(7)(f)(I):
The Pre-licensing Education Program shall include in its content, federal and Colorado state laws and federal and Colorado state regulations governing powersports vehicle dealers. The education curriculum shall contain without limitation titles 4, 5, 6, 18, 33, 39, 42, and 44 of the Colorado Revised Statutes applicable to powersports vehicle dealers and powersports vehicle sales and Federal Laws and Rules applicable to powersports vehicle dealers and powersports vehicle sales.

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Tracking number: 2021-00642

Opinion of the Attorney General rendered in connection with the rules adopted by the

Motor Vehicle Dealer Board

on 11/16/2021

1 CCR 205-2

DEALING IN POWERSPORTS VEHICLES

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.

December 02, 2021 11:51:09

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

1 CCR 207-1 GAMING REGULATIONS 1 - eff 01/14/2022

Effective date

01/14/2022

Note to publisher: Only paragraphs that were changed are shown in this document. All other previously existing paragraphs and tables etc. should remain a part of each Rule.

BASIS AND PURPOSE FOR RULE 3

The purpose of Rule 3 is to establish and provide the specific information required on license applications; to establish yearly license fees for each type of license; to establish nonrefundable application fees; to establish investigation fees for certain applicants and deposit procedures for investigation fees; to establish procedures for conducting background checks on applicants and other interested persons and assessing the costs of such background checks; to require certain information regarding the premises the applicant wishes to be licensed, and to provide a procedure for approval of modifications of such premises; and to provide for the issuance of conditional, temporary, and duplicate licenses. The statutory basis for Rule 3 is found in sections 44-30-102, C.R.S., 44-30-103, C.R.S., 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., and part 5 of article 30 of title 44, C.R.S. *Amended 1/14/15*

RULE 3 APPLICATIONS, INVESTIGATIONS AND LICENSURE

30-305 Investigation fees.

(2) Before any such investigations are conducted, each applicant shall pay a deposit to the gaming fund as follows: *Eff 04/01/2007*

BASIS AND PURPOSE FOR RULE 5

The purpose of Rule 5 is to establish procedures and articulate grounds for disciplinary actions and informal resolution of allegations of violations of the provisions of article 30 of title 44 C.R.S. or any rules and regulations promulgated pursuant to such article, to provide procedures to impose sanctions for violations, and to provide for certain conditions to be met for reissuance of licenses to persons who formerly held a license. The statutory basis for Rule 5 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-504, C.R.S., 44-30-523, C.R.S., 44-30-524, C.R.S., and 24-4-104, C.R.S.

RULE 5 GROUNDS AND PROCEDURES FOR DISCIPLINARY ACTIONS

30-501 Grounds for disciplinary action.

The Commission may levy a monetary penalty or may suspend or revoke, any license issued by it or the Director for any violations by the person holding the license, or such licensee's employees or agents, of any of the provisions of article 30 of title 44, C.R.S., or any of the Rules and Regulations promulgated thereunder. Acceptance of a state gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all the Regulations of the Commission as the same now are or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep the licensee self-informed of the content of all such Regulations, and ignorance thereof will not excuse violations. *Amended 11/14/15*

30-502 Initiation of disciplinary proceedings.

(1) Upon its own motion, upon motion of the Director, or upon written complaint signed and sworn to by the complainant, the Commission may determine to initiate disciplinary proceedings against any person licensed pursuant to article 30 of title 44, C.R.S. Disciplinary proceedings, as used herein, shall mean those procedures undertaken by the Commission to suspend or revoke any license issued by it or the Director, to levy a monetary penalty against any licensee, or to otherwise sanction violations of gaming laws and Rules.

(2) The Commission may initiate disciplinary proceedings against a license where it determines that there is probable cause to believe: that the licensee, the licensee's employees, or agents have

violated any of the provisions of article 30 of title 44, C.R.S., or the Rules and Regulations thereunder; that the licensee or persons associated with the licensee are of unsatisfactory moral character; or that violations by the licensee, the licensee's employees, or agents, of laws other than the limited gaming laws make the licensee no longer suitable for licensing by the Commission or Director.

30-506 Assurance of voluntary compliance.

The Director or Director's designee may accept an assurance of voluntary compliance regarding any act or practice alleged to violate article 30 of title 44, C.R.S., or the Rules and Regulations thereunder, from a person who has engaged in, is engaging in, or is about to engage in such acts or practices. The assurance must be in writing and may include a stipulation for the voluntary payment of the costs of the investigation and an amount necessary to restore to a person money or property which may have been acquired by the alleged violator because of the acts or practices. An assurance of voluntary compliance may not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of article 30 of title 44, C.R.S., or the Rules and Regulation thereunder. The Commission may approve or review an assurance of voluntary compliance.

30-512 Summary Suspension.

(1) Where the Commission has reasonable grounds to believe and finds that any person licensed under article 30 of title 44, C.R.S., has been guilty of a deliberate or willful violation of any of the provisions of article 30 of title 44, C.R.S., or the Rules and Regulations thereunder, or that the licensee has been charged with a felony in Colorado or in another state, or that due to other violations of law by the licensee or its patrons, the public health, safety, or welfare imperatively requires emergency action, and where the Commission incorporates such findings in its order, the Commission may summarily suspend the licensee's license pending disciplinary proceedings for suspension or revocation. Any such disciplinary proceedings shall be promptly instituted and determined.

30-514 Disciplinary proceeding notice required.

The Director must have served upon the summarily suspended licensee a formal notice initiating disciplinary proceedings and a notice of hearing within five (5) days after receipt by the licensee of the notice of summary suspension. The notice initiating disciplinary proceedings and the notice of hearing may be issued by the Director without prior Commission approval. The Commission shall hear the matter on an expedited basis, but in no event later than 45 days after the imposition of the summary suspension unless such licensee has requested a later date pursuant to regulation 30-512(2). (amended perm. 03/02/01), *Amended 11/14/15*

BASIS AND PURPOSE FOR RULE 21

The purpose of Rule 21 is to establish playing rules for authorized types of games which combine the play of blackjack with the play of poker, and management procedures for conducting blackjack-poker combination games in compliance with section 44-30-302 (2), C.R.S. The statutory basis for Rule 21 is found in sections 44-30-201, C.R.S., 44-30-302, C.R.S., 44-30-816, C.R.S., and 44-30-818, C.R.S. *Amended 8/14/16*

RULE 21 RULES FOR BLACKJACK-POKER COMBINATION GAMES

30-2115 The play – TriLux Blackjack.

TriLux Blackjack is a copyrighted and patent-protected blackjack and poker variation game, the rights to which are owned by SG Gaming Inc. of Las Vegas, Nevada, and which may be transferred or assigned.

TriLux Blackjack is an optional bonus wager for blackjack. This optional wager may include a TriLux Bonus, TriLux Super 3 and/or TriLux Bust Bonanza. TriLux Blackjack may be played only on tables

displaying the TriLux Blackjack layout. TriLux Blackjack uses a standard 52 card deck. Refer to pay tables below for the corresponding number of decks to be used for each of the bonus options.

(1) At the same time a player makes his/her standard blackjack wager, the player has an opportunity to make the optional TriLux Bonus, TriLux Super 3 and/or TriLux Bust Bonanza wagers. However, players must make the TriLux Bonus wager to be eligible to make the TriLux Super 3 wager. All wagers must be in an amount between the posted table minimum and the table maximum. Wager limits are determined by the house and in accordance with applicable law.

(a) If the casino rules allow, a player may play multiple hands.

(b) A player playing multiple hands may place TriLux Bonus, TriLux Super 3 and TriLux Bust Bonanza wagers on none, one or all of his/her hands.

(c) Dealer tip wagers may be placed on the TriLux Bonus, TriLux Super 3 and TriLux Bust Bonanza wagers by placing the dealer tip in front of the player's TriLux Bonus, TriLux Super 3 and TriLux Bust Bonanza wagers. Any restrictions on dealer tip wagers must be posted at the table or as wall signage.

(2) The dealer then follows house procedures for dealing blackjack.

(3) Once each player has received two cards, the dealer settles all TriLux Bonus and TriLux Super 3 wagers according to house procedures. If a player's first two cards and the dealer's up card are at least a Pair or Flush depending on the pay table, he or she wins the TriLux Bonus wager according to the posted pay table. If the player's first two cards and the dealer's up card are not at least a Flush, he or she loses his or her TriLux Bonus wager. If a player's first two cards and the dealer's up card are at least a Three of a Kind, he or she wins the TriLux Super 3 wager according to the posted pay table. If the player's two cards and the dealer's up card are not at least a three of a kind, he or she loses his or her TriLux Super 3 wager.

(a) When the cards are dealt face up, the TriLux Bonus and TriLux Super 3 wagers will be settled immediately after all players receive their first two cards and the dealer has received his/her first two cards. Winners will be paid and losing wagers will be picked up in order of placement, from the dealer's right to left. Normal blackjack play will then continue.

(b) When the cards are dealt face down, the TriLux Bonus and TriLux Super 3 wagers will be settled on a hand to hand basis, as the dealer goes from left to right asking for hit/stand determinations.

(4) Players may make the TriLux Bust Bonanza wager after they have acted on their hands, but before the dealer acts on the dealer hand. If the dealer busts, the player wins according to the posted pay table. If the dealer does not bust, the player loses his/her TriLux Bust Bonanza wager.

(a) Player blackjacks are paid prior to the dealer resolving the dealer hand and are not eligible to make the TriLux Bust Bonanza wager.

(b) Player's with hands that bust are not eligible to make the TriLux Bust Bonanza wager.

(5) Winning TriLux Bonus, TriLux Super 3 and TriLux Bust Bonanza wagers will be paid in front of the betting area and pushed off toward the player.

(6) Lucky George: The Lucky George is a pay out for the dealer as a tip, when a qualifying hand is won by a player.

(7) Pay Tables:

TriLux Bonus (without Lucky George):

Hand	TRI-01	TRI-02	TRI-05
	Pays	Pays	Pays
Three of a Kind	9 to 1	2.5 to 1	7 to 1
Straight Flush	9 to 1	2.5 to 1	7 to 1
Straight	9 to 1	2.5 to 1	7 to 1
Flush	9 to 1	2.5 to 1	7 to 1
Pair	N/A	2.5 to 1	Push
Deck Type	2-8 decks	2 decks	2-8 decks

Hand	TRI-03	TRI-04	TRI-06	TRI-07
	Pays	Pays	Pays	Pays
Mini Royal (A, K, Q Suited)	100 to 1	N/A	100 to 1	50 to 1
Straight Flush	35 to 1	30 to 1	30 to 1	30 to 1
Three of a Kind	33 to 1	20 to 1	20 to 1	20 to 1
Straight	10 to 1	10 to 1	10 to 1	10 to 1
Flush	5 to 1	5 to 1	5 to 1	5 to 1
Deck Type	2-8 decks	2-8 decks	2-8 decks	2-8 decks

TriLux Bonus (With Lucky George):

Hand	TRILG-01		TRILG-02		TRILG-03		TRILG-04***	
	Pays*	Lucky George**	Pays*	Lucky George **	Pays*	Lucky George **	Pays*	Lucky George **
Straight Flush	8 to 1	$1	25 to 1	$10	25 to 1	$10	25 to 1	$10
Three of a Kind	8 to 1	$1	15 to 1	$5	15 to 1	$5	15 to 1	$5
Straight	8 to 1	$1	8 to 1	$2	10 to 1	$2	10 to 1	$2
Flush	8 to 1	$1	5 to 1	$1	5 to 1	N/A	5 to 1	$1
Deck Type	1, 2, 6 and 8 decks							

* Pay table is used with the Lucky George version only.
**Pay outs are fixed dollar pays.
***Pay table TRILG-04 must be a minimum of $5 only.

TriLux Super 3:

Hand	SUP-01*	SUP-02*	SUP-03*
	Pays*	**Pays**	**Pays**
Three of a Kind (Suited)	270 to 1	1,000 to 1	500 to 1
Straight Flush	180 to 1	100 to 1	150 to 1
Three of a Kind	90 to 1	70 to 1	75 to 1
Deck Type	4-8 decks	6-8 decks	5-8 decks

*TriLux Bonus wager must be made to be eligible to make the TriLux Super 3 wager

TriLux Bust Bonanza:

Dealer up-card	Pay Table 1		Pay Table 2	
	Dealer Bust	Dealer Suited Bust	Dealer Bust	Dealer Suited Bust
2	1 to 1	25 to 1	1 to 1	25 to 1
3	1 to 1	15 to 1	1 to 1	15 to 1
4	1 to 1	10 to 1	1 to 1	10 to 1
5	1 to 1	5 to 1	1 to 1	5 to 1
6	1 to 1	3 to 1	1 to 1	3 to 1
7	1 to 1	15 to 1	1 to 1	15 to 1

8	2 to 1	10 to 1	2 to 1	10 to 1
9	2 to 1	20 to 1	2 to 1	20 to 1
10/Face Card	2 to 1	20 to 1	2 to 1	20 to 1
Ace	3 to 1	50 to 1	3 to 1	50 to 1
888*	25 to 1	N/A	25 to 1	75 to 1
Deck Type	2 decks only		6 decks only	
* Special bonus paid when dealer busts with three 8s.				

BASIS AND PURPOSE FOR RULE 23

The purpose of Rule 23 is to establish playing rules for craps and procedures for conducting craps games in compliance with section 44-30-302 (2). The statutory basis for Rule 23 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., and 44-30-818, C.R.S.

RULE 23 RULES FOR CRAPS

30-2399.06 The play - Dice-Ology.

Dice-Ology is a patent-protected craps variation game, the rights to which are owned by SG Gaming, Inc. of Las Vegas, NV, and which may be transferred or assigned. Craps with Dice-Ology must be played according to the following rules:

(1) Dice-Ology may be played only on tables displaying the Dice-Ology layout.

(2) Dice-Ology is an optional wager for craps and consists of three separate wagers, Little Ones, Big Ones and Boom or Bust. These bets will be in the amount specified at the table by the retail licensee.

(3) Each Dice-Ology wager is independent and has no effect on the primary game of craps or the other wagers. All Dice-Ology wagers can be made on the come out roll or any time before a number by the chosen bet has been rolled.

(4) Players must place their Dice-Ology Wager in the marked area. Dealers will then move the wagers to the appropriate betting areas for the Little Ones, Big Ones and Boom or Bust.

(5) Any dealer tip delivered as a Dice-Ology wager may be placed at the top of the Dice-Ology betting area or piggy-backed (dealer bet sits on top of the player's bet slightly pushed forward) on top of the player's Dice-Ology wager. Any restrictions on dealer tip wagers must be posted at the table or as wall signage.

(6) When a player makes a point, the stickman, boxman, or dealer will use a lammer to keep track of the number of passes.

(7) As the shooter rolls for any number other than a seven (7), the boxman or dealer will place a lammer on the circle indicating the number rolled. If a number is repeated by the shooter, it has no effect on the wager. When the shooter rolls a seven (7) all bets lose and the dealer will clear all losing bets and lammers.

(a) When all "Little" numbers (2, 3, 4, 5, 6) have been rolled before a seven (7) is rolled the Little Ones bet will pay out according to the chosen pay table. Players may now, at the discretion of the casino, re-bet the Little Ones proposition wager or wait for a 7 to be rolled. The bet loses when a seven (7) is rolled, including a seven (7) on the come out roll.

(b) When all “Big” numbers (8, 9, 10, 11, 12) have been rolled before a seven (7), the Big Ones bet will pay out according to the chosen pay table. Players may now, at the discretion of the casino, re-bet the Big Ones proposition wager or wait for a 7 to be rolled. The bet loses when a seven (7) is rolled, including a seven (7) on the come out roll.

(c) Boom or Bust will pay out when all of the numbers (2, 3, 4, 5, 6, 8, 9, 10, 11, 12) have been rolled before a seven (7), Boom or Bust will pay out according to the chosen pay table. Players may now, at the discretion of the casino, re-bet the Boom or Bust proposition wager or wait for a 7 to be rolled. The bet loses when a seven (7) is rolled.

(8) The pay schedule in use, or pay outs derived from the pay schedules, must be displayed on the table layout or on signage at the table:

Side Bet	**Pay Table 1**	**Pay Table 2**
Little Ones	34 to 1	30 to 1
Big Ones	34 to 1	30 to 1
Boom or Bust	175 to 1	150 to 1

PHILIP J. WEISER
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Office of the Attorney General

Tracking number: 2021-00659

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Gaming - Rules promulgated by Gaming Commission

on 11/18/2021

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 11/18/2021 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.

December 02, 2021 10:56:33

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Natural Resources

Agency

Colorado Water Conservation Board

CCR number

2 CCR 408-1

Rule title

2 CCR 408-1 RULES AND REGULATIONS FOR REGULATORY FLOODPLAINS IN COLORADO 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF NATURAL RESOURCES

Colorado Water Conservation Board

RULES AND REGULATIONS FOR REGULATORY FLOODPLAINS IN COLORADO

2 CCR 408-1

Rule 1. Title:

The formal title of the previous Rules and Regulations was "Rules and Regulations for the Designation and Approval of Floodplains and of Storm or Floodwater Runoff Channels in Colorado" as approved in 1988. The title for these Rules and Regulations was revised in 2005 to "Rules and Regulations for Regulatory Floodplains in Colorado," and amended here under the same title (referred to herein collectively as the "Rules" or individually as "Rule"). These Rules supersede the 2010, the 2005 and the 1988 Rules.

Rule 2. Authority:

These Rules are promulgated pursuant to the authority granted the Colorado Water Conservation Board (Board or CWCB) in sections, 24-65.1-101(1)(c), 24-65.1-202(2)(a), 24-65.1-302(2)(a), 24-65.1-403(3), 37-60-106(1), 37-60-106(1)(c)–(g), (j), (k), and 37-60-108, C.R.S..

Rule 3. Purpose and Scope:

A. **Purpose.** The purpose of these Rules is to provide uniform standards for Regulatory Floodplains (or Floodplains) in Colorado, to provide standards for activities that may impact Regulatory Floodplains in Colorado, and to define the process by which floodplains will be Designated and Approved by the Board. Rules for Regulatory Floodplains are of statewide concern to the State of Colorado and the Board in order to prevent Flooding and the negative impacts of Floods, as well as to promote public health, safety, welfare and property by limiting Development in Floodplains. These Rules also assist the CWCB and Communities in Colorado to develop sound Floodplain Management practices and implement the NFIP. These Rules shall apply throughout the State of Colorado, without regard to whether a Community participates in the National Flood Insurance Program. These Rules shall also apply to Stream Alteration Activities conducted by state agencies and to federal Stream Alteration Activities that are fully or partially financed by state funds. These Rules also apply to projects or studies for which the Board has made a loan or grant pursuant to sections 37-60-120(2) and 37-60-121(1)(b)(VII), (IX)(C), C.R.S.

B. **Scope.**

(1) **Zoning.** These Rules apply to all Floodplain information developed for zoning and for Floodplain permitting purposes for waterways in the State of Colorado by, but not limited to, individuals, corporations, local government agencies, regional government agencies, state government agencies, Native American tribes, and federal government agencies.

(2) **Subdivisions.** These Rules generally apply to the local approval of subdivision drainage reports that provide 100-Year Floodplain information. Local governments should ensure that site-specific Floodplain delineations, intended for regulatory purposes when they are

prepared for Development activities, are consistent with Floodplain information Designated and Approved by the Board.

(3) **Dam Failure Floodplain.** These Rules do not apply to the identification of the area potentially inundated by the catastrophic or sudden failure of any man-made structure such as a dam, canal, irrigation ditch, pipeline, or other artificial channel.

Rule 4. Definitions:

The following definitions are applicable to these Rules and Regulations for Regulatory Floodplain in Colorado:

Term	**Definition**
100-Year-Flood	A Flood having a recurrence interval that has a 1-percent-annual-chance of being equaled or exceeded during any given year (1-percent-annual-chance-Flood). For the purpose of these Rules, the terms “100-Year-Flood” “1-percent -annual-chance Flood,” and “base Flood,” are synonymous. The term does not imply that the Flood will necessarily happen once every one hundred years.
100-Year-Floodplain	The area of land susceptible to being inundated as a result of the occurrence of a 100-Year-Flood. 100-Year-Floodplains are considered to be areas of high Flood hazard. For the purposes of these Rules, the terms “100-Year-Floodplain,” “Regulatory Floodplain,” and “Special Flood Hazard Area” are synonymous.
500-Year-Flood	A Flood having a recurrence interval that has a 0.2-percent-annual-chance of being equaled or exceeded during any given year (0.2-percent- annual-chance-Flood). The terms “five-hundred-year Flood” and “0.2-percent -annual-chance Flood” are synonymous with the term “500-Year-Flood.” The term does not imply that the Flood will necessarily happen once every five hundred years.
500-Year-Floodplain	The area of land susceptible to being inundated as a result of the occurrence of a 500-year-Flood. 500-Year-Floodplains are typically considered to be areas of moderate Flood hazard.
Accessory Structure	A structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.
Addition	Any activity that expands the enclosed footprint or increases the horizontal square footage of an existing structure.
Agricultural Structure	For Floodplain Management Regulation purposes, Agricultural Structures are structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock.

	Structures used for human habitation and those that are places of employment or entertainment and structures with multiple or mixed purposes do not satisfy the “exclusive use” requirement and are not Agricultural Structures.
Alluvial Fans	A fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial Fans contain active stream Channels and boulder bars, and recently abandoned Channels. Alluvial Fans are predominantly formed by alluvial deposits and are modified by infrequent sheet Flood, Channel avulsions and other stream processes.
Approximate Floodplain Information	Flood hazard information based on a reduced level of detail for topographic mapping or hydraulic calculations. Analysis results may be used to develop Flood hazard delineations and corresponding data (i.e., water surface elevations, associated depths and velocities). This may or may not have a comparison of water surface profiles with a topographic map of compatible accuracy. The level of detail for hydrology is consistent with that of detailed Floodplain information. Base Flood Elevations are often not portrayed on a mapped stream reach with Approximate Floodplain Information.
Base Flood	Is synonymous with 100-Year-Flood and is a Flood having a 1-percent-annual-chance of being equaled or exceeded in any given year.
Base Flood Elevation (BFE)	The elevation shown on a FEMA FIRM for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a Flood that has a 1-percent-annual-chance of equaling or exceeding that level in any given year.
Basin	The total land surface area from which precipitation is conveyed or carried by a stream or system of streams under the force of gravity and discharged through one or more outlets.
Board	Refers to the Board of Directors of the Colorado Water Conservation Board.
Channel	The physical confine of stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.
Channelization	The artificial creation, enlargement or realignment of a stream Channel.
Code of Federal Regulations (CFR)	The codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad

areas subject to Federal regulation.

Colorado Floodplain and Stormwater Criteria Manual	The Manual prepared by the CWCB to, if needed, aid local officials and engineers in the proper regulation and design of Flood protected facilities. The Manual is advisory, rather than regulatory, in purpose.
Colorado Revised Statutes (CRS)	The codified general and permanent statutes of the Colorado General Assembly.
Colorado Water Conservation Board	As used in these Rules, “CWCB” refers to the agency and its staff, and “Board” refers to the Board of Directors of the Colorado Water Conservation Board.
Community	Any political subdivision in the state of Colorado that has authority to adopt and enforce Floodplain Management Regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Native American tribes and drainage and Flood control districts.
Conditional Letter of Map Revision (CLOMR)	FEMA's comment on a proposed project, which evaluates potential project impacts on the hydrologic or hydraulic characteristics of a Flooding source. A CLOMR does not revise an effective Floodplain Map, but determines whether a proposed project, once constructed, would warrant revisions to the effective Flood Hazard Information.
Critical Facility or Critical Facilities	Means a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the Community at any time before, during and after a Flood. *See* Rule 6.
Debris Flow	Movement of mud, water, and other materials downward over sloping terrain. The flow typically consists of a mixture of soil, rock, woody debris and water that flows down steep terrain.
Designation and Approval	Certification by formal action of the Board that technical information developed through scientific study using accepted engineering methods is suitable for local governments making land use decisions under statutorily authorized zoning powers.
Detailed Floodplain Information	Floodplain information prepared utilizing topographic base mapping, supplemental survey data, Hydrologic Analysis, and hydraulic calculations (at the time of the study) to arrive at precise Flood Hazard Information suitable for making land use decisions under statutorily authorized zoning powers.
Development	Any man-made changes to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining,

	dredging, filling, grading, paving, excavation or drilling operations.
FEMA	Federal Emergency Management Agency.
FEMA Risk Mapping Assessment and Planning (Risk MAP) Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities	FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping, and associated resources, define the implementation details for statutory and regulatory requirements for NFIP mapping.
Flood or Flooding	A general and temporary condition of partial or complete inundation of normally dry land areas from: 1. The overflow of water from Channels and reservoir spillways; 2. The unusual and rapid accumulation or runoff of surface waters from any source; or 3. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current.
Flood Control Structure	A physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding Flood flows along a particular waterway.
Flood Hazard Information	Floodplain Maps, profiles, and other related information for Flood hazard areas that have been Designated and Approved by the Board. *See* Rule 5.
Flood Insurance Rate Map (FIRM)	A FIRM is the official FEMA Flood map for a Community for delineating both the 100-Year-Floodplain and 500-Year-Floodplain, the Floodway, and hazard zone designations applicable to the Community.
Flood Insurance Study (FIS)	A FEMA FIS is a compilation and presentation of Flood hazard data (information and maps) for watercourses, lakes, and other sources of Flood hazard within a Community for the NFIP. The FIS report contains detailed Flood elevation data in Flood profiles and data

tables.

Floodplain	The area of land that could be inundated as a result of a Flood, including the area of land over which floodwater would flow from the spillway of a reservoir.
Floodplain Management	The operation of an overall program of corrective, preventive, and maintenance measures for reducing potential Flood risk and associated damage, including, but not limited to, zoning or land-use regulations, Flood mitigation measures, and emergency preparedness plans.
Floodplain Management Regulations	Zoning ordinances, subdivision regulations, building codes, health regulations, land-use permits, special purpose ordinances (Floodplain ordinance, grading ordinance, or erosion control ordinance) and other applications of regulatory powers. The term describes state/local regulations that provide standards for Floodplain preservation and potential Flood risk reduction to life, safety, health and property.
Floodplain Maps	Maps that show in a plan view the horizontal boundary of Floods of various magnitudes or frequencies. Such maps include, but are not limited to, Flood Hazard Boundary Maps (FHBM), and Flood Insurance Rate Maps (FIRMs)published by FEMA, Flood Prone Area Maps published by the U.S. Geological Survey (USGS), Flooded Area Maps published by the U. S. Army Corps of Engineers (USACE), Floodplain Information Reports published by the CWCB or others, Flood Hazard Area Delineation studies (FHADs) published by the Urban Drainage and Flood Control District (UDFCD) a/k/a the Mile High Flood District, and other locally adopted Floodplain Studies and master plans.
Floodplain Studies	A formal presentation of the study process, results, and technical support information developed for Floodplain Maps.
Floodway	The Channel of a river or other watercourse and the adjacent land areas that must be kept free of obstructions in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than a designated height.
Freeboard	The vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to Flood heights greater than the height calculated for a selected size Flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the

	watershed.
Geographic Information Systems (GIS)	Computer software that utilizes databases and terrain mapping to store and display spacial and tabular data, such as floodplains, as layers (e.g. political boundaries, roadways, structures, topographic information, land use) for natural resource management and other uses.
Hydraulic analysis	The determination of Flood elevations, depths, and velocities for various storm frequencies/events based on a scientific analysis of the movement and behavior of floodwaters in Channels and overbank areas through a Basin or watershed.
Hydrologic Analysis	The computation of the hydrograph, peak rate of flow, or discharge in cubic feet per second, for various storm frequencies/events for streams, Channels, or watersheds based on a scientific analysis of the physical process resulting in precipitation runoff amounts at specific locations.
Letter of Map Revision (LOMR)	An official revision issued by FEMA to modify the currently effective FIRM and FIS. Based on supporting technical documentation, it is issued by FEMA for changes to Flood hazard potential, Flood zones, Flood hazard delineations, and corresponding Flood elevations.
Letter of Map Revision Based on Fill (LOMR-F)	FEMA's official determination document supporting a revision to the 100-Year-Floodplain, also known as the "Special Flood Hazard Area (SFHA)" or high risk Flood zone shown on the effective FIRM based on the placement of fill outside the effective regulatory Floodway. The determination is based on either the lowest adjacent grade or Lowest Floor relative to the effective BFE or 100-Year water surface elevation. This type of revision does not physically change the SFHA, but provides the property owner an official document verifying the property or building is above the regulatory Flood elevation at that location.
Levee or Levee System	A man-made structure or land feature (or series of structures or land features) designed and operated, wholly or in part, for the purpose of containing, controlling, or diverting the flow of water to reduce Flood risk potential for areas on the landward side of the Levee or Levee System.
Lowest Floor	The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor. Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 C.F.R. § 60.3. *See* Rule 17.

Low Impact Development (LID)	Development design/construction strategy that maintains the predevelopment hydrologic regime to the extent possible at the development site. The goal of LID is to mimic the natural runoff hydrograph as much as practicable in terms of magnitude, frequency, duration, timing, and rate of change of stream flows. LID focuses on small scale stormwater retention and detention, reduced impervious areas, and increased runoff periods.
Material Safety Data Sheet (MSDS)	A form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.
Mitigation	The process of preventing disasters or reducing impacts of related hazards. Structural Mitigation, includes, but is not limited to, Flood proofing structures, diverting floodwaters, detention ponds, floodwalls or Levees. Nonstructural Mitigation includes, but is not limited to, education, planning, and design of Flood prevention measures, emergency preparedness plans, elevating or relocating structures, purchasing property for open space, and/or early Flood warning detection systems.
Model-Backed Approximate Flood Elevation	The 100-Year-Flood water surface elevation resulting from a hydraulic model used to determine an Approximate Floodplain.
National Flood Insurance Program (NFIP)	FEMA's program of Flood insurance coverage and national Floodplain Management administered in conjunction with the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The NFIP has applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.
Notice of Non-Compliance (NONC)	Written notification notifying a Community or person that the CWCB has discovered potential violations of these Rules.
Post-Wildfire Hydrology	Methodologies and calculations developed to account for the increased stormwater runoff following forest fires. Post-wildfire hydrology is typically evaluated every 3 to 5 years to assess the need for further revision based on watershed recovery, forest re-growth, and other factors.
Provisionally Accredited Levee (PAL)	A temporary FEMA Levee designation option for previously accredited Levees or Levee Systems recognized on a FIRM that allows mapping for an area while affording time for a Levee owner or Community to

	provide data and documentation demonstrating the Levee still meets requirements set forth in 44 C.F.R § 65.10. A PAL notation on the FIRM indicates that the Levee owner has signed and submitted an agreement to FEMA to provide documentation of the structure's compliance under NFIP regulations within a specified period of time. As a result, FEMA has provisionally accredited the Levee (for a defined period of time), and that any designation of existing Zone X (shaded) areas due to Flood hazard reduction from a 1-percent-annual-chance-Flood on an effective FIRM (landward of the Levee) is also provisional.
Regulatory Floodplain	In Colorado the Regulatory Floodplain is the extents of the area subject to inundation by the 100-Year-Floodplain that have been Designated and Approved by the Board, unless a Community voluntarily elects to regulate to a 500-Year-Flood standard for certain circumstances.
Residual Risk	The Flood risk (probability of capacity exceedance or failure and the associated consequences) that remains after a Flood risk management or Mitigation measure has been implemented.
Special Flood Hazard Area (SFHA)	Special Flood Hazard Area means an area having special Flood, mudslide (i.e. mudflow), or Flood-related erosion hazards, and show on a Flood Hazard Boundary Map or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH.
Stream Alteration Activity	Any manmade activity within a stream or Floodplain that alters the natural Channel, geometry, or flow characteristics of the stream.
Substantial Damage / Substantially Damaged	Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
Substantial Improvement / Substantially Improved	Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have been Substantially Damaged, regardless of the actual repair work performed. The term does not, however, include either: 1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications, which have been identified by the Community and which are the minimum necessary to assure safe living conditions; or 2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Threshold Planning Quantity (TPQ)	A quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.
Topography	Configuration (relief) of the land surface elevation; the graphic delineation or portrayal of that configuration in map form, as by lines of constant elevation called contour lines.
Use Change	Any change in the primary use of a facility or unimproved land.
Water Surface Profile	A graph that shows the relationship between the vertical elevation of the top of the floodwater and of the streambed with the horizontal distance along the stream alignment.

Rule 5. Regulatory Floodplain:

The Regulatory Floodplain in Colorado is the 100-Year-Floodplain, unless a Community voluntarily elects to regulate to a 500-Year-Flood standard for certain circumstances. The Board will also Designate and Approve 500-Year-Floodplain information when available. In addition, previously designated Floodplain areas that have been removed from FEMA's effective Regulatory Floodplain by a Letter of Map Revision based on Fill (LOMR-F) shall remain within the Regulatory Floodplain for all activities affected by Rule 11.C. All Designated and Approved Regulatory Floodplain information can be used by Communities for the purpose of local regulation. The General Assembly has deemed the designation of Floodplains a matter of statewide importance and interest and gave the CWCB the responsibility for the designation of Regulatory Floodplains and to promote protection of public health, safety, welfare and property by protecting development in the Regulatory Floodplains. § § 24-65.1-101, 24-65.1-202(2)(a)(I), 24-65.1-302(1)(b), (2)(a), 24-65.1-403(3), 24-65.1-404(3).

Rule 6. Critical Facilities:

A. **Classification:** Critical Facilities are classified under the following categories: (1) Essential services facilities; (2) Hazardous materials facilities; (3) At risk populations facilities; and (4) Facilities vital to restoring normal services.

(1) *Essential services facilities* include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

a. These facilities consist of:

i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and emergency operation centers);

ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctor offices, and non-urgent care medical structures that do not provide these functions);

iii. Designated emergency shelters;

iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);

v. Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and

vi. Air transportation lifelines [airports (municipal and larger), helicopter pads and structures serving emergency functions], and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).

b. Specific exemptions to this category include wastewater treatment plants, non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.

i. Owners of these facilities are encouraged to meet the spirit of Rule 6.D. when practicable in order to protect their own infrastructure and to avoid system failures during extreme Flood events. Emergency restoring plans following major Flood events should be considered as a prudent addition to operation and maintenance plans for those facilities.

ii. Public utility plant facilities may be exempted if it is demonstrated to the satisfaction of the Community that the facility is an element of a redundant system for which service will not be interrupted during a Flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the Regulatory Floodplain or are compliant with this Rule, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a Flood. Evidence of ongoing redundancy shall be provided to the Community on an as-needed basis upon request by that Community.

(2) *Hazardous materials facilities* include facilities that produce or store highly volatile, flammable, explosive, toxic, and/or water reactive materials.

a. These facilities consist of*:*

i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);

ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water reactive materials;

iii. Refineries;

iv. Hazardous waste storage and disposal sites; and

v. Above ground gasoline or propane storage or sales centers.

b. Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a MSDS on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the TPQ for that chemical, then that facility shall be considered to be a Critical Facility. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910. *See* Rule 17.

i. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302, also known as Extremely Hazardous Substances; or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Public Health and Environment (CDPHE). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," can be found at 40 C.F.R. § 302. *See* Rule 17.

c. Specific exemptions to this category include: Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use; Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the Community and certification by a qualified professional (as determined by the Community) that a release of the subject hazardous material does not pose a major threat to the public; and Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

d. These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Rule 6.A.

(3) *At risk population facilities* include medical care, congregate care, and schools.

a. These facilities consist of:

i. Elder care (nursing homes);

ii. Congregate care serving 12 or more individuals (day care and assisted living); and

iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);

(4) *Facilities vital to restoring normal services* including government operations.

a. These facilities consist of:

i. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);and

ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only);

b. These facilities may be exempted if it is demonstrated to the satisfaction of the Community that the facility is an element of a redundant system for which service will not be interrupted during a Flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the Regulatory Floodplain or are compliant with this Rule, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a Flood. Evidence of ongoing redundancy shall be provided to the Community on an as-needed basis upon request by that Community.

B. **Identification of Critical Facilities**.

(1) It is the responsibility of the Community to identify and confirm that specific structures in their Community meet the criteria outlined in Rule 6.A. and are deemed to be Critical Facilities. All structures that clearly meet the intent of Rule 6 shall be deemed Critical Facilities by that Community. For those structures for which it is unclear or otherwise ambiguous if the criteria are met, the Community shall have the sole discretion to determine if the structure is a Critical Facility. Communities may adopt ordinances that regulate to higher standards or that include additional facilities within the definition of Critical Facilities. Critical Facilities that are also designated as historic structures (determinations by the State Historic Preservation Office) are exempt from these requirements. Pursuant to section 24-65.1-202(2)(a)(I)(A), C.R.S., open space activities such as agriculture, horticulture, floriculture, recreation, and mineral extraction, including oil and gas activities, shall be encouraged in the Floodplain, and are exempt as Critical Facilities unless provisions within Rule 6.A.(2) apply. These activities may still require coordination with the Community and be subject to other local, state, and federal requirements or permits.

(2) Required identification of Critical Facilities shall be limited to owner-occupied structures. Communities may, at their sole discretion, include leased facilities in their identification of Critical Facilities.

C. **500-Year-Flood Events**. The CWCB acknowledges that Flooding does and has occurred above and beyond 100-Year-Flood events. Communities are encouraged to regulate Development of Critical Facilities within the 500-Year-Floodplain, when available.

D. **Protection of Critical Facilities**.

(1) All new, Substantially Damaged, and Substantially Improved Critical Facilities, and new Additions to Critical Facilities, shall be regulated to a higher standard than those structures not determined to be Critical Facilities. Communities are encouraged to consult with the owner of the Critical Facility in determining the value of the Critical Facility when a Substantial Damage and/or Substantial Improvement is being considered.

(2) This Rule 6 shall be applied to a Use Change if the new use meets the provisions within Rule 6.A. Further, although Rule 6 shall apply to new Additions made at Critical Facilities, it shall only apply to the new Additions, and not the Critical Facility to the extent the Critical Facility existed prior to the amendment of these Rules.

(3) The higher standard for Critical Facilities shall be as follows: For Critical Facilities located within the Regulatory Floodplain, the structure shall be protected according to Rule 11.B. herein, with the exception of a two-foot Freeboard requirement substituted for the standard one-foot Freeboard. The International Building Code and Flood Resistant Design and Construction (ASCE 24) can be used as reference tools for this standard, but are not incorporated by reference herein.

(4) For the purposes of this Rule 6.D., protection shall include one of the following:

a. Location outside the Regulatory Floodplain; or

b. Elevation or Flood proofing of the structure so that it is protected to the level indicated in this Rule 6.D.

(5) Unimproved lands associated with a Critical Facility that lie within a Regulatory Floodplain shall not be subject to this requirement, until future Development takes place on those lands. Likewise, if an undeveloped portion of a facility's property lies within a Regulatory Floodplain, but the developed portion of that facility lies outside of the Regulatory Floodplain, then that facility shall not be classified as a Critical Facility.

(6) All other rules and regulations governing structures not deemed Critical Facilities remain in effect and unchanged.

E. **Ingress and Egress for New Critical Facilities.** New Critical Facilities shall, when practicable as determined by the Community, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a Regulatory Flood event. This criterion is also recommended, but not required, for changes to existing Critical Facilities and use changes involving existing structures or unimproved lands whose classification changes to Critical Facilities.

F. **Variances**. For all Critical Facilities, the Variance procedure outlined in Rule 15 herein remains available and may be considered when deemed necessary and appropriate by the Community over the Critical Facility.

Rule 7. Standards for Delineation of Regulatory Floodplain Information:

A. **Intent of this Rule**. This Rule contains standards for approximate and detailed Floodplains. All Floodplain information intended to be used by Communities for the purpose of regulating Flood hazard areas, with the exception of local stormwater drainage reports, CLOMR, LOMR, and LOMR-F submittals, and supporting documentation submitted to FEMA, shall be provided to the CWCB for Designation and Approval by the Board in order to enable Communities to regulate floodplains appropriately. The standards in this rule reference, and incorporate herein, the FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities, and associated resource documents.

B. **Level of Detail**.

(1) Approximate Floodplain Information will be based on detailed hydrology computed for 100-Year-Floods. Hydraulic information shall be produced using approximate, field, or limited techniques and best available topographic/survey data.

(2) Detailed Floodplain Information will be based on detailed hydrologic and hydraulic determinations for 100-YearFloods, Flood profiles and Floodplain delineations for 100-Year-Flood and other frequencies, if any, shall be plotted, preferably using a digital method. The Board shall Designate and Approve 100-Year-Floodplain information, and 500-Year-Floodplain information when available.

C. **Base Mapping.** Base mapping for Floodplain Studies shall meet the minimum standards as set forth in FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities.

D. **Topography and Surveys**. Topographic and field survey information for Floodplain Studies shall meet the minimum standards as set forth in FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities.

E. **Geographic Information Systems (GIS)**. GIS information for Floodplain Studies in Colorado shall meet the minimum standards as set forth in FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities.

F. **Hydrology**. Hydrologic Analyses for Floodplain Studies in Colorado shall be completed using the information set forth in FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities. The Colorado Floodplain and Criteria Stormwater Manual may be used as a reference document to aid in this analysis. In addition, hydrology studies must comply with the following:

(1) All Floodplain Studies, regardless of the level of detail, (e.g., approximate or detailed) shall utilize detailed hydrologic information. The CWCB recognizes existing and future watershed conditions for the purposes of computing Flood hydrology. The CWCB may evaluate future watershed conditions, in addition to existing conditions.

(2) Any new study to evaluate hydrologic information and/or design storm criteria shall be completed in such a way that it is scientifically defensible and technically reproducible.

(3) All jurisdictions and Communities affected by revised hydrologic data, due to their geographic proximity to the affected stream reach within a particular watershed, are encouraged to participate in the update process, and shall be given the opportunity by the study sponsor to review and comment on the revised information. Opponents to the revised information may present technically accurate and sound scientific data to the Board that clearly demonstrates that the information in question is inaccurate pursuant to Rule 12. The Board shall make the final determination regarding disputes.

(4) Within any given watershed, or hydrologic subregion, consistency in hydrologic data and runoff methodology shall be pursued to the extent possible through cooperation of all affected jurisdictions and entities.

G. **Detailed Hydraulic Method**. Hydraulic Analyses for Floodplain Studies in Colorado shall be completed using protocols set forth FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities.

H. **Floodplain Delineations**. Floodplain delineations shall be completed using protocols set forth in FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities , and shall, at a minimum, comply with the technical quality assurance standards as follows:

(1) The Flood elevations and the Floodplain delineations on the maps must meet or exceed FEMA NFIP standards for tolerance and technical accuracy for correlation to the best available topographic information for the stream and adjacent corridor.

(2) The planimetric features on the Floodplain Maps (including, but not limited to: streets and highways, stream centerlines, bridges and other critical hydraulic features, corporate limits, section lines and corners, survey benchmarks) must be consistent with the best available geospatial data for the stream and the adjacent corridor, as determined through prevailing industry practices, and must meet an acceptable level of technical accuracy.

I. **Special Floodplain Conditions**. There are a number of special Floodplain conditions, or natural Flood hazards, in Colorado that fall outside of the standard riverine environment. Studies for the Regulatory Flood involving special conditions shall be completed using protocols set forth in FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities. The special conditions are:

(1) Alluvial Fan and Debris Flow Floodplains located within foothill and mountainous regions of Colorado shall be considered on a case-by-case basis.

(2) Post-Wildfire Hydrology may be evaluated on a case-by-case basis in forested areas immediately following moderate to intense wildfires resulting in approximately 15% or greater burn area of the affected watershed. Interim Flood advisory maps, based on burned watershed conditions, may be produced at the request of the Community or by Board initiative. The interim Floodplain Maps should show increased runoff from hydrophobic soils and lack of vegetation. The post-wildfire maps may be evaluated every

3 to 5 years to assess the need for further revision based on watershed recovery, forest re-growth, and other factors.

(3) Ice jam Flooding shall be considered within stream reaches where this phenomenon is known to occur. Ice jam Flooding may be analyzed utilizing methodologies outlined in the FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities, *Guidance for Flood Risk Analysis and Mapping: Ice Jam Analyses and Mapping*.

J. **Written reports and maps**. The results of the Hydrologic Analyses, Hydraulic Analyses, and Flood hazard area delineations shall be summarized in a written report and submitted to the CWCB. All Approximate and Detailed Floodplain Information that is presented to the Board for Designation and Approval shall be properly titled, dated, organized, and compiled as a stand-alone digital document (in MS Word and PDF formats). All pertinent technical backup data to support the flood hazard study, regardless of data format be provided to the CWCB in acceptable digital formats. The CWCB shall make pertinent supporting documentation for flood hazard studies available for access to interested parties, to the extent possible, through a secure data sharing platform. In one-dimensional riverine situations, where discrepancies appear between Regulatory Floodplain maps and water surface profiles, any regulatory water surface profile designated and approved by the Board shall take precedence over any corresponding flooded area map for the same stream reach or site location, unless a profile error is identified and substantiated.

K. **Contractor Qualifications**.

(1) Qualified engineers licensed in Colorado shall direct or supervise the Flood hazard studies and projects pertaining to the Regulatory Floodplain. All Floodplain maps, reports and project designs pertaining to the Regulatory Floodplain, except those prepared by federal agencies, shall be certified and sealed by the Colorado Registered Professional Engineer of record.

(2) Federal agencies or other recognized and qualified government authorities may produce Floodplain mapping work as a study proponent or on behalf of a study proponent.

Rule 8. Standards for Regulatory Floodways:

A. **Establishment of Floodway Criteria**. The CWCB recognizes that Designated Floodways are administrative limits and tools used by Communities to regulate existing and future Floodplain Development within their jurisdictions. This Rule 8.A. does not require Communities to automatically map ½ foot floodways within their jurisdictions. However, at such time when Floodways are to be delineated based on revised Flood hazard studies or through physical map revisions involving local government participation, Communities shall delineate Floodways for the revised reaches based on ½-foot rise criteria. Letters of Map Revision to existing Floodway delineations may continue to use the Floodway criteria in place at the time of the existing Floodway delineation. Until such time that Floodways are revised and designated, Communities may continue to regulate their mapped one-foot Floodways. For reaches where a transition must be shown to connect new studies to existing studies with different Floodway criteria, the transition length shall not exceed 2,000 feet.

B. **Designation of Floodways**. Designation and Approval of Floodplain information shall also include the Designation and Approval of corresponding Floodway Information. For waterways with Model-Backed Approximate Flood Elevations or BFEs for which Floodways are not computed, the Community shall apply a ½ foot Floodway regulation according to its own determination, as outlined in FEMA Regulation 44 C.F.R. § 60.3(c)(10), for the FEMA minimum requirement of a 1-foot floodway. *See* Rule 17.

C. **Incorporation of FEMA's Floodway Regulations**. All Communities participating in the NFIP that have BFEs or Model-Backed Approximate Flood Elevation defined for one or more of the waterways within their jurisdictions shall adopt and enforce the "Criteria for Land Management and Use" Floodway regulations at 44 C.F.R. § 60.3(c)(10), (d). Failure to enforce Floodway regulations may impact the Community's standing in the NFIP and may eliminate or reduce eligibility for federal or state financial assistance for Flood Mitigation and disaster relief purposes.

D. **Communities in Which This Rule Applies**. Communities with Regulatory Floodplains that have been Designated and Approved by the Board with BFEs or Model-Backed Approximate Flood Elevations defined for one or more of the waterways within their jurisdictions shall be required to establish technical (quantified) surcharge criteria for Floodway determination and regulation, which must meet or exceed the requirements set forth in this Rule. This Rule shall not apply to approximate stream reaches for which BFEs or Model-Backed Approximate Flood Elevation have not been defined (i.e. non-model-backed Flood hazard areas).

Rule 9. Criteria for Determining the Effects of Flood Control Structures on Regulatory Floodplains:

A. For the purposes of this Rule, local and regional hydraulic structures providing local or regional Flood or stormwater detention, shall be considered to be Flood Control Structures. There are no separate criteria for these structures.

B. **Flood Control Structures**.

(1) If a publicly operated and maintained structure, as further defined in subparagraph B.(3), is specifically designed and operated either in whole or in part for Flood control purposes, then its effects shall be taken into consideration when delineating the Floodplain below such structure. The effects of the structure shall be based upon the 100-Year-Flood with full credit given to the attenuation of peak Flood discharges, which would result from normal Flood Control Structure operating procedures.

(2) The Hydrologic Analysis pertaining to State Regulatory Floodplains shall consider the effects of on-site detention for rooftops, parking lots, highways, road fills, railroad embankments, diversion structures, refuse embankments (including, but not limited to, solid waste disposal facilities), mill tailings, impoundments, siltation ponds, livestock water tanks, erosion control structures, or other structures, only if they have been designed and constructed with the purpose of impounding water for Flood detention and/or infiltration and are publicly operated and maintained in accordance with subparagraph B.(3).

(3) For the purposes of this Rule, public operation and maintenance is required for credit of the flood control structure, which may include direct responsibility, ultimate Community responsibility, or Community enforcement. *See* 44 C.F.R. § 65.6 (a)(12). This does not

apply to state or federally operated and/or maintained facilities. Detention structures that are privately operated or maintained shall not be included in the Hydrologic Analysis unless it can be shown that they exacerbate downstream peak discharges.

C. **Non-Flood Control Structures**. If a structure is not specifically designed and operated, either in whole or in part, for Flood control purposes, then its effects, even if it provides inadvertent Flood routing capabilities that reduce the 100-Year-Flood impacts downstream, shall not be taken into account, and the delineation of the Flood hazard areas below such structure shall be based upon the 100-Year-Flood that could occur absent the structure's influence. However, if adequate assurances have been obtained to preserve the Flood routing capabilities of such structure, then the delineation of the Flood hazard areas below the structure may, but need not, be based on the assumption that the reservoir formed by the structure will be filled to the elevation of the structure's emergency spillway and the 100-Year-Flood hydrology can be routed through the reservoir to account for any Flood attenuation effects.

D. **Adequate Assurances**. For the purposes of this Rule 9 "adequate assurances" shall, at a minimum, include appropriate recognition in either a signed adequate assurance agreement, or the Community's adopted master plan of:

(1) The Flood routing capability of the reservoir, as shown by comparison of the 100-Year-Flood hazard area in plan and profile (where applicable) with and without the structure in place, in order that the public may be made aware of the potential change in level of Flood protection in the event that the reservoir Flood routing capability is lost;

(2) The need to preserve that Flood routing capability by whatever means available in the event that the reservoir owners attempt to make changes that would decrease the Flood routing capability; and

(3) A complete operations and maintenance plan.

E. **Irrigation Facilities**. The CWCB recommends that irrigation facilities (including, but not limited to, ditches and canals) not be used as stormwater or Flood conveyance facilities, unless specifically approved and designated by Community and approved by the irrigation facility owners. The Flood conveyance capacity of irrigation facilities shall be acknowledged only by agreement between the facility owners and Communities, with review and concurrence from the Colorado Division of Water Resources to ensure that water rights administration needs are properly considered. A maintenance easement or agreement shall be in place allowing the Community maintenance access to the irrigation facility if needed.

Unless specified otherwise by aforementioned written agreement, Flood hydrology for State Regulatory Floodplain mapping purposes shall consist of peak hydrologic flows that are identical immediately downstream and immediately upstream of a ditch or canal that is generally perpendicular to the stream or drainageway of interest. The irrigation facility shall be assumed as running full so that there are no computed Flood reduction benefits downstream of the irrigation facility. Backwater behind irrigation facilities shall be mapped. The Board will Designate and Approve 100-Year-Flood Flood Hazard Information for irrigation facilities if the above recommendations are met. This Rule is not intended in any way to interfere with Colorado water law.

Rule 10. Criteria for Determining Effects of Levees on Regulatory Floodplains:

A. **General**. The use of Levees for property protection, Flood control, and Flood hazard Mitigation is not encouraged by the CWCB, unless other Mitigation alternatives are not viable. The areas landward of an accredited Levee and Provisionally Accredited Levee (PAL) system shall be mapped and annotated on the FIRM in accordance with FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities. In situations where Levees are the only viable alternative for protection of existing development, "setback" levees should be designed and constructed to maintain the natural Channel and reserve a portion of the natural Floodplain capacity. Levees should not be used for Flood protection along streams or watercourses where new Development is planned. However, Levees may be used to protect public utility plant facilities for wastewater treatment and pumping as well as electric power plants due to their close proximity to natural waterways. For existing Levees that protect existing development, proper maintenance should be performed by Levee owners/operators, or non-federal sponsors in the case of federal Levees, according to an operations and maintenance plan.

(1) Levees should not be constructed for the primary purpose of removing undeveloped lands from mapped Floodplain areas for the purposes of developing those lands because of the potential impairment of the health, safety, welfare and property of the people. Design and construction of Levees identified for this purpose will not be eligible for CWCB grants or loans.

(2) When constructed, Levees for which protection will be considered for designation and approval must meet the requirements set forth in "Mapping of Areas Protected by Levee Systems," 44 C.F.R. § 65.10. Artificial embankments that either function as a Levee or a Flood Control Structure must meet the provisions of this Rule or the "Office of the State Engineer Rules and Regulations for Dam Safety and Dam Construction," 2 C.C.R. 402-1, respectively, in order to be considered as providing protection. *See* Rule 17.

B. **Maintenance**. An operating and maintenance manual that ensures continuous proper function of the structure shall be prepared and updated. The Levee shall be structurally sound and adequately maintained. Sedimentation effects shall be considered for all Levee projects. Certification from a federal agency, state agency, or a Colorado Registered Professional Engineer that the Levee meets the minimum Freeboard criteria, as stated above in Rule 10.A.(2), shall be provided to CWCB.A visual inspection shall be required on a three-year basis to demonstrate that the Levee continues to be structurally sound and adequately maintained and results of the inspection shall be provided to the CWCB. Levees that have obvious structural defects or that are obviously lacking in proper maintenance shall not be considered in the Hydraulic Analysis without a funded project plan to bring the Levee deficiencies into compliance (to be considered on a case-by-case basis).

C. **Ownership**. Privately-owned or non-Community-owned Levee systems shall only be considered in the Hydraulic Analysis if they are publicly operated and maintained. For the purposes of this Rule, public operation and maintenance is required for credit of the Levee system, which may include direct responsibility, ultimate Community responsibility, or Community enforcement. *See* 44 C.F.R. § 65.6 (a)(12). Levees for which the Community, state, or federal government has responsibility for operations and maintenance will be considered, provided that the criteria set forth in this Rule are met.

D. **Levee Analysis and Standards Consistent with Federal Regulation.** To comply with these Rules, analysis of Levees and Levee standards for Freeboard, interior drainage, and human intervention and operation must comply with the standards in 44 CFR § 65.10 and the FEMA Risk MAP Technical References, Guidelines and Standards for Flood Risk Analysis & Mapping Activities, *Guidance for Flood Risk Analysis and Mapping: Levees*, Guidance Document 95.

Rule 11. Floodplain Management Regulations:

A. **Compliance with Minimum Standards of the National Flood Insurance Program**. Each Community in the State of Colorado shall comply with the minimum Floodplain criteria set forth in the FEMA regulation "Criteria for Land Management and Use," 44 C.F.R. § § 60.3–60.5, *see* Rule 17, unless more restrictive standards have been adopted as set forth in these Rules or pursuant to regulations adopted by the Community. These Rules do not apply to local stormwater or local storm drainage studies where riverine Flooding sources are not considered.

B. **Minimum Freeboard**. A minimum Freeboard of one foot above the 100-Year-Flood elevation (BFE or Model-Backed Approximate Flood Elevation) shall apply to structures in the Floodplain as follows:

(1) **Residential Structures**. New, Substantially Damaged, and/or Substantially Improved residential structures, and Additions to existing residential structures shall be constructed with the Lowest Floor, including basements, placed with a minimum of one foot of Freeboard above the BFE or Model-Backed Approximate Flood Elevation. In AO Zones, new, Substantially Damaged, and/or Substantially Improved residential structures, and Additions to existing residential structures shall be constructed with the Lowest Floor, including basements, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Community's FIRM (at least two feet if no depth number is specified) plus one foot of Freeboard.

(2) **Non-residential Structures**.

a. New, Substantially Damaged, and/or Substantially Improved non-residential structures, and Additions to existing non-residential structures shall be constructed with the Lowest Floor, including basements, placed with a minimum of one foot of Freeboard above the BFE or Model-Backed Approximate Flood Elevation, or together with attendant utility and sanitary facilities, be designed so that the structure is watertight to an elevation at least one foot above the BFE or Model-Backed Approximate Flood Elevation with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. In AO Zones, new, Substantially Damaged, and/or Substantially Improved non-residential structures and Additions to existing non-residential structures shall be constructed with the Lowest Floor, including basements, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Community's FIRM (at least two feet if no depth number is specified) plus one foot of Freeboard, or together with attendant utility and sanitary facilities be completely floodproofed to that level with walls substantially impermeable to the past of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Agricultural

Structures and Accessory Structures shall be exempt from the Freeboard requirement but shall meet all other requirements set forth in FEMA Policy No. 104-008-03: Floodplain Management Requirements for Agricultural Structures and Accessory Structures.

b. Critical Facilities shall be regulated according to Rule 6.D. This Rule does not affect the Freeboard requirement for Levees described in Rule 10.D.

C. **Permit Restrictions for Properties Removed from the Floodplain by Fill**. No Community shall issue a permit for the construction of a new structure on a property removed from the Floodplain by the issuance of a FEMA LOMR-F unless the Lowest Floor elevation placed below the BFE or Model-Backed Approximate Flood Elevation with one foot of Freeboard that existed prior to the placement of fill. In AO Zones, new structures shall be constructed with the Lowest Floor, including basements, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Community's FIRM (at least two feet if no depth is specified) that existed prior to the placement of fill plus one-foot of Freeboard. Issuance of any such permit shall constitute a violation of these Rules. Critical Facilities are exempted from this restriction if the facility is protected according to Rule 6.D. herein.

D. **Highest Adjacent Grade**. For the purposes of this Rule 11, highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Rule 12. Effects of Flood Mitigation Measures and Stream Alteration Activities on Regulatory Floodplains:

In order to assist the CWCB in carrying out its mission to protect the health, safety, welfare and property of the public, through the prevention of Floods in Colorado, the CWCB requires the following:

A. Flood control Channels shall include a low-flow Channel with a capacity to convey the average annual flow rate, or other appropriate flow rate as determined through a hydrogeomorphological analysis, without excessive erosion or Channel migration, with an adjacent overbank Floodplain to convey the remainder of the 100-Year-Flood flow. The Channel improvement shall not cause increased velocities or erosive forces upstream or downstream of the improvement.

B. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and Channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed geomorphological analysis should be considered, when appropriate, to assist in determining the most appropriate design.

Project proponents for a Mitigation activity must evaluate the residual 100-Year-Floodplain. Proponents are also encouraged to map the residual 500-Year-Floodplain.

C. All dams must be maintained to ensure that they retain their structural and hydraulic integrity pursuant to FEMA Risk MAP Technical References, Guidelines, and Standards for Flood Risk Analysis and Mapping Activities, *Dams/Reservoirs and Non-Dam Features*. *See* Rule 17. All Levees must be maintained to ensure that they retain their structural and hydraulic integrity

pursuant to FEMA Risk MAP Technical References, Guidelines, and Standards for Flood Risk Analysis and Mapping Activities, *Levees*. *See* Rule 17.

D. Any Stream Alteration Activity proposed by a project proponent in either i) a Floodway or ii) a Regulatory Floodplain with no established Floodway (except in shallow Flooding areas, defined as Flooding with an average depth limited to 3.0 feet or less where no defined Channel exists) must be evaluated for its impact on the Regulatory Floodplain. All Stream Alteration Activity shall be in compliance with all applicable federal, state and local Floodplain rules, regulations and ordinances.

E. Any Stream Alteration Activity shall be designed and sealed by a Colorado Registered Professional Engineer.

F. All activities within the Regulatory Floodplain performed by federal agencies using local or state funds, or by private, local or state entities shall meet all applicable federal, state and local Floodplain requirements.

G. For compliance purposes, Stream Alteration Activities shall not be constructed in a Floodway unless the project proponent demonstrates through a Floodway analysis and report, sealed by a Colorado Registered Professional Engineer, that there is no rise resulting from the project unless a CLOMR has been obtained. No rise means a 0.00-foot rise or a decrease in the Flood elevation between the existing and proposed conditions. Stream Alteration Activities proposed in a Regulatory Floodplain with no established Floodway (except in shallow Flooding areas, defined as Flooding with an average depth limited to 3.0 feet or less where no defined Channel exists), shall demonstrate no more than $^{1}/_{2}$-foot rise in Flood elevations (or a more stringent standard adopted by the Community) between the existing and proposed conditions unless a CLOMR is obtained. This requirement only applies on stream reaches with BFEs or Model-Backed Approximate Flood Elevations established.

H. Rule 12.D. addresses when hydraulic modeling is required for Stream Alteration Activities. For map update purposes, regardless of whether modeling is required or not, whenever a Stream Alteration Activity is shown by hydraulic modeling to increase or decrease the established BFE in excess of 0.30 vertical feet between the pre-project and post-project conditions (or a more stringent standard adopted by the Community), a LOMR (or comparable revision process) showing such changes shall be obtained in order to accurately reflect the proposed changes on the Regulatory Floodplain map for the stream reach. This is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk assessment and Floodplain management requirements will be based upon current data, 44 CFR § 65.3. The Community is responsible for ensuring that this process is pursued. This section herein does not require a CLOMR to be applied for, unless mandated by the Community. This section reflects state policy and may not fully reflect federal and other requirements for map maintenance. This section is not intended to undermine or replace federal requirements, and Communities and project proponents are responsible for satisfying any other map maintenance requirements as a result of Stream Alteration Activities.

Rule 13. Process for Designation and Approval of Regulatory Floodplains:

A. **Designation and Approval Requirements**. The Board will Designate and Approve Regulatory Floodplains by the adoption of written resolutions based only upon such Floodplain information as the CWCB determines meets the standards set forth in Rule 7, as applicable, with consideration of the effects of dams and Levees being subject to the criteria or Rules 9 and 10, respectively and any Mitigation activity in Rule 12.

B. **Base Flood**. 100-Year-Floodplain information shall generally be the basis for all Designation and Approval actions by the Board for regulatory purposes in Colorado. However, the Board will Designate and Approve 500-Year-Floodplain information when available.

C. **Provisional Designation**. The Board may Designate and Approve, on a provisional basis and for a maximum period of time not to exceed two years, Floodplain information that does not meet the minimum requirements as set forth in Rule 7.

D. **Process for Taking Designation and Approval Actions**. The Board shall consider the Designation and Approval of Floodplain information either by request of a Community or by acting on its own initiative.

(1) **Consideration at a Community's Request**. The Board shall consider Designation and Approval of Floodplain information upon written request from the Community having jurisdiction in the area where the Floodplain information is applicable. The letter of request shall identify the report title, date, author or agency which prepared the report, stream name(s), upstream and downstream limits of the stream reach(es) to be designated, stream length(s) in miles, type of designation requested (detailed or approximate), and any other relevant information. The CWCB shall receive such a request at least 30 days prior to the Board meeting at which consideration of Designation and Approval is requested.

(2) **Consideration at the CWCB's initiative**. If Designation and Approval of a Floodplain would be in the best interest of the health, safety, welfare and property of the citizens of the State of Colorado, then the CWCB may take action at its own initiative to consider the Designation and Approval of Floodplain information. In such cases, the CWCB shall notify the affected Communities in writing at the time of study initiation or, in the case of a previously completed study, the CWCB will endeavor to receive concurrence in writing from the affected Community at least 45 days prior to the Board meeting at which it will consider the Designation and Approval of Floodplain information within their jurisdiction. Regardless of Community concurrence, CWCB may pursue Designation and Approval.

(3) **Notification of Adopted Resolutions**. The CWCB shall send signed copies of each adopted resolution of Designation and Approval to each Community in the study area and to FEMA within 30 days of adoption.

Rule 14. Designation and Approval of Changes to Regulatory Floodplains:

When changes are made to the characteristics of a Floodplain that result in a revision of a Community's FIRMs or Flood Hazard Boundary Maps (and a subsequent designation of the new map), the Board will Designate and Approve changes to the Regulatory Floodplain caused by Development, new or better technical information, or other sources. The Board will designate the revised Floodplains by adopting

written resolutions based upon such Floodplain information as the Board determines meets the standards set forth in Rules 6-12.

A. In the event that a Community is aware of and has access to better available information on a previously designated flooding source, then the CWCB allows for that undesignated information to be used for regulatory purposes if it is to the same or greater level of detail as the previously designated Regulatory Floodplain information, has been approved through a detailed technical review by a qualified Colorado Professional Engineer, and meets one of the following conditions in (1) – (3). Communities may need to formally adopt this information through its local adoption process.

(1) Regulatory Floodplain included on a FEMA FIRM – the revised Floodplain mapping is more restrictive, the Community has informed all impacted property owners of the change and provided due process as established in Community guidelines, and the revised Floodplain mapping is ultimately Designated and Approved by the Board; or

(2) Regulatory Floodplain not included on a FEMA FIRM – the Community has informed all impacted property owners of the change, and provided due process as established in Community guidelines. The Community must submit Floodplain mapping revisions for Designation and Approval by the Board in a timely manner (not to exceed two years from the date of completion); or

(3) Regulatory Floodplain – the revised Floodplain mapping has been approved by FEMA through a LOMR or Physical Map Revision process, and ultimately Designated and Approved by the Board.

B. **Conditions**. All changes to Regulatory Floodplains shall meet or exceed the same conditions as those required for original Designation and Approval.

C. **Process for Designation and Approval of Changes to a Regulatory Floodplain**. The Board may consider the Designation and Approval of changes to Regulatory Floodplain information either by request of a Community or by acting on its own initiative.

(1) **Consideration at a Community's Request**. The Board shall consider Designation and Approval of changes to a Regulatory Floodplain upon written request from the governing body of any Community having jurisdiction in the area where the Floodplain information is applicable. The CWCB staff shall receive such requests at least 30 calendar days prior to the Board meeting at which consideration of Designation and Approval is requested.

(2) **Consideration at the CWCB's Initiative**. If Designation and Approval of changes to a Regulatory Floodplain would be in the best interest of the health, safety, welfare and property of the citizens of the State of Colorado, then the CWCB may take action at its own initiative to consider the Designation and Approval of Floodplain information. In such cases, the CWCB shall notify the affected Communities in writing at the time of the study initiation or, in the case of a previously completed study, the CWCB will endeavor to receive concurrence in writing from the affected Community at least 45 days prior to the Board meeting at which it will consider the Designation and Approval of Floodplain information within their jurisdiction. Regardless of Community concurrence, CWCB may pursue Designation and Approval.

(3) **Notification of Adopted Resolution**. The CWCB shall send signed copies of each adopted resolution of Designation and Approval of changes to a Regulatory Floodplain to each Community within the limits of the changed Floodplain within 30 calendar days of Designation and Approval.

D. **Identification of Designations of Changes to a Regulatory Floodplain**. The designation of the changes to the Regulatory Floodplain will be given a reference identification number that will differentiate the changed designation from the original. It is implied that designations to changes to a Regulatory Floodplain will only rescind the affected portions of the previously designated Floodplain information. All other unaffected reaches will remain as originally designated.

E. **Map Revisions to Flood Insurance Rate Maps (FIRMs) or Flood Hazard Boundary Maps**. Floodplain Map revisions (e.g., FEMA LOMRs) may be designated twice annually by the Board during a regularly scheduled Board meeting and will not be subject to a full technical review by the CWCB staff.

Rule 15. Variances:

A. **Consideration by Community**. Request for a variance to any of these Rules may be considered by the Community, provided the entity or individual requesting the variance has submitted a written request to the appropriate authority. A notice of the request must be provided to any adjacent Communities that would be affected by the variance.

B. **Contents of a Request for Variance**. The request for a variance shall identify:

(1) The Rule from which the variance is requested;

(2) The Communities that would be affected by the variance;

(3) The reasons why the Rule cannot be complied with;

(4) The estimated difference in water surface elevations, Flood velocities and Flood boundaries that would result if the requested variance were granted than if the calculations were made through strict compliance with the Rule;

(5) The estimated number of people and structures that will be impacted by granting of the variance; and

(6) Any other evidence submitted by the Community, the CWCB staff, or other party of interest.

C. **Factors to be considered**. Variances may be issued if it can be determined that:

(1) There is a good and sufficient cause; and

(2) The variance is the minimum necessary, considering the Flood hazard, to afford relief; and

(3) Failure to grant the variance would result in exceptional hardship to the Community or the requestor and that the hardship is not the Community's or requestor's own making; and

(4) The granting of a variance will not result in increased vulnerability to Flood losses, additional threats to public safety and welfare, extraordinary public expense, create nuisances, cause fraud or victimization of the public, hide information of significant interest to the public, or conflict with existing local laws or regulations.

(5) In lieu of items C(1) through C(4) above, a Community may, at its sole discretion, use an established variance procedure.

D. **Variance Process**. Variance requests shall be processed as follows:

(1) Communities shall render, confirm, modify, or reject all variance requests pertaining to these Rules.

(2) The Board may review local variance decisions on a case-by-case basis to ensure that the overall intent and spirit of these Rules are properly considered at the local level.

(3) Informal variance determination request may be presented to CWCB staff in order to guide Community officials or project applicants as to whether a formal variance would be needed on a case-by-case basis.

Rule 16. Enforcement of Floodplain Rules and Regulations:

A. **Procedure to be followed regarding alleged violations**

(1) **Notice of Non-Compliance**.

a. A NONC may be prepared and transmitted by the CWCB or its Director. Information regarding potential violations may be discovered directly by CWCB staff or can be brought to the CWCB or its Director by a Complainant, such as FEMA, other state agencies, the Community within whose boundaries the alleged violation took place, or by any other person who may be directly and adversely affected or aggrieved as a result of the alleged violation.

b. Oral complaints shall be confirmed in writing by the Complainant. Persons making a complaint are required to submit a formal letter of complaint to the CWCB Director.

c. NONC process.

i. An NONC issued by the CWCB shall be delivered to an alleged violator by personal delivery or by certified mail (return receipt requested). A copy of the NONC shall be transmitted to FEMA Region VIII and the Community.

ii. The NONC does not constitute final agency action.

iii. The NONC shall identify the statute, Rule, regulation, or policy subject to CWCB jurisdiction allegedly violated and the facts alleged to constitute the violation. The NONC may propose appropriate corrective action and suggested corrective action(s) if any, that the CWCB recommends.

(2) FEMA Region VIII shall support, through its NFIP activities, these Rules. This support will include the existing ability for FEMA to place sanctions upon a Community for non-compliance.

(3) Certain Board decisions to provide Flood and watershed related grant funding to Communities may be directly dependent upon a Community's compliance with these Rules.

Rule 17. Incorporation by Reference:

A. The following rules, regulations, standards, and guidelines are hereby incorporated by reference:

(1) FEMA Risk Mapping, Assessment and Planning (Risk MAP) Technical References, Guidelines and Standards for Flood Risk Analysis and Mapping Activities, December 1, 2020, available at https://www.fema.gov/flood-maps/guidance-reports/guidelines-standards, including but not limited to the following specific guidance documents:

a. *Guidance for Flood Risk Analysis and Mapping: Ice Jam Analyses and Mapping;*

b. *Guidance for Flood Risk Analysis and Mapping: Levees*; and

c. *Guidance for Flood Risk Analysis and Mapping: Dams/Reservoirs and Non-Dam Features*.

(2) FEMA National Flood Insurance Program, 44 C.F.R. §§ 59, 60, 65, 70, and 72, May 13, 2021, available at https://www.ecfr.gov/cgi-bin/text-idx?SID=504ee2bfc731d90f6be69c8f09fd0b3c&mc=true&tpl=/ecfrbrowse/Title44/44CIsubchapB.tpl.

(3) The United States Environmental Protection Agency Superfund, Emergency Planning, and Community Right-to-Know Programs, Designation, Reportable Quantities, and Notification Regulations, 40 C.F.R. § 302, May 13, 2021, available at https://www.ecfr.gov/cgi-bin/text-idx?node=pt40.30.302&rgn=div5.

(4) The Occupational Safety and Health Administration Occupational Safety and Health Standards Regulations, 29 C.F.R. § 1910, May 13, 2021, available at https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=13981877314c1c75ef4ee8c5652c8449&ty=HTML&h=L&mc=true&n=pt29.5.1910&r=PART.

(5) The Colorado Office of the State Engineer Rules and Regulations for Dam Safety and Dam Construction Materials, 2 CCR 402-1, January 1, 2020, available at https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=8426&fileName=2%20CCR%20402-1.

(6) FEMA Policy No. 104-008-03: Floodplain Management Requirements for Agricultural Structures and Accessory Structures, February 2020, available at https://www.fema.gov/sites/default/files/2020-08/fema_floodplain-management_agriculture-accessory-structures_2020.pdf.

B. These rules, regulations, standards, and guidelines in subparagraphs (1)-(6) of Rule 17.A. are hereby incorporated by reference by the Board and made a part of these Rules. Materials in these Rules, which are incorporated by reference are limited to those materials in existence as of the effective date of these revised Rules and do not include later amendments to or editions of such rules, regulations, standards, and guidelines. The material incorporated by reference is available for public inspection during regular business hours at the office of the Colorado Water Conservation Board, 1313 Sherman Street, Room 718, Denver, CO 80203 or may be examined at any state or federal publications depository library, or on the FEMA or CWCB website.

Rule 18. Severability:

If any portion of these Rules is found to be invalid, the remaining portion of the Rules shall remain in force and in effect.

Rule 19. Recommended Activities for Regulatory Floodplains:

The following list contains Floodplain Management activities and actions suggested by the CWCB to increase a Community's overall level of Flood protection. Communities and other authorized government entities may:

A. Adopt local standards above and beyond the FEMA and CWCB minimum requirements.

B. Develop a Flood response plan that identifies responsibilities/actions before, during, and after a Flood event.

C. Enroll in FEMA's NFIP and possibly FEMA's Community Rating System Program.

D. Develop an early warning Flood detection system (Flood warning system) using available technologies such as automated precipitation and stream flow gages linked to an appropriate notification system.

E. Coordinate with lenders, insurance agents, real estate agents, and developers to prepare and discuss educational tools based on state and federal requirements.

F. Promote wise Floodplain Development and support effective structural and non-structural Flood Mitigation projects.

G. Conduct Floodplain Studies in areas of foreseeable development that do not currently have detailed Floodplain Studies.

H. Maintain an electronic or paper library of local flood related data.

I. Develop a Flood risk outreach program and notify Flood prone residents annually of Flood hazards and the need for Flood insurance.

J. Encourage elevation of Flood-prone structures and Flood-proofing of structures in the Floodplains.

K. Utilize available state/federal Mitigation and preparedness funds.

L. Require certified Floodplain managers to review proposed land developments.

M. Advise the public at large that Flooding does occur above and beyond the 100-Year-Flood and 500-Year-Floods. Floods greater than 500-Year-Floods (0.2-percent-annual-chance Floods) do occur, and loss of life and property is possible in areas mapped outside of both the 100-Year-Floodplain and 500-Year-Floodplain.

N. Utilize the concept of “No Adverse Impact” Floodplain Management where the action of one property owner does not adversely impact the rights of other property owners, as measured by increased Flood peaks, Flood stage, Flood velocity, and erosion and sedimentation. “No Adverse Impact” could be extended to entire watersheds as a means to promote the use of retention/detention or other techniques to mitigate increased runoff from urban areas.

O. Prohibit the construction of new Levees that are intended to remove land from a Regulatory Floodplain for the purpose of allowing new Development activity to take place in areas that are otherwise Flood prone.

P. Require an appropriate level of Freeboard at bridges between the 100-Year-Flood water surface elevation and the lowest elevation of the lowest structural member to allow for passage of waterborne debris.

Q. Identify areas prone to Flooding outside of the 500-Year-Floodplain where loss of life or Substantial Damage may occur. Flooding greater than 500-Year-Flood events can and do occur as well, and loss of life and property is possible in areas mapped outside of both the 100-Year-Floodplain and 500-Year-Floodplain. Communities are encouraged to map and regulate 500-Year-Floodplains for Critical Facilities at their sole discretion.

R. Maintain a Flood hazard page on the Community website with links to the CWCB, FEMA Flood Map Service Center, NFIP, National Weather Service, local building codes, and local permitting information.

S. The CWCB discourages compensatory Flood storage because existing Flood storage volume should be preserved. However, when necessary, structures and fill that displace Floodplain storage volume shall be compensated for by excavation of equivalent volumes at equivalent elevations within a nearby vicinity of the displaced volume. The compensatory storage area shall be hydraulically connected to the source of Flooding.

T. Adopt buffer ordinances that limit Development in and near natural protective features such as riparian stream corridors and wetlands. Natural protective features may extend beyond 100-Year-Flood elevations. Extra protections for these areas are beneficial because these areas attenuate runoff periods, improve water quality, stabilize streambanks, recharge groundwater aquifers, allow for lateral stream migration, and protect aquatic and terrestrial habitat. Riparian and wetland areas also enhance the general aesthetic value of a community.

U. Buffer ordinances are often seen as part of land use or zoning code. They may also stand alone in other portions of the municipal code. Options for widths include fixed width, variable width, or multi-zoned buffers.

V. **Establish Residual Risk Mapping**. Residual Risk is the threat to the areas behind Levees that may still be at risk for Flooding. FEMA has identified thousands of miles of Levees nationwide, affecting millions of people. It is important for Levee owners, Communities, and homeowners to understand the risks associated with living in Levee-impacted areas and the steps that can be taken to provide full protection from Flooding. Even the best Flood protection system or structure cannot completely eliminate the risk of every Flood event, and when Levee systems fail, the results may be catastrophic and the damage may be more significant than if the Levee system had not been built.

W. A Community may regulate any Designated and Approved 100-Year shallow Flooding areas, defined as Flooding with an average depth limited to 3.0 feet or less where no defined Channel exists.

X. Detention/Flood control storage and LID should be considered, when practicable, as part of a basinwide program for the watershed.

Rule 20. Effective Date:

These revised Rules shall apply to the Designation and Approval of all Flood Hazard Information made by the CWCB and all other Floodplain activities on or after January 14, 2022 and are, therefore, not retroactive to any Floodplain information Designated and Approved by the Board or other Floodplain activities prior to the effective date.

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Office of the Attorney General

Tracking number: 2021-00486

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Colorado Water Conservation Board

on 11/18/2021

2 CCR 408-1

RULES AND REGULATIONS FOR REGULATORY FLOODPLAINS IN COLORADO

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.

December 08, 2021 13:20:59

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

New Regulation 4-2-79

CONCERNING THE REQUIREMENTS FOR PROVIDER DATA REQUESTS AND CARRIER RESPONSES CONFIRMING OUT-OF-NETWORK PAYMENT METHODOLOGY UTILIZATION

Section 1 Authority
Section 2 Scope and Purpose
Section 3 Applicability
Section 4 Definitions
Section 5 Requirements for Data Requests and Carrier Responses
Section 6 Severability
Section 7 Enforcement
Section 8 Effective Date
Section 9 History
Appendix A Out-of-Network Data Request and Response Form

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(13), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish the requirements for provider and health care facility submitted requests for out-of-network payment methodology data from carriers pursuant to § 10-16-704(13), C.R.S., as well as the fields that must be supplied in any response provided by a carrier pursuant to that same statute.

Section 3 Applicability

This regulation applies to all provider and health care facility requests and carrier responses to data requests pursuant to § 10-16-704(13), C.R.S.

Section 4 Definitions

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

B. “Commissioner” means, for the purposes of this regulation, the Commissioner of Insurance or his or her designee.

C. “Out-of-network provider” means, for the purposes of this regulation, a provider in this state that has not entered into a contract with a carrier or with its contractor or subcontractor to provide health care services to covered persons.

D. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.

Section 5 Requirements for Data Requests and Carrier Responses

A. An out-of-network provider or health care facility that has received payment pursuant to § 10-16-704(13), C.R.S., and is submitting a request to the Commissioner seeking data to evaluate the carrier's compliance in paying the highest rate required in § 10-16-704(3)(d) or (5.5)(b), C.R.S. must utilize the "Out-of-Network Data Request and Response Form found in Appendix A" of this regulation.

B. A separate spreadsheet containing multiple claims must be submitted for each distinct facility or provider requesting confirmation that the appropriate payment methodology was used pursuant to § 10-16-704(3)(d) or (5.5)(b), C.R.S.

C. All provider fields in the "Out-of-Network Data Request and Response Form" must be populated by the requesting provider or health care facility prior to the form being sent to the Division. An incomplete form will not be sent to the applicable carrier until it has been completely populated by the requesting provider.

D. Upon receipt of an "Out-of-Network Data Request and Response Form" from the Division, a carrier shall populate the carrier fields and return the completed template to the Division no later than thirty (30) calendar days after receipt. Additional time to respond may be granted by the Division when the "Out-of-Network Data Request and Response Form" contains more than one hundred (100) claims. The fields populated by the carrier in response to a request from the Division must identify which out-of-network payment methodologies and amounts were considered in determining payment, clearly state which methodology and payment was selected, and include a description of how the carrier has determined its median in-network rate.

E. Upon request by the Division, the carrier shall provide a separate document containing the methodology for determining the carrier's median in-network rate or reimbursement for each service in the same geographic area, to accompany a specified completed "Out-of-Network Data Request and Response Form."

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 regulation shall become effective January 15, 2022.

Section 9 History

New regulation effective January 15, 2022.

APPENDIX A: Out-of-Network Data Request and Response Form

NAME OF REQUESTING PROVIDER/FACILITY AND CONTACT INFORMATION:																
REQUESTING PROVIDER OR FACILITY TIN:																
NAME OF CARRIER AND CONTACT INFORMATION:																
DATE OF REQUEST:																
REQUESTING PROVIDER DATA FIELDS (must be completely filled-out by requester)										**CARRIER DATA FIELDS (must be completed by carrier)***						
Carrier Member Number	Carrier Claim Number	Patient Account Number	Date of Service	CPT/ HCPCS Code	Units	Total Facility/ Provider Charges	Total Amount Paid	Date Claim Paid	CO DOI Regulated Plan? Y/N	DOI Geographic Rating Areas	Carrier Provider Methodology Calculation: 60th Percentile of Average In-network Rate – APCD Data	Carrier Provider Methodology Calculation 110% of carrier median in-network rate	Carrier Facility Methodology Calculation: Median In-network Rate – APCD Data	Carrier Facility Methodology Calculation 105% of carrier median in-network rate	Other Negotiated Amount (If applicable)	Amount Paid to Include Member Cost Sharing

* Carriers may be subject to the imposition of penalties, or any sanctions authorized by the insurance code for providing false or misleading information in completing this form.

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Office of the Attorney General

Tracking number: 2021-00442

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 11/19/2021

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 11/19/2021 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.

December 02, 2021 10:53:01

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 Medical Board

CCR number

3 CCR 713-49

Rule title

3 CCR 713-49 Rules Regarding the Use of Benzodiazepines 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

Rule 180 – Rules Regarding the Use of Benzodiazepines

3 CCR 713-49

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

49.1 INTRODUCTION

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204(1), 12-240-106(1)(a), and 12-240-123, C.R.S. The specific statutory authority for the promulgation of this Rule is section 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.

49.2 RULES AND REGULATIONS

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 12-240-121, 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 medical practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

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Tracking number: 2021-00672

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 11/18/2021

3 CCR 713-49

RULE 180 - RULES REGARDING THE USE OF BENZODIAZEPINES

The above-referenced rules were submitted to this office on 11/18/2021 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.

December 02, 2021 10:48:23

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-3

Rule title

4 CCR 723-3 RULES REGULATING ELECTRIC UTILITIES 1 - eff 01/14/2022

Effective date

01/14/2022

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

3506. – 3524. [Reserved].

DISTRIBUTION SYSTEM PLANNING

3525. Applicability

This rule shall apply to all electric utilities in the state of Colorado that own distribution facilities except municipally owned electric utilities and cooperative electric associations that have voted to exempt themselves from the Public Utilities Law pursuant to § 40-9.5-104, C.R.S.

3526. Overview and Purpose.

The purpose of these rules, as directed by § 40-2-132, C.R.S., is to require electric utilities to file a Distribution System Plan (DSP) that enables the Commission to review and evaluate the utility's investments in the distribution grid to ensure that they cost-effectively support grid adequacy, reliability and resilience and prepare for new expectations upon the distribution system, while simultaneously ensuring progress toward priorities highlighted by state legislation, including but not limited to supporting diversification of energy supply through distributed energy resources, expanding the utilization of non-wire alternatives that may reduce the need for conventional distribution grid investment, reducing greenhouse gas emissions, advancing building and transportation electrification, maintaining affordable customer rates, and promoting equity with regard to disproportionately impacted communities. These rules should also establish a proactive and transparent process for enhancing understanding of key distribution system characteristics.

3527. Definitions.

The following definitions apply to rules 3525 through 3542. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Ancillary services" means the functions that maintain the proper flow and direction of electricity, address imbalances between supply and demand, and help the system recover after a power system event. Ancillary services include but are not limited to synchronized regulation, contingency reserves, flexibility reserves, voltage and frequency response, power factor corrections, and spinning reserves.

(b) "Capacity need" means a distribution grid capacity constraint or shortfall projected within a ten-year period.

(c) "Demand flexibility" means the ability to help utilities manage or balance load by shifting electricity use across hours of the day to reshape customer load profiles or dynamically respond to system conditions while delivering end-use services (e.g., air conditioning, domestic hot water, electric vehicle charging) at the same or better quality and delivering net benefits to the system, customers, or society. Demand flexibility often uses distributed energy resources, communication and/or control technologies.

(d) "Demand response measures" or "demand response" or "DR" means any modulation in customer electric usage at targeted times, including reduction of usage or shifting of usage from one time to another, or interruption or curtailment of electric usage, either with load control equipment or in response to incentives, a signal, or changes in the price of electricity designed to induce changes in electricity use at specific times.

(e) "Direct current fast charger" means a high-power fast charging method of at least 50 kW capacity used to resupply an electric vehicle using direct current electricity, typically 208/480V three-phase.

(f) "Distributed energy resources" or "DER" may include, but are not limited to, distributed generation, energy storage systems, electric vehicles, microgrids, fuel cells, and demand side management measures including energy efficiency, demand response, and demand flexibility that are deployed at the distribution grid level, on either the customer or utility side of the meter. DER can be used to optimize energy use and generation to satisfy the energy, capacity, or ancillary service needs of the distribution grid.

(g) "Distribution system plan" or "DSP" means the compliance plan filed in accordance with rule 3528.

(h) "Energy efficiency measures" are measures that target consumer behavior, equipment, or devices that result in the decrease in electricity usage of customers without detriment to end-use services.

(i) "Grid availability" means the hours per year when the utility makes the grid or a portion of the grid available for use not only by load but also by distributed generation and demand response.

(j) "Grid need" means the need for energy, capacity, ancillary services, reliability, or resiliency services to address a forecasted deficiency on the electric distribution system.

(k) "Hosting capacity" means the amount of distributed generation, including distributed generation paired with non-exporting battery storage (and additional technologies including exporting battery storage to the extent reasonably feasible to model), that can be interconnected to the distribution system at a given time and at a given location under existing grid conditions and operations, without adversely impacting safety, power quality, reliability or other operational criteria, and without requiring electric infrastructure upgrades.

(l) "Locational value" means an analysis of distributed energy resources that incorporates location-specific incremental net benefits to the electric grid.

(m) "Major distribution grid project" means planned, proposed, or potential construction, reconfiguring, or upgrade of any electric distribution line, substation, or ancillary structure that meets the following criteria: (1) is a project estimated to require an investment of more than $2 million on the distribution grid or more than $3 million on both the transmission and distribution grids; and (2) will be made at or near an existing or planned substation, or feeders or transformers associated with a substation.

(n) "Microgrid" means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that can act as a single controllable entity with respect to the grid. A microgrid is capable of connecting and disconnecting from the centralized grid to enable the microgrid to operate in both grid-connected or island-mode.

(o) "N-1 event" means an outage event of one distribution or transmission element such as a transformer, feeder, or transmission line that may cause load to shift to other elements as backup. An N-1 event indicates a need for additional reliability capacity if it is determined to cause a potential overload on elements carrying energy to accommodate the event.

(p) "Non-Wires Alternative" or "NWA" means the strategic deployment of distributed energy resources by a utility or a third party and associated control or aggregation of systems and technologies intended to cost-effectively defer or avoid the need for Major Distribution Grid Projects. An NWA is intended to reliably reduce load, congestion or other constraints at times of peak demand in targeted locations on the grid. NWAs can include one or multiple DER, including but not limited to demand response measures, energy efficiency, energy storage, and distributed generation. NWA projects can include these and other investments individually or in combination to meet the specified need.

(q) "Pilot" means a utility offering to test a new use or deployment of DER for a set period of time with a specified end date and number of customers, wherein the utility seeks to gain experience or expertise, and to inform the Commission.

(r) "Program" means an ongoing, long-term offering by the utility with no specified end date that utilizes or deploys DER on the distribution grid in a manner that provides system benefits or cost savings.

(s) "Ratable procurement" means the procurement of incremental DER capacity to defer or avoid long-term traditional utility infrastructure or grid needs driven by steady load growth.

(t) "Reliability need" means a risk of failure requiring mitigation due to inadequate capacity or voltage support, or an N-1 event on the distribution grid.

(u) "Resilience" is the ability of the distribution grid to withstand and reduce the magnitude and/or duration of disruptive events, which includes the capability to anticipate, absorb, adapt to, and/or rapidly recover from such an event.

3528. Distribution System Plan Filing Requirements.

A utility with over 500,000 customers shall file a DSP as an application, every two years, with the first DSP to be submitted on or before January 31, 2022. A utility with 500,000 or fewer customers shall file a DSP as an application, every two years, with the first DSP to be submitted on or before January 31, 2023.

(a) Each DSP application filing shall conform to the application requirements contained in rules 3002 and rule 1303 of the Commission's Rules of Practice and Procedure.

(b) Within 30 days of the filing of the application, the Commission shall issue a decision addressing whether the contents of the DSP meet Commission standards based on the information provided by the utility set forth in paragraph 3528(d).

(c) If the DSP identifies major distribution grid projects that meet the NWA suitability screening criteria put forth in paragraph 3534(a), then the DSP proceeding shall consist of two phases.

(I) Within the same proceeding and subject to paragraph 3528(b), the utility shall file a Phase II DSP within 120 days of the filing of the Commission's order establishing the final Phase I DSP.

(A) Within 30 days after the filing of the Phase II DSP, parties may submit comments pertaining to the Phase II DSP.

(B) Within 15 days after the deadline for initial comments on the Phase II DSP, parties may submit reply comments.

(d) If the utility claims that any of the requirements set forth in rules 3529 through 3541 are not yet practicable to provide or are currently cost-prohibitive to provide, the utility shall indicate for each requirement:

(I) why the information is not yet practicable or is currently cost-prohibitive, what information could be provided in the alternative and how that alternative information would achieve planning and policy objectives;

(II) how the information could be obtained in future filings, and if so, at what estimated cost, and on what timeframe;

(III) what the benefits or limitations of filing the data in future reports would be as related to achieving the planning and policy objectives; and

(IV) if the information cannot be provided in future reports, what information could be provided in the alternative and how it would achieve planning and policy objectives.

(e) The utility shall file a final DSP action plan in accordance with rule 3536, including all required modifications, within 60 days of the Commission's final decision.

(f) The utility may file, at any time, an application to amend the contents of a DSP approved pursuant to paragraph 3536(c). Such an application shall meet the requirements of paragraphs 3002(b) and 3002(c), shall identify each proposed amendment, shall state the reason for each proposed amendment, and shall be administered pursuant to the Commission's Rules Regulating Practice and Procedure.

(g) Utilities are encouraged to convene regular, informal stakeholder meetings to discuss DSP-related issues and to inform the contents of DSP applications. The utility shall convene at least one stakeholder meeting at least 90 days prior to the filing of the DSP. As part of these

stakeholder meetings, the utility shall solicit input on future programs and/or pilots and solicit feedback on both the hosting capacity analysis and the web portal. The utility shall make all reasonable efforts to engage local governments and community organizations representing disproportionately impacted communities. The Commission may, at its discretion, require utilities to host stakeholder discussions regarding specific DSP topics.

3529. Contents of the Distribution System Plan.

(a) The utility shall file a Phase I DSP with the Commission that contains the information specified below. When required by the Commission, the utility shall provide any relevant studies, additional data, and work-papers to support the information contained in the plan. The DSP shall include the following:

(I) a description of the objectives of the DSP, including the utility's ten-year vision for distribution grid capabilities and services that meet customer needs and state policy goals;

(II) a description of how the distribution grid may evolve over the next five and ten years due to various factors, such as increasing DER penetration, the expansion of beneficial electrification programs and other electrification, advanced metering infrastructure, increasing demand flexibility, energy efficiency and other emerging technologies. The utility should discuss the challenges and opportunities presented by the emergence of new technology as well as plans they have to adapt to or utilize these changes to the grid;

(III) a description of the utility's vision of how existing utility demand-side management measures and programs, as well as other existing distributed energy resource offerings, shall or could be utilized or modified to meet distribution system planning needs;

(IV) distribution system forecasts, as described in rule 3530;

(V) an assessment of the existing distribution system, as described in rule 3531;

(VI) an assessment of grid needs, as described in rule 3532;

(VII) a description of grid innovations and any proposed pilots and programs, as described in rule 3533;

(VIII) NWA suitability screening results, as described in rule 3534;

(IX) a proposed NWA cost benefit analysis methodology, as described in rule 3535;

(X) any proposed documents and model contracts that the utility intends to use for NWA solicitation or procurement;

(XI) a Phase I action plan, as described in rule 3536;

(XII) a proposal for cost recovery, which may include an incentive, as described in rule 3538;

(XIII) a security assessment, as described in rule 3539.

(XIV) a proposal for implementation of a web portal as described in paragraph 3541(d);

(XV) a description of the stakeholder engagement process, as described in paragraph 3528(g); and

(XVI) a description of how the utility has engaged, and plans to engage, on DSP with communities, particularly disproportionately impacted communities, and how the utility has incorporated community climate, equity and resilience goals and priorities into the DSP and action plan.

3530. Distribution System Forecasts.

(a) Forecast requirements. The utility shall prepare demand forecasts for each year within the ten-year planning period. The utility shall also prepare ten-year forecasts for load growth on the distribution grid, including the growth of various types of DERs connected to the distribution grid. Forecasts should be based on at least two growth scenarios (State Policy and High), including reasonably detailed predictions of the expected geographic areas of substantial growth within the distribution substation grid area and impacts on planning for the transmission and distribution system, including impacts due to DER adoption and increased demand flexibility and demand response within the utility's service territory. Forecasted growth should include the following:

(I) peak load growth at each substation, by year;

(II) peak load growth at each substation transformer by year;

(III) peak load growth on each feeder, by year;

(IV) coincident peak and non-coincident peak load growth at substations, transformers, and feeders, by voltage class;

(V) load growth associated with beneficial electrification, by substation transformer and by feeder under each scenario in subparagraph 3530(a)(X);

(VI) load growth due to new planned neighborhoods or housing developments,

(VII) net load impacts due to DER adoption under each scenario in subparagraph 3530(a)(X);

(VIII) net load impacts due to demand side management, demand response, and demand flexibility;

(IX) approved CSG capacity in RES Plans and anticipated CSG capacity additions beyond the current effective RES plans;

(X) forecasts of DERs and NWA should include ten-year scenarios that project expected growth of DERs and NWA, including expected geographic dispersion at the distribution feeder level and impacts on distribution planning. Scenarios shall be designed to meet or exceed current state policy such as those related to greenhouse gas (GHG) reductions,

increased use of DERs, electrification, distribution reliability, resiliency, and transmission system needs. Scenarios shall include key inputs including growth of peak exported generation or net generation from distributed solar generation; growth of peak exported generation or net generation from distributed battery storage systems; and growth of peak exported generation or net generation from all other distributed generation. Scenarios shall be based on the following criteria:

(A) State Policy Goal Scenario: Adopts a current forecast case for DER and NWA deployment for distribution planning at the feeder level, assuming compliance with current state policy goals.

(B) High Growth Scenario: Adopts a high growth case for DERs. This scenario should exceed state policy goals, which may include long-term GHG reductions, and beneficial electrification at levels higher or faster than required in state statute or incurrent state policy goals. Additionally, the High Growth Scenario may improve upon performance in areas of demand flexibility, distribution reliability, resiliency, and transmission system needs beyond a business as usual projection.

(b) The utility shall provide all assumptions and methodologies that are inputs into the forecasting scenarios in paragraph 3530(a).

3531. Assessment of Existing Distribution System.

(a) System overview and substation historical data.

(I) To identify and assess needs on the distribution system, each utility shall provide a map of existing and planned substations within its service territory, as well as tabular information about the current design capacity, and performance of each substation and substation transformer. The assessment should also include the status of advanced metering infrastructure deployment which may be made by reference to other reports or filings. At a minimum, this should include the following information for each substation and substation transformer on the utility's distribution grid:

(A) maximum rated capacity of each substation transformer;

(B) peak hourly demand on each substation transformer for the past three years;

(C) capacity margin for each substation transformer;

(D) advanced functionality capabilities of each substation transformer;

(E) number of feeders served by each substation and substation transformer;

(F) maximum rated capacity of each feeder;

(G) peak hourly demand on each feeder for the past three years;

(H) capacity margin for each feeder;

(I) percentage of grid availability;

(J) minimum daytime load;

(K) aggregate miles of underground and overhead wires, categorized by voltage class;

(L) monitoring capabilities and data collection on the distribution system, such as the substations and feeders for which the utility has real-time supervisory control and data acquisition (SCADA) capability;

(M) amount of distributed generation installed on the system (number of systems and nameplate capacity in kilowatts (kW) by generator types, organized by substation or feeder);

(N) description of NWA on the system, organized by substation or feeder; including annual cost savings and greenhouse gas emissions reductions;

(O) amount and locations of distributed storage installed on the system (number of systems and ratings, measured in kilowatts and kilowatt-hours (kW and kWh));

(P) estimated number of EVs and Level 2 and DCFC EV charging stations organized by substation or feeder;

(Q) estimated demand flexibility capacity on the system and historic utilization of those flexibility capabilities;

(R) voltage and power quality data for the past three years; and

(S) location of highly seasonal circuits as defined by subparagraph 3667(a)(IV).

(II) Hosting capacity analysis.

(A) As part of its DSP, each utility shall develop a hosting capacity analysis of the distribution system.

(B) The analysis shall determine the hosting capacity on a particular feeder, feeder section or substation at a given time under existing and forecasted grid conditions and operations without adversely impacting safety, power quality, reliability, or other operational criteria.

(C) The hosting capacity analysis shall be performed using a load flow analysis and forecasted distribution facilities and their capacity, configuration, loading, and voltage data gathered at the substation, feeder, and primary node levels where available.

(D) The utility shall perform scenario analysis to evaluate hosting capacity need under normal, planned contingency, and unplanned contingency conditions, for both the State Policy and High Growth scenario.

(E) The utility shall provide a detailed description of the methods and outcomes it used to perform the hosting capacity analysis.

(F) The hosting capacity analysis shall reflect that which appears in the web portal as described in rule 3541. The utility shall also provide a detailed narrative describing the utility's progress towards advancements to the accuracy and value of the hosting capacity analysis and providing real-time hosting capacity data. This should include a description of how its hosting capacity analysis currently advances customer-sited DER (in particular distributed renewable electric generation and energy storage systems), how the utility anticipates the hosting capacity analysis will aid in identifying interconnection points on the distribution system and necessary distribution upgrades to support the continued development of distributed generation resources, and any other method in which the utility anticipates customer benefit stemming from the hosting capacity analysis.

(G) For their first DSP filing, utilities with 500,000 or fewer customers shall provide an Excel spreadsheet (or equivalent format) by feeder of either daily daytime minimum load or, if daytime minimum load is not available, daily peak load with the time granularity specified. If daytime minimum load or daily peak load data are unavailable, the utility shall explain why the data are unavailable.

3532. Grid Needs Assessment.

(a) The utility shall provide a summary analysis of the energy, capacity, ancillary services, and reliability needs and constraints on a utility's distribution system and solutions to those needs.

(b) The grid needs assessment shall include an analysis regarding the suitability of non-wires alternatives to mitigate identified needs and recommendations for the deployment of utility infrastructure upgrade solutions versus the procurement of non-wires alternative solutions to address any identified needs.

(c) The grid needs assessment shall address existing and forecasted needs over a ten-year planning period that could result in a major distribution grid project.

(d) The grid needs assessment shall include each of the following parts.

(I) An assessment of critical needs.

(A) The utility shall provide an assessment of critical capacity and reliability needs that must be addressed within the ten-year planning horizon.

(B) The assessment shall include a review of all planned, proposed and potential major distribution grid projects which will be required to address constraints related to substation transformers and feeders that are forecasted to have insufficient capacity to adequately serve peak load or reliability needs over the next ten years.

(C) The assessment shall be divided into two parts – one detailing short-term needs within zero to three years, and one detailing longer-term needs in four to ten years.

(D) The data used for the assessment shall be provided in megawatt values in tables, in a logical spreadsheet form (both printed and functional Excel spreadsheet formats) and graphically as a map in executable ARC GIS or similar format.

(E) The assessment of critical needs will be provided via the web portal, described in rule 3541. Any notable updates to the web portal should also be made in this section of the DSP.

(F) The assessment shall include a review of the capability of the distribution system and any needs incurred to interconnect approved CSG capacity in the utility's current SGIP queue. The assessment shall include an estimate of the potential benefits and costs of infrastructure upgrades. The assessment shall also include a good faith effort by the utility to assess any needs to interconnect capacity approved in its most recent RES Plan but not yet acquired, and a reasonable expectation of future CSG capacity during the DSP planning period for targeted development areas. The utility will work with stakeholders to assess the level of interest for targeted development at specific locations for future CSG capacity and the corresponding potential benefits and costs of infrastructure upgrade needs at those specific locations.

(II) The utility's current distribution plan for distribution grid investments, as well as the total capital budget including the past three years and the next five years of projected budget. Budgets shall be broken down by relevant budget categories.

(III) Fast charging locations for electric vehicles. The utility shall use the results of the grid needs assessment to identify locations where substation transformers and feeders have sufficient capacity for hosting multiple direct current fast chargers for electric vehicles. Utilities will also assess vehicle-to-grid (V2G) opportunities as potential NWA projects.

(IV) An identification of any long-term needs identified in the grid needs assessment for which ratable procurement may avoid or defer the anticipated need driven by steady load growth, including geographically targeted deployment of demand flexibility, demand response, and energy efficiency measures.

3533. Grid Innovation.

(a) The DSP shall address DSP pilots and programs that are either in progress, planned, or have been suggested by other parties and found to have merit by the utility. The DSP shall identify any barriers to deployment of DERs and NWA. Such barriers may include but not be limited to integration or interconnection of DERs and NWAs, barriers that limit the ability of a DER and NWA to provide benefits, and barriers related to distribution system operation and infrastructure capability. This section shall include, but not be limited to:

(I) Within each DSP, the utility may propose new pilots and programs designed to gain experience integrating DER, NWA or other new distribution technologies in a way that improves system performance, minimizes system costs, increases system resiliency and/or reliability, and/or reduces greenhouse gas emissions including from reduced curtailment of renewable energy. Such pilots and programs may be proposed as solutions to help solve identified grid needs identified under rule 3532.

(II) New proposed pilots. Within each DSP, the utility may propose new pilots. Pilots shall not be required to pass a cost-benefit test; however, the Commission shall determine that the pilot can be implemented at a reasonable cost and rate impact. Each of the proposed pilots shall, at a minimum, include:

(A) a description of what the utility seeks to learn through the pilot with specific goals and metrics;

(B) an explanation of how the pilot can be scaled to enable the utility to achieve objectives described in the plan pursuant to rule 3529;

(C) the specific DER and NWA technology or technologies eligible for the pilot, including any operational requirements;

(D) a description of any geographic or locational focus of the pilot;

(E) the customer classes that may participate in the pilot;

(F) a description of the potential benefits the utility expects the pilot technology to demonstrate;

(G) a description of the costs of the pilot, including a cap on costs for each pilot;

(H) criteria for evaluation of the pilot and an evaluation plan that includes a calculation of pilot costs, schedule, and a summary of pilot benefits, including quantified benefits, as available;

(I) a description of the use of any targeted incentive payments, or other incentives, provided to participants;

(J) a description of the mechanism to acquire equipment, technologies, vendors, and participants in the pilot; and

(K) a description of how the pilot will provide health, safety, environmental, or financial benefits to disproportionately impacted communities.

(III) New proposed programs. Within its DSP, the utility may seek approval for a new program to better integrate DER and NWA or other distribution technologies into its business practices in a way that improves system performance, minimizes costs, increases system resiliency and reliability, or reduces emissions. Proposed programs may be successors of completed pilots; however, a utility does not need to have conducted a pilot in order to seek approval for a new program.

(IV) The utility may propose pilots or programs developed internally and shall also accept third-party proposals for pilots and programs at any time. For a third-party pilot or program to be considered in a DSP, it must be received by the utility at least six months prior to the DSP filing deadline. When seeking approval for such pilots or programs, the utility shall provide an overview of all pilots and program proposals considered and an explanation for its proposed selections and rejections. For any proposal not considered, the utility shall explain why it was not considered.

(V) Updates on existing pilots and programs. Within its DSP, the utility shall provide a narrative status update on all active pilots and programs approved in prior DSPs. The utility may also seek reauthorization of existing programs within a DSP. As part of its first DSP, the utility is encouraged to evaluate whether any existing reporting obligations outside the DSP related to distribution system pilots, programs, or projects should be centralized within the DSP process. Upon Commission approval, and notice filed within the original proceeding, such reporting obligations shall be transferred to DSP proceedings.

(b) NWAs and pilots may include the use of targeted incentive payments to encourage DER adoption or optimize the use of existing DERs by customers in specific locations, to provide locational value to the system. Such incentives shall be accounted for in the cost benefit analysis as described in rule 3535 and shall be recovered in a manner similar to other distribution-grid related expenditures.

3534. NWA Suitability Screening.

(a) Major distribution grid projects identified to be necessary in the grid needs assessment conducted pursuant to rule 3532 shall be subject to an NWA suitability screening to determine if a NWA may be a suitable alternative to traditional utility infrastructure solutions.

(b) The NWA suitability screening is performed by the utility and includes the following criteria:

(I) the project is anticipated to occur during the ten-year planning horizon;

(II) the constraint is due to thermal loading, voltage, capacity or reliability issues and could be resolved by a DER, a reduction in peak demand loading, a reduction in energy consumption, or load shifting on the transmission or distribution facilities; and

(III) the conventional solution is still within the planning or design stage, with no major equipment on order, received, or installed that cannot be repurposed for other uses.

(c) The utility may seek a waiver from these requirements on a case-by-case basis, if necessary, to preserve reliability, serve economic development needs, or to meet other unforeseen circumstances where the utility expects a non-wires alternative cannot adequately resolve or the planning constraint. Such requests should be substantiated to show why the NWA suitability screening is not possible or could not reasonably result in an alternative to traditional utility infrastructure. Should the utility assert that a NWA is infeasible due to the urgency of the grid need, the utility shall also explain why the grid need was not previously identified.

(d) For all major distribution grid projects identified as meeting all the NWA suitability screening, the utility shall conduct a technology-neutral competitive solicitation for NWAs to defer, reduce, or avoid the costs of the major distribution grid projects.

3535. NWA Cost Benefit Analysis.

(a) In order to assess the cost-effectiveness of a potential NWA solution that meets the NWA Suitability Screening in rule 3534, the utility shall:

(I) develop and publish a cost benefit methodology that will be provided in the utility's DSP;

(II) assess the proposed NWA solution using a cost-benefit methodology that considers the approach as put forward in the National Standard Practice Manual and specifically including the following costs and benefits: avoided or deferred costs associated with an NWA solution, sub-transmission, substation transformer additions or upgrades, feeder capital and operating costs, distribution power quality equipment, reliability and resiliency costs, energy and capacity value of generation, capacity value of storage, greenhouse gas emissions including the Commission approved social cost of carbon useful life of NWA and traditional solutions, and dispatchability and availability of the technology. If the utility is proposing a performance incentive as part of cost recovery for the NWA pursuant to paragraph 3538(d), it shall include the cost-benefit analysis both with and without the performance incentive included as a cost of the project;

(III) provide a description of DSP goals, compliance with statute, rules, and requirements, and additional relevant principles; and

(IV) assess the proposed distribution system costs, direct system benefits, indirect system benefits, and system sensitivity analysis.

(b) The utility may also propose an alternative or adjusted cost-benefit methodology if it does not believe that the full costs and benefits of the NWA solution are being counted.

3536. Action Plan.

(a) The utility shall provide a five-year action plan for distribution system investments and activities within its Phase I DSP which will serve as an application for the Commission and stakeholders to rely upon when evaluating distribution system planning projects, pilots, and programs.

(b) The Phase I action plan shall include the sequence of events and timelines for each action that will not require a solicitation process following Phase I, including:

(I) the implementation of NWAs to address grid needs not classified as major distribution system projects, and the implementation of NWAs approved in prior DSPs;

(II) the implementation of proposed pilots and programs as specified in rule 3533;

(III) the implementation of major distribution grid projects that were determined to be the best option to address grid needs;

(IV) system interoperability and communications strategy;

(V) costs and plans associated with obtaining data necessary for the evaluation of NWAs, pilots and programs (for example, energy efficiency load shapes, solar output profiles with and without battery storage, capacity impacts of DR combined with energy efficiency, electric vehicle charging profiles);

(VI) interaction of planned or proposed investments with other utility programs and the effects on existing utility programs and tariffs; and

(VII) the implementation of major distribution projects intended to cost-effectively interconnect the approved and reasonably forecasted CSG capacity, including that approved by RES Plans in effect during the planning period.

(c) Subject to paragraph 3528(b), the utility shall provide an updated action plan with its Phase II DSP. This plan shall include the sequence of events and timelines for NWAs identified in the solicitation process, including:

(I) the implementation of NWAs identified through the NWA analysis process;

(II) an updated system interoperability and communications strategy;

(III) costs and plans associated with obtaining data necessary for the evaluation of NWAs (for example, energy efficiency load shapes, solar output profiles with and without battery storage, capacity impacts of DR combined with energy efficiency, electric vehicle charging profiles); and

(IV) interaction of planned or proposed NWA investments with other utility programs and the effects on existing utility programs and tariffs.

3537. NWA Solicitation Process (Phase II).

(a) The utility shall propose in its DSP (Phase I) Application appropriate timelines for the release of the RFP(s), the receipt of bids, evaluation of bids, the utility's proposal to the Commission, the filing of the independent evaluator report, party comments in response to the independent evaluator report, and the Commission decision. These timelines should consider similar timelines as expressed in the Electric Resource Planning Rules, specifically rule 3613. The timelines proposed by the utility and approved by the Commission in the DSP (Phase I) shall describe an appropriately expedited, comment-based NWA Solicitation Process (Phase II) to facilitate timely decisions and implementation of NWA bids.

(b) For projects which meet the Major Distribution or Major Transmission grid threshold and NWA suitability screening criteria, an Independent Evaluator (IE) shall be retained.

(I) The utility shall file for Commission approval the name of the independent evaluator. The Commission shall approve an independent evaluator by written decision during Phase I.

(II) The utility shall pay for the services provided by the independent evaluator pursuant to a contract approved by the Commission. In its Phase I DSP Application, the utility shall

specify the level and structure of any bid fees proposed to offset the independent evaluator and solicitation costs. The terms of such contract shall prohibit the independent evaluator from assisting any entity making proposals to the utility for subsequent resource acquisitions for three years.

(III) The utility shall work cooperatively with the independent evaluator and shall provide the independent evaluator immediate and continuing access to all documents and data reviewed, used, or produced by the utility in the preparation of its projects which meet the Major Distribution or Major Transmission grid threshold and NWA suitability screening criteria and in its bid solicitation, evaluation, and selection processes. The utility shall make available the appropriate utility staff to meet with the independent evaluator to answer questions and, if necessary, discuss the prosecution of work. The utility shall provide to the independent evaluator, in a timely manner to facilitate the deadlines outlined in these rules, bid evaluation results and modeling runs so that the independent evaluator can verify these results and can investigate options that the utility did not consider. If the independent evaluator notes a problem or a deficiency in the bid evaluation process, the independent evaluator should notify the utility.

(IV) All parties in the DSP proceeding other than the utility are restricted from initiating contacts with the independent evaluator. The independent evaluator may initiate contact with the utility and other parties. For all contacts with parties in the DSP proceeding, including those with the utility, the independent evaluator shall maintain a log that briefly identifies the entities communicating with the independent evaluator, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any.

(V) The independent evaluator shall generally serve as an advisor to the Commission and shall generally not be a party to the proceedings. As such, the independent evaluator shall not be subject to discovery and cross-examination at hearing.

(VI) Within 30 days of a utility selecting an NWA bidder to advance to Phase II, the independent evaluator shall file a report. The independent evaluator shall address in its report whether the utility's competitive acquisition procedures and bidding policy, including the assumptions, criteria, and models, were sufficient to solicit and evaluate bids in a fair and reasonable manner, with any deficiencies specifically noted. The independent evaluator shall provide confidential versions of these reports to Commission staff and the UCA.

(c) All solicitations, unless requested by the Commission, or requested by the utility and approved by the Commission, shall be conducted in a technology neutral manner.

(d) The utility may require prospective bidders to sign non-disclosure agreements to obtain information deemed confidential or highly confidential.

(e) After final NWA bids have been selected by the utility, the utility shall update the elements of the Action Plan that pertain to NWAs.

3538. Approvals and Cost Recovery.

(a) The utility may seek Commission approval of a NWA, pilot, or program in its DSP application filing. Should such an approval be sought, the Commission may require a hearing specifically on the NWA pilot, or program in addition to the process described in rule 3536. The Commission may require the utility to demonstrate satisfactory compliance with appropriate benchmarks or performance metrics outlined in the Commission's decision approving pilots, programs or NWA or other components of the DSP. Utilities may seek approval to implement an NWA, pilot, or program not classified as major distribution grid projects without performing a competitive solicitation. New pilots or programs should meet the standards and requirements set forth in paragraph 3533(a).

(b) A utility may seek any necessary approvals for a NWA, pilot or program in other proceedings, including, but not limited to:

(I) demand side management planning;

(II) renewable energy standard compliance planning;

(III) transportation electrification planning; or

(IV) innovative technology pilot programs or demonstrations.

(c) The Commission shall approve a utility's investment in NWAs, pilots, or programs if the Commission finds the investment to be in the public interest. In considering whether the investment is in the public interest, the Commission shall determine whether the utility's ratepayers realize benefits from the NWA, pilot, or program and whether the associated costs are just and reasonable. The utility may seek approval to implement NWAs, pilot, or program not classified as major distribution grid projects without performing a competitive solicitation.

(d) In the application for approval of a DSP, the utility shall address how it anticipates recovering costs associated with the investments put forward in its DSP in accordance with subparagraph 3529(a)(XI).

(I) Investments made to implement an approved DSP shall be deemed to made in the ordinary course of business and shall be recovered through the normal implementation of the utilities rate mechanisms.

(II) The utility shall demonstrate that the investments made to implement an approved DSP do not undermine equitable access to other utility programs and do not materially impact the related utility program's targeted performance.

(III) The utility may propose a performance incentive for implementing any NWA, pilot, or program as a component of its cost recovery proposal. The performance mechanism, if proposed, shall also be included as part of the cost-benefit analysis specified in rule 3535. A performance incentive may include allocating to the utility a share of the cost-savings derived from NWA implementation as compared to the avoided capital investment.

(IV) For costs the Commission deems to be incurred outside the ordinary course of business, the utility may seek approval of a regulatory asset for recovery as part of the utility's next rate case or may be placed in another cost recovery mechanism as proposed by the utility. The Commission shall establish the authorized rate of return on any regulatory asset created pursuant to this paragraph.

(e) The Commission shall issue written decisions approving, conditioning, modifying, or rejecting the utility's DSP filing. The Commission may modify any plan, as appropriate, to optimize overall system costs and ratepayer benefits, to improve services derived from the distribution grid, and to achieve state policy goals pursuant to rule 3526. These decisions create a presumption that utility actions consistent with the decisions are prudent.

(f) The utility shall file a final DSP, which may include required modifications, within 60 days of the Commission's final decision.

3539. Security Assessment.

(a) The utility shall provide a narrative assessment of the reliability and resilience of the distribution grid with respect to cybersecurity and physical security, including:

(I) current status of distribution grid reliability and plans for improving reliability, including areas of the grid where reliability problems have been identified, with plans for resolving them. Distribution grid reliability metrics (SAIDI and SAIFI at a minimum) should be provided for each year for the past three years for each substation;

(II) list of major outages, including cause and duration, involving 10,000 customers or more for each year for the past three years;

(III) analysis of cyber security issues or other threats to the distribution system and what efforts the utility is taking to ensure the distribution system is secure;

(IV) analysis of risks by substation posed by natural disasters such as wildfires, floods, severe storms, and a detailed description of efforts the utility is taking to increase system resiliency in the response to these risks;

(V) other plans aimed at improving distribution system resiliency; and

(VI) any pilots or programs, existing or proposed, aimed at increasing reliability and resiliency, using microgrids or other technology, should be discussed within the Grid Innovation section of the Phase I DSP, as described in rule 3533.

(VII) The utility may incorporate by reference any other filings or applications made to the Commission that are relevant to a discussion of distribution system reliability and resilience.

3540. Data Access, Privacy and Confidentiality.

(a) The utility shall disclose data necessary to implement these rules with appropriate levels of protection, considering sensitivity and public benefit. The utility shall identify and address the

treatment of sensitive information in consideration of the objectives of DSP and as required by these rules.

(b) The utility shall not disclose personal information, as defined in paragraph 1004(x), or customer data, as defined in paragraph 3001(i). Paragraph 3033(b) shall not apply to data releases under this rule.

(c) In each DSP application filing made pursuant to rule 3529, the utility shall file a list of the information related to the resource plan proceeding that the utility claims is confidential and a list of the information that the utility claims is highly confidential, and its proposed treatment of the information. For good cause shown, the utility may seek to protect information as confidential or highly confidential by filing the appropriate motion under rule 1101 of the Commission's Rules of Practice and Procedure in a timely manner.

3541. Web Portal.

(a) The utility shall make available a web portal that provide map-based and tabular data that is publicly available or access-restricted as further defined under this rule. Such web portal shall be designed to meet the objectives of the DSP and shall allow users to download data in tabular and geospatial formats

(b) The utility may only deny access to its web portal if visitors and/or registrants violate the terms of service or other agreed upon terms of access. To ensure the appropriate level of protection of sensitive information, the utility may require visitors to the web portal to take actions, including:

(I) requiring visitors to acknowledge terms of service associated with its use, provided those terms do not preclude academic or public policy purposes; and

(II) establishing registration processes, including the creation of a username and password, and/or the use of multifactor authentication for access to sensitive information.

(c) A web portal shall include at least the following information:

(I) consistent with subparagraph 3531(a)(II), the utility's hosting capacity analysis;

(II) publicly available summaries, data, or links to existing information on the utility's website related to programs approved by the Commission that address the deployment of DERs, including, without limitation, pilots, tariffs, and incentives; and

(III) any additional content as directed by the Commission.

(d) Implementation of the web portal.

(I) Prior to filing its first DSP application pursuant to rule 3529, the utility shall engage potential users of the web portal from multiple sectors to develop a proposal for implementation of the web portal to be filed with the application.

(II) In its first DSP application pursuant to rule 3529, the utility shall present a proposal and timeline for developing a web portal that meets the requirements of this rule and includes:

(A) a summary of its process for identifying and engaging potential users of the web portal and the results of that process;

(B) a description of use cases that will be implemented through the web portal to meet the objectives of DSP;

(C) an evaluation of the data required in a DSP application pursuant to rule 3529 that addresses what data will be provided on the web portal and at what level of granularity, an evaluation of the risks and benefits associated with providing such data, proposals for treatment of sensitive information, and identifying any data for which confidential or highly confidential treatment is sought under the process provided in paragraph 3540(c);

(D) a proposal for providing functionalities that enhance the user experience, such as color-coding of substations, circuits, and feeders or ability to change the year of the data being displayed;

(E) a proposal for what information is currently available and can be provided on a web portal and what information requires approval by the Commission for incorporation onto a web portal;

(F) a proposal for updating data provided through the web portal, specifically addressing the quarterly updating of the utility's hosting capacity analysis as described in subparagraph 3531(a)(II);

(G) a proposal for enabling Application Programming Interface (API) capabilities where reasonable and appropriate; and

(H) a proposal for collecting user feedback on an ongoing basis.

(III) In subsequent DSP application proceedings, the utility shall provide an update on the status of implementing the web portal and any proposed changes to functionality and treatment of data. Prior to each application pursuant to rule 3529, the utility is encouraged to engage with stakeholders including users of the web portal, to identify changes.

(IV) The utility shall file an annual compliance report in the most recent DSP application proceeding that provides an update on the status of implementing the web portal, summarizes user feedback, and describes how the utility addressed that feedback, including any updates or revisions to the functionality of the web portal that are anticipated to occur prior to its next DSP application filing.

3542. Evaluation and Reporting.

(a) An assessment of the existing distribution system, as described in rule 3531.

(b) An assessment of Distribution Grid Security, as described in rule 3539.

(c) Starting with its second DSP application, the utility shall describe the past implementation of NWAs, a review of the NWA cost benefit analysis methodology used, as well as proposed performance metrics and benchmarks to track successful implementation of the plan.

(d) The utility shall report lessons learned from the DSP process and identify ways to improve methodologies through research before the next filing.

(e) Should the utility receive approval for an NWA, a DSP related pilot, or a DSP-related program in a proceeding other than a DSP application, for active projects the utility shall provide in subsequent DSPs:

(I) the name of the project;

(II) a brief description of the project;

(III) the number of the proceeding in which the utility is seeking or has received approval for the project;

(IV) the number(s) of any other proceedings that contain reporting for the project;

(V) the date of project approval, if applicable;

(VI) the total proposed or approved budget; and

(VII) a description of the proposed or approved budget by funding source.

3543. – 3549. [Reserved].

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 11/15/2021

4 CCR 723-3

RULES REGULATING ELECTRIC UTILITIES

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.

December 02, 2021 10:38:58

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-3

Rule title

4 CCR 723-3 RULES REGULATING ELECTRIC UTILITIES 1 - eff 01/14/2022

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

* * * *

[indicates omission of unaffected rules]

3403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.

(a) A utility shall process an application for utility service that is made either orally or in writing and shall apply nondiscriminatory criteria with respect to the requirement of a deposit prior to commencement of service. Nondiscriminatory criteria means that no deposit or guarantee, or additional deposit or guarantee, shall be required by a utility because of race, sex, creed, national origin, marital status, age, number of dependents, source of income, disability, or geographical area of residence.

(b) All utilities requiring deposits shall offer customers at least one payment alternative that does not require the use of the customer's social security number.

(c) If billing records are available for a customer who has received past service from the utility, the utility shall not require that person to make new or additional deposits to guarantee payment of current bills unless the records indicate recent or substantial delinquencies.

(d) A utility shall not require a deposit from an applicant for service who provides written documentation of a 12 consecutive month good -payment history from the utility from which that person received similar service. For purposes of this paragraph, the 12 consecutive months must have ended no earlier than 60 days prior to the date of the application for service.

(e) A utility shall not require a deposit from an applicant for service or restoration of service who is or was within the last 12 months, a participant in the Low-Income Energy Assistance Program (LEAP) or in a low-income program consistent with rule 3412, or who received energy bill assistance from Energy Outreach Colorado within the last 12 months.

(f) If a utility uses credit scoring to determine whether to require a deposit from an applicant for service or a customer, the utility shall have a tariff that describes, for each scoring model that it uses, the credit scoring evaluation criteria and the credit score limit that triggers a deposit requirement.

(g) If a utility uses credit scoring, prior payment history with the utility, or customer-provided prior payment history with a like utility as a criterion for establishing the need for a deposit, the utility shall include in its tariff the specific evaluation criteria that trigger the need for a deposit.

(h) If a utility denies an application for service or requires a deposit as a condition of providing service, the utility immediately shall inform the applicant for service of the decision and shall provide, within three business days, a written explanation to the applicant for service stating the reasons why the application for service has been denied or a deposit is required.

(i) No utility shall require any surety other than either a deposit to secure payment for utility services or a third-party guarantee of payment in lieu of a deposit. In no event shall the furnishing of utility services or extension of utility facilities, or any indebtedness in connection therewith, result in a lien, mortgage, or other interest in any real or personal property of the customer unless such indebtedness has been reduced to a judgment. Should the guarantor terminate service or terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility, applying the criteria contained in its tariffs, may require a deposit or a new third party guarantor.

(j) The total deposit a utility may require or hold at any one time shall not exceed an amount equal to an estimated 90 days' bill of the customer, except in the case of a customer whose bills are payable in advance of service, in which case the deposit shall not exceed an estimated 60 days' bill of the customer. The deposit may be in addition to any advance, contribution, or guarantee in connection with construction of lines or facilities, as provided in the extension policy in the utility's tariffs. A deposit may be paid in installments.

(k) A utility receiving deposits shall maintain records showing:

(I) the name of each customer making a deposit;

(II) the amount and date of the deposit;

(III) each transaction, such as the payment of interest or interest credited, concerning the deposit;

(IV) each premise where the customer receives service from the utility while the deposit is retained by the utility;

(V) if the deposit was returned to the customer, the date on which the deposit was returned to the customer; and

(VI) if the unclaimed deposit was paid to the energy assistance organization, the date on which the deposit was paid to the energy assistance organization.

(l) Each utility shall state in its tariff its customer deposit policy for establishing or maintaining service. The tariff shall state the circumstances under which a deposit will be required and the circumstances under which it will be returned. A utility shall return any deposit paid by a customer who has made no more than two late payments in 12 consecutive months.

(m) Each utility shall issue a receipt to every customer from whom a deposit is received. No utility shall refuse to return a deposit or any balance to which a customer may be entitled solely on the basis that the customer is unable to produce a receipt.

(n) The payment of a deposit shall not relieve any customer from the obligation to pay current bills as they become due. A utility is not required to apply any deposit to any indebtedness of the customer to the utility, except for utility services due or past due after service is terminated.

(o) A utility shall pay simple interest on a deposit at the percentage rate per annum as calculated by Commission staff and in the manner provided in this paragraph.

(I) At the request of the customer, the interest shall be paid to the customer either on the return of the deposit or annually. The simple interest on a deposit shall be earned from the date the deposit is received by the utility to the date the customer is paid. At the option of the utility, interest payments may be paid directly to the customer or by a credit to the customer's account.

(II) The simple interest to be paid on a deposit during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the 12 monthly average rates of interest expressed in percent per annum, as quoted for one-year United States Treasury constant maturities, as published in the Federal Reserve Bulletin, by the Board of Governors of the Federal Reserve System. Each year, Commission staff shall compute the interest rate to be paid. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is 25 basis points or more, the newly calculated customer deposit interest rate shall be used. The Commission shall send a letter to each utility stating the rate of interest to be paid on deposits during the next calendar year. Annually following receipt of Commission staff’s letter, if necessary, each utility shall file by advice letter or application, as appropriate, a revised tariff, effective the first day of January of the following year, or on an alternative date set by the Commission, containing the new rate of interest to be paid upon customers’ deposits, except when there is no change in the rate of interest to be paid on such deposits.

(p) A utility shall have tariffs concerning third-party guarantee arrangements and, pursuant to those tariffs, shall offer the option of a third party guarantee arrangement for use in lieu of a deposit. The following shall apply to third-party guarantee arrangements:

(I) an applicant for service or a customer may elect to use a third-party guarantor in lieu of paying a deposit;

(II) the third-party guarantee form, signed by both the third-party guarantor and the applicant for service or the customer, shall be provided to the utility;

(III) the utility may refuse to accept a third-party guarantee if the guarantor is not a customer in good standing at the time of the guarantee;

(IV) the amount guaranteed shall not exceed the amount which the applicant for service or the customer would have been required to provide as a deposit;

(V) the guarantee shall remain in effect until the earlier of the following occurs:

(A) the guarantee is terminated in writing by the guarantor;

(B) if the guarantor was a customer at the time of undertaking the guarantee, the guarantor ceases to be a customer of the utility; or

(C) the customer has established a satisfactory payment record, as defined in the utility's tariffs, for 12 consecutive months.

(VI) Should the guarantor terminate service or terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility, applying the criteria contained in its tariffs, may require a deposit or a new third party guarantor.

(q) A utility shall pay all unclaimed monies, as defined in § 40-8.5-103(5), C.R.S., that remain unclaimed for more than two years to the energy assistance organization. "Unclaimed monies" shall not include: undistributed refunds for overcharges subject to other statutory provisions and rules; and, credits to existing customers from cost adjustment mechanisms.

(I) Monies shall be deemed unclaimed and presumed abandoned when left with the utility for more than two years after termination of the services for which the deposit or the construction advance was made or when left with the utility for more than two years after the deposit or the construction advance becomes payable to the customer pursuant to a final Commission order establishing the terms and conditions for the return of such deposit or advance and the utility has made reasonable efforts to locate the customer.

(II) Interest on a deposit shall accrue at the rate established pursuant to paragraph (o) of this rule commencing on the date on which the utility receives the deposit and ending on the date on which the deposit is paid to the energy assistance organization. If the utility does not pay the unclaimed deposit to the energy assistance organization within four months of the date on which the unclaimed deposition is deemed to be unclaimed or abandoned pursuant to subparagraph (q)(I) of this rule, then at the conclusion of the four-month period, interest shall accrue on the unclaimed deposit at the rate established pursuant to paragraph (o) of this rule plus six percent.

(III) If payable under the utility’s line extension tariff provisions, interest on a construction advance shall accrue at the rate established pursuant to paragraph (o) of this rule commencing on the date on which the construction advance is deemed to be owed to the customer pursuant to the utility’s extension policy and ending on the date on which the construction advance is paid to the energy assistance organization. If the utility does not pay the unclaimed construction advance to the energy assistance organization within four months of the date on which the unclaimed construction advance is deemed to be unclaimed or abandoned pursuant to subparagraph (q)(I) of this rule, then at the

conclusion of the four-month period, interest shall accrue on the unclaimed construction advance at the rate established pursuant to paragraph (o) of this rule plus six percent.

(r) A utility shall resolve all inquiries regarding a customer's unclaimed monies and shall not refer such inquiries to the energy assistance organization.

(s) If a utility has paid unclaimed monies to the energy assistance organization, a customer later makes an inquiry claiming those monies, and the utility resolves the inquiry by paying those monies to the customer, the utility may deduct the amount paid to the customer from future funds submitted to the energy assistance organization.

(t) For purposes of paragraphs (q), (r), and (s) of this rule, "utility" means and includes: a cooperative electric association which elects to be so governed; and, a utility as defined in rule 3001(nn).

3404. Charges, Fees, and Payment Plans.

(a) In its tariffs, a utility shall provide a description of all charges or fees that the utility assesses customers resulting from regulated charges that are past due, discontinuance of service, and restoration of service. A utility may assess the following charges or fees at no higher than cost, as stated in its tariff:

(I) a late payment charge for regulated charges that are past due and exceed $50;

(II) a fee for discontinuance of service;

(III) a fee for restoration of service;

(IV) collection fees; and

(V) any other regulated charges or fees provided in the utility's tariff.

(b) In its tariffs, a utility shall have the following payment plans available for its customers:

(I) an installment payment plan; and

(II) a budget or level payment plan.

(c) In its tariff, a utility shall have an installment payment plan which permits a customer to make installment payments if one of the following applies.

(I) The plan is to pay regulated charges from past billing periods and the past due amount arises solely from events under the utility's control (such as, without limitation, meter malfunctions, billing errors, utility meter reading errors, or failures to read the meter, except where the customer refuses to read the meter and it is not readily accessible to the utility). A utility shall advise a customer who is eligible for this type of plan of the customer's eligibility. At the request of the customer and at the customer's discretion, an installment payment plan under this subparagraph shall extend over a period equal in length to that during which the errors were accumulated and shall not include interest.

(II) The customer pays at least ten percent of the amount shown on the notice of discontinuance for regulated charges and enters into an installment payment plan on or before the expiration date of the notice of discontinuance.

(III) The customer pays at least ten percent of any regulated charges amount more than 30 days past due and enters into an installment payment plan on or before the last day covered by a medical certificate. A customer who has entered into and failed to abide by an installment payment plan prior to receiving a medical certificate shall pay all amounts that were due for regulated charges up to the date on which the customer presented a medical certificate which meets the requirements of subparagraph 3407(e)(IV) and then may resume the installment payment plan.

(IV) If service has been disconnected, the customer pays at least any collection and reconnection charges and enters into an installment payment plan. This subparagraph shall not apply if service was discontinued because the customer breached a prior payment arrangement.

(d) Installment payment plans shall include the following amounts that are applicable at the time the customer requests a payment arrangement:

(I) the unpaid remainder of amounts due for regulated charges shown on the notice of discontinuance;

(II) any amounts due for regulated charges not included in the amount shown on the notice of discontinuance which have since become more than 30 days past due;

(III) all current regulated charges contained in any bill which is past due but is less than 30 days past the due date;

(IV) any new regulated charges contained in any bill which has been issued but is not past due;

(V) any regulated charges which the customer has incurred since the issuance of the most recent monthly bill;

(VI) any other regulated charges and fees as described in paragraph (a) of this rule, except fees relating to service diversion, whether or not such fees have appeared on a regular monthly bill; and

(VII) any applicable deposit, consistent with rule 3403.

(e) A customer entering into a payment arrangement as described in paragraph (b) may modify their bill due date if the utility's billing system allows for such a change.

(f) Within seven calendar days of entering into a payment arrangement with a customer, a utility shall provide the customer with this rule and a statement describing the payment arrangement. The statement describing the payment arrangement shall include the following:

(I) the terms of the payment plan; and

(II) a description of the steps which the utility will take if the customer does not abide by payment plan.

(g) Except as provided in subparagraph (c)(I) of this rule, an installment payment plan shall consist, at a minimum, of equal monthly installments for a term selected by the customer but not to exceed 12 months. Notwithstanding the foregoing, a utility may enter into an installment payment plan with a customer for a term up to 24 months if it determines that this is warranted by extraordinary circumstances. In the alternative, the customer may choose a modified budget or level payment plan, or similar tariff payment arrangement in which the total due shall be added to the preceding year's total billing to the customer's premises, modified for any base rate or cost adjustment changes. The resulting amount shall be divided and billed in 11 equal monthly budget billing payments, followed by a settlement billing in the twelfth month, or shall follow other payment-setting practices consistent with the tariff plan available. Utilities may not require a customer to participate in a budget or level payment plan or automated billing as a prerequisite for entering into an installment payment plan.

(h) For an installment payment plan entered into pursuant to this rule, the first monthly installment payment, and with the new charges (unless the new charges have been made part of the arrangement amount) shall be due on a date which is not earlier than the next regularly-scheduled due date of the customer who is entering into the installment payment plan. Succeeding installment payments, together with the new charges, shall be due in accordance with the due date established in the installment payment plan. Any payment not made on the due date established in the installment payment plan shall be considered in default.
Any new charges that are not paid by the due date shall be considered past due, excluding those circumstances covered in subparagraph (c)(I) of this rule.

(i) This rule shall not be construed to prevent a utility from offering any other installment payment plan terms to avoid discontinuance or terms for restoration of service, provided the terms are at least as favorable to the customer as the terms set out in this rule.

* * * *

[indicates omission of unaffected rules]

3407. Discontinuance of Service.

(a) A utility shall not discontinue the service of a customer for any reason other than the following:

(I) nonpayment of regulated charges;

(II) fraud or subterfuge;

(III) service diversion;

(IV) equipment tampering;

(V) safety concerns;

(VI) exigent circumstances;

(VII) discontinuance ordered by any appropriate governmental authority; or

(VIII) properly discontinued service being restored by someone other than the utility when the original cause for proper discontinuance has not been cured.

(b) A utility shall apply nondiscriminatory criteria when determining whether to discontinue service for nonpayment. A utility shall not discontinue service for nonpayment of any of the following:

(I) any amount which has not appeared on a regular monthly bill or which is not past due. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges;

(II) any past due amount that is less than $50;

(III) any amount due on another account now or previously held or guaranteed by the customer, or with respect to which the customer received service, unless the amount has first been transferred either to an account which is for the same class of service or to an account which the customer has agreed will secure the other account. Any amount so transferred shall be considered due on the regular due date of the bill on which it first appears and shall be subject to notice of discontinuance as if it had been billed for the first time;

(IV) any amount due on an account on which the customer is or was neither the customer of record nor a guarantor, or any amount due from a previous occupant of the premises. This subparagraph does not apply if the customer is or was obtaining service through fraud or subterfuge or if paragraph 3401(c) applies;

(V) any amount due on any account for which the present customer is or was the customer of record, if another person established the account through fraud or subterfuge and without the customer's knowledge or consent;

(VI) any delinquent amount, unless the utility can supply billing records from the time the delinquency occurred;

(VII) any debt except that incurred for service rendered by the utility in Colorado;

(VIII) any unregulated charge; or

(IX) any amount which is the subject of a pending dispute or informal complaint under rule 3004.

(c) If the utility discovers any connection or device installed on the customer’s premises, including any energy-consuming device connected on the line side of the utility's meter, which would prevent the meter from registering the actual amount of energy used, the utility shall do one of the following.

(I) Remove or correct such devices or connections. If the utility takes this action, it shall leave at the premises a written notice which advises the customer of the violation, of the steps taken by the utility to correct it, and of the utility's ability to bill the customer for any estimated energy consumption not properly registered. This notice shall be left at the time the removal or correction occurs.

(II) Provide the customer with written notice that the device or connection must be removed or corrected within 15 days and that the customer may be billed for any estimated energy consumption not properly registered. If the utility elects to take this action and the device or connection is not removed or corrected within the 15 days permitted, then within seven calendar days from the expiration of the 15 days, the utility shall remove or correct the device or connection pursuant to subparagraph (c)(I) of this rule.

(d) If a utility discovers evidence that any utility-owned equipment has been tampered with or that service has been diverted, the utility shall provide the customer with written notice of the discovery. The written notice shall inform the customer of the steps the utility will take to determine whether non-registration of energy consumption has or will occur and shall inform the customer that the customer may be billed for any estimated energy consumption not properly registered. The utility shall mail or hand-deliver the written notice within three calendar days of making the discovery of tampering or service diversion.

(e) A utility shall not discontinue service, other than to address safety concerns or in exigent circumstances, if one of the following is met.

(I) A customer at any time tenders full payment in accordance with the terms and conditions of the notice of discontinuance to a utility employee authorized to receive payment. Payment of a charge for a service call shall not be required to avoid discontinuance.

(II) If a customer pays, on or before the expiration date of the notice of discontinuance, at least one-tenth of the amount shown on the notice and enters into an installment payment plan with the utility, as provided in rule 3404.

(III) If it is outside the hours of 8:00 a.m. and 4:00 p.m.; between 12:00 Noon on Friday and 8:00 a.m. the following Monday; between 12:00 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday; or between 12:00 Noon on the day prior to and 8:00 a.m. on the day following any day during which the utility's local office is not open.

(IV) Medical emergencies.

(A) A utility shall postpone discontinuance of electric service to a residential customer for 90 days from the date of a medical certificate issued by a Colorado-licensed physician, health care practitioner acting under a physician's authority, or health care practitioner licensed to prescribe and treat patients which evidences that service discontinuance will aggravate an existing medical emergency or create a medical emergency for the customer or a permanent resident of the customer's household. A customer may invoke this subparagraph only once in any twelve consecutive months.

(B) As a condition of obtaining a new installment payment plan on or before the last day covered by a medical certificate, a customer who has already entered into a payment arrangement, but broke the arrangement prior to seeking a medical certificate, may be required to pay all amounts that were due up to the date of the original medical certificate as a condition of obtaining a new payment arrangement. At no time shall a payment from the customer be required as a condition of honoring a medical certificate.

(C) The medical certificate must be in writing (which includes electronic certificates and signatures and those provided electronically), sent to the utility from the office of a licensed physician or health care practitioner licensed to prescribe and treat patients, and clearly show the name of the customer or individual whose illness is at issue; the Colorado medical identification number, phone number, name, and signature of the physician, health care practitioner acting under a physician's authority, or health care practitioner licensed to prescribe and treat patients certifying the medical emergency. Such certificate is not contestable by the utility as to the medical judgment, although the utility may use reasonable means to verify the authenticity of such certificate.

(D) A utility may accept notification by telephone from the office of a licensed physician, or health care practitioner licensed to prescribe and treat patients, but a written medical certificate must be sent to the utility within ten days.

(V) Weather provisions.

(A) A utility shall postpone service discontinuance to a residential customer on any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 a.m. predicts that the temperature will be 32 degrees Fahrenheit (32°F) or lower at any time in the following 24 hours, or during any additional period in which utility personnel will not be available to restore utility service in accordance with rule 3409. Nothing prohibits a utility from postponing service discontinuance when temperatures are warmer than these criteria.

(B) A utility shall postpone service discontinuance to a residential customer on any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 a.m. predicts that the temperature will be 95 degrees Fahrenheit (95°F) or higher at any time in the following 24 hours, or during any additional period in which utility personnel will not be available to restore utility service in accordance with rule 3409. Nothing prohibits a utility from postponing service discontinuance when temperatures are cooler than these criteria.

(f) In addition to its tariffs, a utility shall publish information related to its practices around delinquency, disconnection for nonpayment, and reconnection on its website. This information should be written in a manner that promotes customer understanding and must be produced in English and a specific language or languages other than English where the utility's entire service territory contains a population of at least ten percent who speak a specific language other than English as their primary language as determined by the latest U.S. Census information. A utility must include at least the following information:

(I) the customer's rights related to service disconnection, including medical and weather-based protections, timing restrictions on service disconnection, and options and hours to contact the utility for support relating to service disconnection;

(II) a summary of a customer's options to prevent service disconnection for nonpayment, including installment payment plan options, utility energy assistance and affordability programs, and eligibility requirements for such programs;

(III) referrals to organizations that provide energy payment assistance, including energy efficiency services, such as Energy Outreach Colorado, charities, nonprofits, and governmental entities that provide or administer funds for such assistance;

(IV) the customer's rights related to service restoration, including restoration timelines, actions customers may take to restore service; and options and hours to contact the utility for support relating to service restoration;

(V) a summary of charges, fees, and deposits to which a customer may be subject under paragraphs 3404(a) and 3403(j), with a description of how those amounts are calculated, explained in a way that enables a customer to estimate the full costs they may be assessed;

(VI) a description of the customer's options in the event of a dispute regarding billing or disconnection practices;

(VII) a description of the options available to an occupant of a service address who is not a customer of record and who has a court-ordered protection order against a customer of record for the service address, relating to past-due balances, service disconnection, restoration, and continuance at the service address, including initiating new service, transferring service, and the utility's practices, policies, and criteria for determining benefit of service for purposes of transferring a customer's balance to an occupant; and

(VIII) a description of the utility's Demand Side Management programs, including requirements to participate, the benefits of participating, and utility contact information relating to such programs.

(g) Reporting requirements.

(I) Annual Report. No later than March 1 of each calendar year, each utility shall file a report covering the prior calendar year in the miscellaneous proceeding for utility disconnection filings, using the form available on the Commission's website. The report shall provide data on residential customers by class and zip code and must also break down such data by low-income customers, defined as customers participating in low-income programs authorized by rule 3412 and the Low-Income Energy Assistance Program. For data provided in this report, paragraph 3033(b) shall not apply. The report shall contain the following information, displayed by quarter:

(A) total number of unique customers;

(B) total dollar amount billed;

(C) total number of customers charged a late payment charge;

(D) total dollar amount of late payment charges collected;

(E) number of customers with an arrearage balance by vintage (1-30 days, 31-60 days, 61-90 days, 91+ days);

(F) dollar amount of arrearages by vintage (1-30 days, 31-60 days, 61-90 days, 91+ days);

(G) total number of disconnection notices sent;

(H) total number of disconnections for nonpayment;

(I) total number of service restorations after disconnections for nonpayment;

(J) average duration of disconnection for nonpayment by hours, measured from when the customer completes an action in paragraph 3409(b) to when service is restored;

(K) total dollar amount of deposits collected for restoring service that was disconnected for nonpayment;

(L) total number of deposits collected for restoring service that was disconnected for nonpayment;

(M) total number of new installment payment plans entered into;

(N) average repayment term of new installment payment plans entered into;

(O) total dollar amount of fees collected for disconnecting service for nonpayment;

(P) total dollar amount of fees collected for restoring service that was disconnected for nonpayment;

(Q) total dollar amount of collection fees collected from customers whose service was disconnected for nonpayment; and

(R) total dollar amount of any other tariff-authorized charges or fees collected resulting from past due amounts, service disconnection for nonpayment, and restoring service that was disconnected for nonpayment.

(II) Along with the items in subparagraph (g)(I), each utility shall file the following additional items.

(A) A narrative containing the utility's analysis of any trends or inconsistencies revealed by the data in the prior year including, at minimum, an analysis of:

(i) the total number of residential customers who were disconnected for nonpayment in the prior calendar year and percent of those customers who were disconnected for nonpayment multiple times; and

(ii) the total number of residential installment payment plans entered into in the prior calendar year, the average length of those installment payment plans, the number of residential installment payment plans completed, and the number of residential installment payment plans that were broken.

(B) Information about how the utility is working to reduce delinquencies and disconnections, including any actions the utility is taking specific to residential customers experiencing multiple disconnections in a calendar year, and a description of the efforts made to identify entities to which the utility refers customers for energy bill assistance.

3408. Notice of Discontinuance of Service.

(a) Except as provided in paragraphs (g) and (h) of this rule, prior to discontinuing service, a utility shall provide a customer, and any third party the customer has designated in writing or electronically, with the following forms of notice:

(I) upon a bill becoming past due, and at least five business days before issuing a notice of discontinuance, a utility must provide notice of late payment;

(II) at least 12 business days before any proposed service discontinuance, written notice of discontinuance as further described in paragraphs (b) and (c), by first class mail or hand delivery;

(III) at least 24 hours in advance of any proposed discontinuance of service, the utility must make a reasonable attempt to provide notice in person or by telephone; and

(IV) if the utility will implement service discontinuance remotely, in addition to subparagraphs (I) through (III), the utility must undertake at least one additional attempt to notify the customer of record at their provided telephone number or in person at least 72 hours before discontinuing service.

(b) The written notice of discontinuance under subparagraph (a)(II) shall be conspicuous and in easily understood language, and the heading shall contain, in bold font and capital letters, the following warning:

THIS IS A FINAL NOTICE OF DISCONTINUANCE OF UTILITY SERVICE AND CONTAINS IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS AND REMEDIES. YOU MUST ACT PROMPTLY TO AVOID UTILITY SHUT OFF.

(c) The body of the notice of discontinuance under subparagraph (a)(II) of this rule shall advise the customer of the following:

(I) the reason for the discontinuance of service;

(II) the amount past due for utility service, deposits, or other regulated charges, if any;

(III) the date by which an installment payment plan must be entered into or full payment must be received in order to avoid discontinuance of service;

(IV) how and where the customer can pay or enter into an installment payment plan prior to the discontinuance of service;

(V) that the customer may avoid discontinuance of service by entering into an installment payment plan with the utility pursuant to rule 3404 and the utility's applicable tariff;

(VI) that the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency;

(VII) that the customer has the right to dispute the discontinuance directly with the utility by contacting the utility, and how to contact the utility toll-free from within the utility's service area;

(VIII) that the customer has the right to make an informal complaint to the External Affairs section of the Commission in writing, by telephone, or in person, along with the Commission's address and local and toll-free telephone number;

(IX) that the customer has the right to file a formal complaint, in writing, with the Commission pursuant to rule 1302 and that this formal complaint process may involve a formal hearing;

(X) that in conjunction with the filing of a formal complaint, the customer has a right to file a motion for a Commission order ordering the utility not to disconnect service pending the outcome of the formal complaint process and that the Commission may grant the motion upon such terms as it deems reasonable, including but not limited to the posting of a deposit or bond with the utility or timely payment of all undisputed regulated charges;

(XI) that if service is discontinued for non-payment, the customer may be required, as a condition of restoring service, to pay reconnection and collection charges in accordance with the utility's tariff; and

(XII) that customers may be able to obtain financial assistance to assist with the payment of the utility bill and that more detailed information on that assistance may be obtained by calling the utility toll-free. The utility shall state its toll-free telephone number.

(d) A notice of discontinuance shall be printed in English and a specific language or languages other than English where the utility's entire service territory contains a population of at least ten percent who speak a specific language other than English as their primary language as determined by the latest U.S. Census information.

(e) A utility shall explain and shall offer the terms of an installment payment plan to each customer who contacts the utility in response to a notice of discontinuance of service.

(f) If the utility attempts to notify the customer in person or by telephone but fails to do so, it shall leave written or recorded notice of the attempted contact and its purpose.

(g) If a customer has entered into an installment payment plan and has defaulted or allowed a new bill to remain unpaid past its due date, a utility shall provide, by first class mail or by hand-delivery, a written notice to the customer. The notice shall contain:

(I) a heading as follows: NOTICE OF BROKEN ARRANGEMENT;

(II) statements that advise the customer:

(A) that the utility may discontinue service if it does not receive the monthly installment payment within ten days after the notice is mailed or hand-delivered;

(B) that the utility may discontinue service if it does not receive payment for the current bill within 30 days after its due date;

(C) that, if service is discontinued, the utility may refuse to restore service until the customer pays all amounts for regulated service more than 30 days past due and any collection or reconnection charges; and

(D) that the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency.

(h) A utility is not required to provide notice under this rule if one of the following applies:

(I) the situation involves safety concerns or exigent circumstances;

(II) discontinuance is ordered by any appropriate governmental authority;

(III) either paragraph 3407(c) or 3407(d) applies; or

(IV) service, having been already properly discontinued, has been restored by someone other than the utility and the original cause for discontinuance has not been cured.

(i) Where a utility knows that the service to be discontinued is used by customers in multi-unit dwellings, in places of business, or in a cluster of dwellings or places of business and the utility service is recorded on a single meter used either directly or indirectly by more than one unit, the utility shall issue notice as required in paragraphs (a) and (b) of this rule, except that:

(I) the notice period shall be 30 days;

(II) such notice may include the current bill;

(III) the utility shall provide written notice to each individual unit, stating that a notice of discontinuance has been sent to the party responsible for the payment of utility bills for the unit and that the occupants of the units may avoid discontinuance by paying the next new bill in full within 30 days of its issuance and successive new bills within 30 days of issuance; and

(IV) the utility shall post the notice in at least one of the common areas of the affected location.

3409. Restoration of Service.

(a) Unless prevented from doing so by safety concerns or exigent circumstances, a utility shall restore, without additional fee or charge, any discontinued service which was not properly discontinued or restored as provided in rules 3407, 3408, and 3409.

(b) A utility shall restore service if the customer does any of the following:

(I) pays in full the amount for regulated charges shown on the notice and any deposit and/or fees as may be specifically required by the utility's tariff in the event of discontinuance of service;

(II) pays any reconnection and collection charges specifically required by the utility's tariff, enters into an installment payment plan, and makes the first installment payment, unless the cause for discontinuance was the customer's breach of such an arrangement;

(III) presents a medical certificate, as provided in subparagraph 3407(e)(IV); or

(IV) demonstrates to the utility that the cause for discontinuance, if other than non-payment, has been cured.

(c) Unless prevented by safety concerns or exigent circumstances, a utility shall restore service to a customer who has completed an action in paragraph (b) within 24 hours (excluding weekends and holidays) of the time that the customer completes an action in paragraph (b), or within 12 hours of the time that the customer completes an action in paragraph (b) if the customer pays applicable after-hours charges and fees established in tariffs. The utility must exercise its best efforts to restore service for customers meeting requirements of paragraph (b) on the same day of a service discontinuance.

(d) The utility must resolve doubts as to whether a customer has met the requirements for service restoration under paragraph (b) in favor of restoration.

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[indicates omission of unaffected rules]

3413. Medical Exemption Program.

(a) Scope and Applicability.

(I) Any electric utility that has a Commission approved Medical Exemption Program shall file an advice letter and tariff, consistent with 4 CCR 723-1-1210, for a rate plan for residential customers who elect an alternate rate plan due to a qualifying medical condition and/or use of essential medical equipment and whose household income is less than or equal to 400 percent of federal poverty guidelines, which may be self-certified by

the customer. The effect of such an exemption shall be neutral with respect to the utility's revenue requirement. If a customer qualifies for the alternate rate plan, that customer shall not be precluded from participating in any low-income program offered by the utility.

(b) Definitions.

(I) "Essential medical equipment" means any medical device used in the home to sustain life or which is relied upon for mobility, as determined by a physician currently licensed and in good standing in the state of Colorado.

(II) "Federal poverty guidelines" means the poverty measures published annually by the U.S. Department of Health and Human Services.

(III) "Non-participant" means a utility customer who is not participating in the Medical Exemption Program.

(IV) "Participant" means a residential utility customer who is billed according to the utility's alternative rate plan.

(V) "Qualifying medical condition" includes heat-sensitive medical conditions including, but not limited to, multiple sclerosis, epilepsy, quadriplegia, and paraplegia, or the need for the use of essential medical equipment, as determined by a physician licensed in the state of Colorado, or other health care practitioner licensed to prescribe and treat patients.

(c) A certificate of a qualifying medical condition and/or use of essential medical equipment shall be valid for one year. Once certified by a physician, or other health care practitioner licensed to prescribe and treat patients, customers with qualifying medical conditions lasting longer than one year may submit an annual attestation as to the continued condition and the current address of residency. A certificate of a qualifying medical condition and/or use of essential medical equipment shall:

(I) be in writing (which includes electronic certificates and signatures and those provided electronically);

(II) be sent from the office of a currently licensed physician in good standing in the state of Colorado, or other health care practitioner licensed to prescribe and treat patients to either the utility or a Commission approved third party with whom the utility contracts pursuant to rule 3209;

(III) clearly state the name of the customer or individual whose medical condition and/or use of essential medical equipment is at issue; and

(IV) clearly state the Colorado medical identification number, phone number, name, and signature of the physician or health care practitioner acting under a physician's authority, or other health care practitioner licensed to prescribe and treat patients certifying the existence of a qualifying medical condition and/or use of essential medical equipment.

(d) Such certification is not contestable by the utility as to the medical judgment, although the utility may use reasonable means to verify the authenticity of such certificate.

(e) Verification of the authenticity of the certificate of a qualifying medical condition or use of essential medical equipment shall be done by the utility or a Commission approved third party with which the utility contracts the medical verification activities.

(f) If the utility or Commission approved third party deems it reasonably necessary, verification of household income may be done by the utility or Commission approved third party with which the utility contracts the income verification activities.

(g) The Commission may, with cause, conduct an audit of the income verification process employed by the utility or an entity with which the utility contracts for that purpose.

(h) Cost recovery.

(I) Each utility shall address in its filing how costs of the alternative rate plan will be recovered.

(II) Each utility shall provide information regarding impacts on the various participant classes and on participants within a class.

(III) The following costs are eligible for recovery by a utility as alternative rate plan costs:

(A) lost revenues based on the difference between the expected monthly revenues and revenues under the alternate rate plan for the months during which the Medical Exemption Program is in place; and

(B) alternative rate plan administrative costs.

(i) Annual Report.

(I) No later than December 15 each year, each utility shall file an annual report, based on the previous summer cooling period the Medical Exemption Program was in effect, containing the following information:

(A) monthly information including number of participants, individual household electricity usage, and individual household incomes;

(B) the total number of applicants for the alterative rate plan;

(C) the number of applicants who qualified for the rate plan;

(D) total cost of the program and the average rate impact of non-participants by rate class; and

(E) a description of the efforts made to facilitate the enrollment of qualified persons in the alternative rate plan.

(II) To the extent that the annual report may disclose individual customer information, the utility is authorized to file that portion of the annual report as confidential pursuant to 4 CCR 723-1-1102, Procedures Relating to Confidential Information Submitted to the Commission Outside of a Formal Proceeding.

3414. - 3499. [Reserved].

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[indicates omission of unaffected rules]

3976. Regulated Electric Utility Rule Violations, Civil Enforcement, and Civil Penalties.

An admission to or Commission adjudication for liability for an intentional violation of the following may result in the assessment of a civil penalty of up to $2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limits set in § 40-7-113.5, C.R.S.

Citation	**Description**	**Maximum Penalty Per Violation**
	Articles 1-7 of Title 40, C.R.S.	$2000
	Commission Order	$2000
Rule 3005(a)-(c);(f)	Records and Record Retention	$2000
Rule 3027(a)	Collection and Use of Customer Data	$1000
Rule 3027(b)	Disclosure of Customer Data	$2000
Rule 3027(c)	Tariff	$1000
Rule 3027(d)	Disclosure of Customer Data	$1000
Rule 3028(a)	Customer Notice	$1000
Rule 3029(a),(b)	Consent Form	$1000
Rule 3030(a)	Disclosure of Customer Data	$2000
Rule 3030(b)	Records	$1000
Rule 3031(a)	Disclosure of Customer Data	$2000
Rule 3031(b)	Records	$1000

Rule 3032(a)	Disclosure of Customer Data	$2000
Rule 3032(c) and (d)	Consent and Records	$1000
Rule 3033(a)	Disclosure of Aggregated Data	$2000
Rule 3033(d)	Tariff	$1000
Rule 3100(a)	Obtaining a Certificate of Public Convenience and Necessity for a Franchise	$2000
Rule 3101(a)	Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to Operate in a Service Territory	$2000
Rule 3102(a)	Obtaining a Certificate of Public Convenience and Necessity for Facilities	$2000
Rule 3103(a),(c),(d)	Amending a Certificate of Public Necessity for Changes in Service Territory or Facilities	$2000
Rule 3108(a),(c)	Keeping a Current Tariff on File with the Commission	$2000
Rule 3109	Filing a New or Changed Tariff with the Commission	$2000
Rule 3110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	$2000
Rule 3200(a),(b)	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	$2000
Rule 3204	Reporting Incidents Resulting in Death, Serious Injury, or Significant Property Damage	$2000
Rule 3210	Line Extensions	$2000
Rule 3251	Reporting Major Events	$2000
Rule 3252	Filing a Report on a Major Event with the Commission	$2000
Rule 3303(a)-(j)	Meter Testing	$2000

Rule 3306	Record Retention of Tests and Meters	$2000
Rule 3309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	$2000
Rule 3401	Billing Information, Procedures, and Requirements	$2000
Rule 3603	Resource Plan Filing Requirements	$2000
Rule 3654(a),(d)	Renewable Energy Standards	$2000
Rule 3657(a)	QRU Compliance Plans	$2000
Rule 3662	Annual Compliance Reports	$2000
Rule 3803(c)	Master Meter Exemption Requirements	$2000
Rule 3004(b)-(f)	Disputes and Informal Complaints	$1000
Rule 3202(a),(b),(f),(g)	Maintaining a Standard Voltage and Frequency	$1000
Rule 3203(a),(b)	Trouble Report Response, Interruptions and Curtailments of Service	$1000
Rule 3405	Provision of Service, Rate, and Usage Information to Customers	$1000
Rule 3406	Provision of Source Information to Customers	$1000
Rule 3253	Filing a Supplemental Report on a Major Event with the Commission	$1000
Rule 3208(a)-(c)	Poles	$500
Rule 3403(a)-(q);(s)	Applications for Service, Customer Deposits, and Third Party Guarantees	$500
Rule 3658	Standard Rebate Offer	$500
Rule 3006(a),(b),(e)-(m)	Annual Reporting Requirements	$100
Rule 3304	Scheduled Meter Testing	$100
Rule 3305	Meter Testing Upon Request	$100
Rule 3402(a),(c),(d)	Meter and Billing Error Adjustments	$100

Rule 3404(a)-(h)	Availability of Installation Payments to Customers	$1000
Rule 3407	Discontinuance of Service	$2000
Rule 3408(a)-(g);(i)	Notice of Discontinuation of Service	$2000
Rule 3409	Restoration of Service	$2000
Rule 3411(c)(IV),(d)(I), (d)(II),(e)	Low-Income Energy Assistance Act	$100
Rule 3618	Filing of Electric Resource Planning Reports	$100

3977 – 3999. [Reserved].

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Tracking number: 2020-00622

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 11/18/2021

4 CCR 723-3

RULES REGULATING ELECTRIC UTILITIES

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.

December 08, 2021 13:29:19

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-4

Rule title

4 CCR 723-4 RULES REGULATING GAS UTILITIES 1 - eff 01/14/2022

Effective date

01/14/2022

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-4

PART 4
RULES REGULATING GAS UTILITIES

* * * *

[indicates omission of unaffected rules]

4403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.

(a) A utility shall process an application for utility service that is made either orally or in writing and shall apply nondiscriminatory criteria with respect to the requirement of a deposit prior to commencement of service. Nondiscriminatory criteria means that no deposit or guarantee, or additional deposit or guarantee, shall be required by a utility because of race, sex, creed, national origin, marital status, age, number of dependents, source of income, disability, or geographical area of residence.

(b) All utilities requiring deposits shall offer customers at least one payment alternative that does not require the use of the customer's social security number.

(c) If billing records are available for a customer who has received past service from the utility, the utility shall not require that person to make new or additional deposits to guarantee payment of current bills unless the records indicate recent or substantial delinquencies.

(d) A utility shall not require a deposit from an applicant for service who provides written documentation of a 12 consecutive month good payment history from the utility from which that person received similar service. For purposes of this paragraph, the 12 consecutive months must have ended no earlier than 60 days prior to the date of the application for service.

(e) A utility shall not require a deposit from an applicant for service or restoration of service who is or was within the last 12 months, a participant in the Low-Income Energy Assistance Program or in a low-income program consistent with rule 4412, or who received energy bill assistance from Energy Outreach Colorado within the last 12 months.

(f) If a utility uses credit scoring to determine whether to require a deposit from an applicant for service or a customer, the utility shall have a tariff that describes, for each scoring model that it uses, the credit scoring evaluation criteria and the credit score limit that triggers a deposit requirement.

(g) If a utility uses credit scoring, prior payment history with the utility, or customer-provided prior payment history with a like utility as a criterion for establishing the need for a deposit, the utility shall include in its tariff the specific evaluation criteria that trigger the need for a deposit.

(h) If a utility denies an application for service or requires a deposit as a condition of providing service, the utility immediately shall inform the applicant for service of the decision and shall provide, within three business days, a written explanation to the applicant for service stating the specific reasons why the application for service has been denied or a deposit is required.

(i) No utility shall require any surety other than either a deposit to secure payment for utility services or a third-party guarantee of payment in lieu of a deposit. In no event shall the furnishing of utility services or extension of utility facilities, or any indebtedness in connection therewith, result in a lien, mortgage, or other interest in any real or personal property of the customer unless such indebtedness has been reduced to a judgment. Should the guarantor terminate service or terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility, applying the criteria contained in its tariffs, may require a deposit or a new third party guarantor.

(j) The total deposit a utility may require or hold at any one time shall not exceed an amount equal to an estimated 90 days' bill of the customer, except in the case of a customer whose bills are payable in advance of service, in which case the deposit shall not exceed an estimated 60 days' bill of the customer. The deposit may be in addition to any advance, contribution in aid of construction or guarantee required by the utility tariff in connection with construction of lines or facilities, as provided in the extension policy in the utility's tariffs. A deposit may be paid in installments.

(k) A utility receiving deposits shall maintain records showing:

(I) the name of each customer making a deposit;

(II) the amount and date of the deposit;

(III) each transaction, such as the payment of interest or interest credited, concerning the deposit;

(IV) each premise where the customer receives service from the utility while the deposit is retained by the utility;

(V) if the deposit was returned to the customer, the date on which the deposit was returned to the customer; and

(VI) if the unclaimed deposit was paid to the energy assistance organization, the date on which the deposit was paid to the energy assistance organization.

(l) Each utility shall state in its tariff its customer deposit policy for establishing or maintaining service. The tariff shall state the circumstances under which a deposit will be required and the circumstances under which it will be returned. A utility shall return any deposit paid by a customer who has made no more than two late payments in 12 consecutive months.

(m) Each utility shall issue a receipt to every customer from whom a deposit is received. No utility shall refuse to return a deposit or any balance to which a customer may be entitled solely on the basis that the customer is unable to produce a receipt.

(n) The payment of a deposit shall not relieve any customer from the obligation to pay current bills as they become due. A utility is not required to apply any deposit to any indebtedness of the customer to the utility, except for utility services due or past due after service is terminated.

(o) A utility shall pay simple interest on a deposit at the percentage rate per annum as calculated by the Commission staff and in the manner provided in this paragraph.

(I) At the request of the customer, the interest shall be paid to the customer either on the return of the deposit or annually. The simple interest on a deposit shall be earned from the date the deposit is received by the utility to the date the customer is paid. At the option of the utility, interest payments may be paid directly to the customer or credited to the customer's account.

(II) The simple interest to be paid on a deposit during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the 12 monthly average rates of interest expressed in percent per annum, as quoted for one-year United States Treasury constant maturities, as published in the Federal Reserve Bulletin, by the Board of Governors of the Federal Reserve System. Each year, the Commission staff shall compute the interest rate to be paid. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is 25 basis points or more, the newly calculated customer deposit interest rate shall be used. The Commission shall send a letter to each utility stating the rate of interest to be paid on deposits during the next calendar year. Annually following receipt of Commission staff's letter, if necessary, a utility shall file by advice letter or application, as appropriate, a revised tariff, effective the first day of January of the following year, or on an alternative date set by the Commission, containing the new rate of interest to be paid upon customers' deposits, except when there is no change in the rate of interest to be paid on such deposits.

(p) A utility shall have tariffs concerning third-party guarantee arrangements and, pursuant to those tariffs, shall offer the option of a third party guarantee arrangement for use in lieu of a deposit. The following shall apply to third-party guarantee arrangements:

(I) an applicant for service or a customer may elect to use a third-party guarantor in lieu of paying a deposit;

(II) the third-party guarantee form, signed by both the third-party guarantor and the applicant for service or the customer, shall be provided to the utility;

(III) the utility may refuse to accept a third-party guarantee if the guarantor is not a customer in good standing at the time of the presentation of the guarantee to the utility;

(IV) the amount guaranteed shall not exceed the amount which the applicant for service or the customer would have been required to provide as a deposit;

(V) the guarantee shall remain in effect until the earlier of the following occurs:

(A) the guarantee is terminated in writing by the guarantor;

(B) if the guarantor was a customer at the time of undertaking the guarantee, the guarantor ceases to be a customer of the utility; or

(C) the customer has established a satisfactory payment record, as defined in the utility's tariffs, for 12 consecutive months.

(VI) Should the guarantor terminate service or terminate the third party guarantee before the customer has established a satisfactory payment record for 12 consecutive months, the utility, applying the criteria contained in its tariffs, may require a deposit or a new third party guarantor.

(q) A utility shall pay all unclaimed monies, as defined in § 40-8.5-103(5), C.R.S., that remain unclaimed for more than two years to the energy assistance organization. "Unclaimed monies" shall not include: undistributed refunds for overcharges subject to other statutory provisions and rules and credits to existing customers from cost adjustment mechanisms.

(I) Monies shall be deemed unclaimed and presumed abandoned when left with the utility for more than two years after termination of the services for which the deposit or the construction advance was made or when left with the utility for more than two years after the deposit or the construction advance becomes payable to the customer pursuant to a final Commission order establishing the terms and conditions for the return of such deposit or advance and the utility has made reasonable efforts to locate the customer.

(II) Interest on a deposit shall accrue at the rate established pursuant to paragraph (o) of this rule commencing on the date on which the utility receives the deposit and ending on the date on which the deposit is paid to the energy assistance organization. If the utility does not pay the unclaimed deposit to the energy assistance organization within four months of the date on which the unclaimed deposition is deemed to be unclaimed or abandoned pursuant to subparagraph (q)(I) of this rule, then at the conclusion of the four-month period, interest shall accrue on the unclaimed deposit at the rate established pursuant to paragraph (o) of this rule plus six percent.

(III) If payable under the utility’s line extension tariff provisions, interest on a construction advance shall accrue at the rate established pursuant to paragraph (o) of this rule commencing on the date on which the construction advance is deemed to be owed to the customer pursuant to the utility’s extension policy and ending on the date on which the construction advance is paid to the energy assistance organization. If the utility does not pay the unclaimed construction advance to the energy assistance organization within four months of the date on which the unclaimed construction advance is deemed to be unclaimed or abandoned pursuant to subparagraph (q)(I) of this rule, then at the conclusion of the four-month period, interest shall accrue on the unclaimed construction advance at the rate established pursuant to paragraph (o) of this rule plus six percent.

(r) A utility shall resolve all inquiries regarding a customer's unclaimed monies and shall not refer such inquiries to the energy assistance organization.

(s) If a utility has paid unclaimed monies to the energy assistance organization, a customer later makes an inquiry claiming those monies, and the utility resolves the inquiry by paying those monies to the customer, the utility may deduct the amount paid to the customer from future funds submitted to the energy assistance organization.

4404. Charges, Fees, and Payment Plans.

(a) In its tariffs, a utility shall provide a description of all charges or fees that the utility assesses resulting from regulated charges that are past due and service discontinuance and restoration. A utility may assess the following charges or fees at no higher than cost, as stated in its tariff:

(I) a late payment charge for regulated charges that are past due and exceed $50;

(II) a fee for discontinuance of service;

(III) a fee for restoration of service;

(IV) collection fees; and

(V) any other regulated charges or fees provided in the utility's tariff.

(b) In its tariffs, a utility shall have the following payment plans available for its customers:

(I) an installment payment plan; and

(II) a budget or level payment plan.

(c) A utility shall have in its tariff an installment payment plan which permits a customer to make installment payments if one of the following applies.

(I) The plan is to pay regulated charges from past billing periods and the past due amount arises solely from events under the utility's control (such as, without limitation, meter malfunctions, billing errors, utility meter reading errors, or failures to read the meter, except where the customer refuses to read the meter and it is not readily accessible to the utility). A utility shall advise a customer who is eligible for this type of plan of the customer's eligibility. At the request of the customer and at the customer's discretion, an installment payment plan under this subparagraph shall extend over a period equal in length to that during which the errors were accumulated and shall not include interest.

(II) The customer pays at least ten percent of the amount shown on the notice of discontinuance for regulated charges and enters into an installment payment plan on or before the expiration date of the notice of discontinuance.

(III) The customer pays at least ten percent of any regulated charges amount more than 30 days past due and enters into an installment payment plan on or before the last day covered by a medical certificate. A customer who has entered into and failed to abide by

an installment payment plan prior to receiving a medical certificate shall pay all amounts that were due for regulated charges up to the date on which the customer presented a medical certificate which meets the requirements of subparagraph 4407(e)(IV) and then may resume the installment payment plan.

(IV) If service has been disconnected, the customer pays at least any collection and reconnection charges and enters into an installment payment plan. This subparagraph shall not apply if service was discontinued because the customer breached a prior payment arrangement.

(d) Installment payment plans shall include the following amounts that are applicable at the time the customer requests a payment arrangement:

(I) the unpaid remainder of amounts due for regulated charges shown on the notice of discontinuance;

(II) any amounts due for regulated charges not included in the amount shown on the notice of discontinuance which have since become more than 30 days past due;

(III) all current regulated charges contained in any bill which is past due but is less than 30 days past the due date;

(IV) any new regulated charges contained in any bill which has been issued but is not past due;

(V) any regulated charges which the customer has incurred since the issuance of the most recent monthly bill;

(VI) any other regulated charges and fees as described in paragraph (a) of this rule, except fees relating to service diversion, whether or not such fees have appeared on a regular monthly bill; and

(VII) any applicable deposit, consistent with rule 4403.

(e) A customer entering into a payment arrangement as described in paragraph (b) may modify their bill due date if the utility's billing system allows for such a change.

(f) Within seven calendar days of entering into a payment arrangement with a customer, a utility shall provide the customer with this rule and a statement describing the payment arrangement. The statement describing the payment arrangement shall include the following:

(I) the terms of the payment plan; and

(II) a description of the steps which the utility will take if the customer does not abide by payment plan.

(g) Except as provided in subparagraph (c)(I) of this rule, an installment payment plan shall consist, at a minimum, of equal monthly installments for a term selected by the customer but not to exceed 12 months. Notwithstanding the foregoing, a utility may enter into an installment payment

plan with a customer for a term up to 24 months if it determines that this is warranted by extraordinary circumstances. In the alternative, the customer may choose a modified budget or level payment plan, or similar tariff payment arrangement in which the total due shall be added to the preceding year's total billing to the customer's premises, modified for any base rate or cost adjustment changes. The resulting amount shall be divided and billed in 11 equal monthly budget billing payments, followed by a settlement billing in the twelfth month, or shall follow other payment-setting practices consistent with the tariff plan available. Utilities may not require a customer to participate in a budget or level payment plan or automated billing as a prerequisite for entering into an installment payment plan.

(h) For an installment payment plan entered into pursuant to this rule, the first monthly installment payment, and with the new charges (unless the new charges have been made part of the arrangement amount) shall be due on a date which is not earlier than the next regularly-scheduled due date of the customer who is entering into the installment payment plan. Succeeding installment payments, together with the new charges, shall be due in accordance with the due date established in the installment payment plan. Any payment not made on the due date established in the installment payment plan shall be considered in default. Any new charges that are not paid by the due date shall be considered past due, excluding those circumstances covered in subparagraph (c)(I) of this rule.

(i) This rule shall not be construed to prevent a utility from offering any other installment payment plan terms to avoid discontinuance or terms for restoration of service, provided the terms are at least as favorable to the customer as the terms set out in this rule.

* * * *

[indicates omission of unaffected rules]

4407. Discontinuance of Service.

(a) A utility shall not discontinue the service of a customer for any reason other than the following:

(I) nonpayment of regulated charges;

(II) fraud or subterfuge;

(III) service diversion;

(IV) equipment tampering;

(V) safety concerns;

(VI) exigent circumstances;

(VII) discontinuance ordered by any appropriate governmental authority; or

(VIII) properly discontinued service being restored by someone other than the utility when the original cause for proper discontinuance has not been cured.

(b) A utility shall apply nondiscriminatory criteria when determining whether to discontinue service for nonpayment. A utility shall not discontinue service for nonpayment of any of the following:

(I) any amount which has not appeared on a regular monthly bill or which is not past due. Unless otherwise stated in a tariff or Commission rule, an account becomes "past due" on the 31st day following the due date of current charges;

(II) any past due amount that is less than $50;

(III) any amount due on another account now or previously held or guaranteed by the customer, or with respect to which the customer received service, unless the amount has first been transferred either to an account which is for the same class of service or to an account which the customer has agreed will secure the other account. Any amount so transferred shall be considered due on the regular due date of the bill on which it first appears and shall be subject to notice of discontinuance as if it had been billed for the first time;

(IV) any amount due on an account on which the customer is or was neither the customer of record nor a guarantor, or any amount due from a previous occupant of the premises. This subparagraph does not apply if the customer is or was obtaining service through fraud or subterfuge or if paragraph 4401(c) applies;

(V) any amount due on an account for which the present customer is or was the customer of record, if another person established the account through fraud or subterfuge and without the customer's knowledge or consent;

(VI) any delinquent amount, unless the utility can supply billing records from the time the delinquency occurred;

(VII) any debt except that incurred for service rendered by the utility in Colorado;

(VIII) any unregulated charge; or

(IX) any amount which is the subject of a pending dispute or informal complaint under rule 4004.

(c) If the utility discovers any connection or device installed on the customer’s premises, including any energy-consuming device in the proximity of the utility's meter, which would prevent the meter from registering the actual amount of energy used, the utility shall do one of the following.

(I) Remove or correct such devices or connections. If the utility takes this action, it shall leave at the premises a written notice which advises the customer of the violation, of the steps taken by the utility to correct it, and of the utility’s ability to bill the customer for any estimated energy consumption not properly registered. This notice shall be left at the time the removal or correction occurs.

(II) Provide the customer with written notice that the device or connection must be removed or corrected within 15 days and that the customer may be billed for any estimated energy consumption not properly registered. If the utility elects to take this action and the device or connection is not removed or corrected within the 15 days permitted, then within seven calendar days from the expiration of the 15 days, the utility shall remove or correct the device or connection pursuant to subparagraph (c)(I) of this rule.

(d) If a utility discovers evidence that any utility-owned equipment has been tampered with or that service has been diverted, the utility shall provide the customer with written notice of the discovery. The written notice shall inform the customer of the steps the utility will take to determine whether non-registration of energy consumption has or will occur and shall inform the customer that the customer may be billed for any estimated energy consumption not properly registered. The utility shall mail or hand-deliver the written notice within three calendar days of making the discovery of tampering or service diversion.

(e) A utility shall not discontinue service, other than to address safety concerns or in exigent circumstances, if one of the following is met.

(I) A customer at any time tenders full payment in accordance with the terms and conditions of the notice of discontinuance to a utility employee authorized to receive payment. Payment of a charge for a service call shall not be required to avoid discontinuance.

(II) If a customer pays, on or before the expiration date of the notice of discontinuance, at least one-tenth of the amount shown on the notice and enters into an installment payment plan with the utility, as provided in rule 4404.

(III) If it is outside the hours of 8:00 a.m. and 4:00 p.m.; between 12:00 Noon on Friday and 8:00 a.m. the following Monday; between 12:00 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday; or between 12:00 Noon on the day prior to and 8:00 a.m. on the day following any day during which the utility’s local office is not open.

(IV) Medical emergencies.

(A) A utility shall postpone service discontinuance to a residential customer for 90 days from the date of a medical certificate issued by a Colorado-licensed physician, health care practitioner acting under a physician's authority, or health care practitioner licensed to prescribe and treat patients which evidences that service discontinuance will aggravate an existing medical emergency or create a medical emergency for the customer or a permanent resident of the customer's household. A customer may invoke this subparagraph only once in any twelve consecutive months.

(B) As a condition of obtaining a new installment payment plan on or before the last day covered by a medical certificate, a customer who has already entered into a payment arrangement, but broke the arrangement prior to seeking a medical certificate, may be required to pay all amounts that were due up to the date of the original medical certificate as a condition of obtaining a new payment arrangement. At no time shall a payment from the customer be required as a condition of honoring a medical certificate.

(C) The medical certificate must be in writing (which includes electronic certificates and signatures and those provided electronically), sent to the utility from the office of a licensed physician, or health care practitioner licensed to prescribe and treat patients, and clearly show the name of the customer or individual whose illness is at issue; the Colorado medical identification number, phone number, name, and signature of the physician, health care practitioner acting under a physician's authority, or health care practitioner licensed to prescribe and treat patients certifying the medical emergency. Such certificate is not contestable by the utility as to the medical judgment, although the utility may use reasonable means to verify the authenticity of such certificate.

(D) A utility may accept notification by telephone from the office of a licensed physician, or health care practitioner licensed to prescribe and treat patients, but a written medical certificate must be sent to the utility within ten days.

(V) A utility shall postpone service discontinuance to a residential customer on any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 a.m. predicts that the temperature will be 32 degrees Fahrenheit (32°F) or lower at any time during the following 24 hours, or during any additional period in which utility personnel will not be available to restore utility service in accordance with rule 4409. Nothing prohibits a utility from postponing service discontinuance when temperatures are warmer than these criteria.

(f) In addition to its tariffs, a utility shall publish information related to its practices around delinquency, disconnection for nonpayment, and reconnection on its website. This information should be written in a manner that promotes customer understanding and must be produced in English and a specific language or languages other than English where the utility's entire service territory contains a population of at least ten percent who speak a specific language other than English as their primary language as determined by the latest U.S. Census information. A utility must include at least the following information:

(I) the customer's rights related to service disconnection, including medical and weather-based protections, timing restrictions on service disconnection, and options and hours to contact the utility for support relating to service disconnection;

(II) a summary of a customer's options to prevent service disconnection for nonpayment, including installment payment plan options, utility energy assistance and affordability programs, and eligibility requirements for such programs;

(III) referrals to organizations that provide energy payment assistance, including energy efficiency services, such as Energy Outreach Colorado, charities, nonprofits, and governmental entities that provide or administer funds for such assistance;

(IV) the customer's rights related to service restoration, including restoration timelines, actions customers may take to restore service, and options and hours to contact the utility for support relating to service restoration;

(V) a summary of charges, fees, and deposits to which a customer may be subject under paragraphs 4403(j) and 4404(a), with a description of how those amounts are calculated, explained in a way that enables a customer to estimate the full costs they may be assessed;

(VI) a description of the customer's options in the event of a dispute regarding billing or disconnection practices;

(VII) a description of the options available to an occupant of a service address who is not a customer of record and who has a court-ordered protection order against a customer of record for the service address, relating to past-due balances, service disconnection, restoration, and continuance at the service address, including initiating new service, transferring service, and the utility's practices, policies, and criteria for determining benefit of service for purposes of transferring a customer of record's balance to an occupant; and

(VIII) a description of the utility's Demand Side Management programs, including requirements to participate, the benefits of participating, and utility contact information relating to such programs.

(g) Reporting requirements.

(I) Annual Report. No later than March 1 of each calendar year, each utility shall file a report covering the prior calendar year in the miscellaneous proceeding for utility disconnection filings, using the form available on the Commission's website. The report shall provide data on residential customers by class and zip code and must also break down such data by low-income customers, defined as customers participating in low-income programs authorized by rule 4412 and the Low-Income Energy Assistance Program. For data provided in this report, paragraph 4033(b) shall not apply. The report shall contain the following information, displayed by quarter:

(A) total number of unique customers;

(B) total dollar amount billed;

(C) total number of unique customers charged a late payment charge;

(D) total dollar amount of late payment charges collected;

(E) number of unique customers with an arrearage balance by vintage (1-30 days, 31-60 days, 61-90 days, 91+ days);

(F) dollar amount of arrearages by vintage (1-30 days, 31-60 days, 61-90 days, 91+ days);

(G) total number of disconnection notices sent;

(H) total number of disconnections for nonpayment;

(I) total number of service restorations after disconnections for nonpayment;

(J) average duration of disconnection for nonpayment in hours, measured from when the customer completes an action in paragraph 4409(b) to when service is restored;

(K) total dollar amount of deposits collected for restoring service that was disconnected for nonpayment;

(L) total number of deposits collected for restoring service that was disconnected for nonpayment;

(M) total number of new installment payment plans entered into;

(N) average repayment term of new installment payment plans entered into;

(O) total dollar amount of fees collected for disconnecting service for nonpayment;

(P) total dollar amount of fees collected for restoring service that was disconnected for nonpayment;

(Q) total dollar amount of collection fees collected from customers whose service was disconnected for nonpayment; and

(R) total dollar amount of any other tariff-authorized charges or fees collected resulting from past due amounts, service disconnection for nonpayment, and restoring service that was disconnected for nonpayment.

(II) Along with the items in subparagraph (g)(I), each utility shall file the following additional items.

(A) A narrative containing the utility's analysis of any trends or inconsistencies revealed by the reported data for the prior year including, at minimum, an analysis of:

(i) the total number of residential customers who were disconnected for nonpayment in the prior calendar year and percent of those customers who were disconnected for nonpayment multiple times; and

(ii) the total number of residential installment payment plans entered into in the prior calendar year, the average length of those installment payment plans, the number of residential installment payment plans completed,

and the number of residential installment payment plans that were broken.

(B) Information about how the utility is working to reduce delinquencies and disconnections, including any actions the utility is taking specific to residential customers experiencing multiple disconnections in a calendar year, and a description of the efforts to identify and refer energy efficiency and bill assistance resources.

4408. Notice of Discontinuance.

(a) Except as provided in paragraphs (g) and (h) of this rule, prior to discontinuing service, a utility shall provide a customer, and any third party the customer has designated in writing or electronically, with the following forms of notice:

(I) upon a bill becoming past due, and at least five business days before issuing a notice of discontinuance, a utility must provide notice of late payment;

(II) at least 12 business days before any proposed service discontinuance, written notice of discontinuance as further described in paragraphs (b) and (c), by first class mail or hand delivery;

(III) at least 24 hours in advance of any proposed service discontinuance, the utility must make a reasonable attempt to provide notice in person or by telephone; and

(IV) if the utility will implement service discontinuance remotely, in addition to subparagraphs (I) through (III), the utility must undertake at least one additional attempt to notify the customer of record at their provided telephone number or in person at least 72 hours before discontinuing service.

(b) The written notice of discontinuance under subparagraph (a)(II) shall be conspicuous and in easily understood language, and the heading shall contain, in bold font and capital letters, the following warning:

THIS IS A FINAL NOTICE OF DISCONTINUANCE OF UTILITY SERVICE AND CONTAINS IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS AND REMEDIES. YOU MUST ACT PROMPTLY TO AVOID UTILITY SHUT OFF.

(c) The body of the notice of discontinuance under subparagraph (a)(II) of this rule shall at a minimum advise the customer of the following:

(I) the reason for the discontinuance of service;

(II) the amount past due for utility service, deposits, or other regulated charges, if any;

(III) the date by which an installment payment plan must be entered into or full payment must be received in order to avoid discontinuance of service;

(IV) how and where the customer can pay or enter into an installment payment plan prior to the discontinuance of service;

(V) that the customer may avoid discontinuance of service by entering into an installment payment plan with the utility pursuant to rule 4404 as described in the utility's applicable tariff;

(VI) that the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency;

(VII) that the customer has the right to dispute the discontinuance directly with the utility by contacting the utility, and how to contact the utility toll-free from within the utility's service area;

(VIII) that the customer has the right to make an informal complaint to the Commission in writing, by telephone, or in person, along with the Commission's address and local and toll-free telephone number;

(IX) that the customer has the right to file a formal complaint, in writing, with the Commission pursuant to rule 1302 and that this formal complaint process may involve a formal hearing;

(X) that in conjunction with the filing of a formal complaint, the customer has a right to file a motion for a Commission order ordering the utility not to disconnect service pending the outcome of the formal complaint process and that the Commission may grant the motion upon such terms as it deems reasonable, including but not limited to the posting of a deposit or bond with the utility or timely payment of all undisputed regulated charges;

(XI) that if service is discontinued for non-payment, the customer may be required, as a condition of restoring service, to pay reconnection and collection charges in accordance with the utility's tariff; and

(XII) that customers may be able to obtain financial assistance to assist with the payment of the utility bill and that more detailed information on that assistance may be obtained by calling the utility toll-free. The utility shall state its toll-free telephone number.

(d) A notice of discontinuance shall be printed in English and a specific language or languages other than English where the utility's entire service territory contains a population of at least ten percent who speak a specific language other than English as their primary language as determined by the latest U.S. Census information.

(e) A utility shall explain and shall offer the terms of an installment payment plan to each customer who contacts the utility in response to a notice of discontinuance of service.

(f) If the utility attempts to notify the customer in person or by telephone but fails to do so, it shall leave written or recorded notice of the attempted contact and its purpose.

(g) If a customer has entered into an installment payment plan and has defaulted or allowed a new bill to remain unpaid past its due date, a utility shall provide, by first class mail or by hand-delivery, a written notice to the customer. The notice shall contain:

(I) a heading as follows: NOTICE OF BROKEN ARRANGEMENT

(II) statements that advise the customer:

(A) that the utility may discontinue service if it does not receive the monthly installment payment within ten days after the notice is mailed or hand-delivered;

(B) that the utility may discontinue service if it does not receive payment for the current bill within 30 days after its due date;

(C) that, if service is discontinued, the utility may refuse to restore service until the customer pays all amounts for regulated service more than 30 days past due and any collection or reconnection charges; and

(D) that the customer has certain rights if the customer or a member of the customer's household is seriously ill or has a medical emergency.

(h) A utility is not required to provide notice under this rule if one of the following applies:

(I) the situation involves safety concerns;

(II) discontinuance is ordered by any appropriate governmental authority;

(III) either paragraph 4407(c) or 4407(d) applies; or

(IV) service, having been already properly discontinued, has been restored by someone other than the utility and the original cause for discontinuance has not been cured.

(i) Where a utility knows that the service to be discontinued is used by customers in multi-unit dwellings, in places of business, or in a cluster of dwellings or places of business and the utility service is recorded on a single meter used either directly or indirectly by more than one unit, the utility shall issue notice as required in paragraphs (a) and (b) of this rule, except that:

(I) the notice period shall be 30 days;

(II) such notice may include the current bill;

(III) the utility shall provide written notice to each individual unit, stating that a notice of discontinuance has been sent to the party responsible for the payment of utility bills for the unit and that the occupants of the units may avoid discontinuance by paying the next new bill in full within 30 days of its issuance and successive new bills within 30 days of issuance; and

(IV) the utility shall post the notice in at least one of the common areas of the affected location.

4409. Restoration of Service.

(a) Unless prevented from doing so by safety concerns, a utility shall restore, without additional fee or charge, any discontinued service which was not properly discontinued or restored as provided in rules 4407, 4408, and 4409.

(b) A utility shall restore service if the customer does any of the following:

(I) pays in full the amount for regulated charges shown on the notice and any deposit and/or fees as may be specifically required by the utility's tariff in the event of discontinuance of service;

(II) pays any reconnection and collection charges specifically required by the utility's tariff, enters into an installment payment plan, and makes the first installment payment, unless the cause for discontinuance was the customer's breach of such an arrangement;

(III) presents a medical certificate, as provided in subparagraph 4407(e)(IV);

(IV) demonstrates to the utility that the cause for discontinuance, if other than non-payment, has been cured.

(c) Unless prevented by safety concerns or exigent circumstances, a utility shall restore service to a customer who has completed an action in paragraph (b) within 24 hours (excluding weekends and holidays) of the time that the customer completes an action in paragraph (b), or within 12 hours of the time that the customer completes an action in paragraph (b) if the customer pays applicable after-hours charges and fees established in tariffs. The utility must exercise its best efforts to restore service for customers meeting requirements of paragraph (b) on the same day of a service discontinuance.

(d) The utility must resolve doubts as to whether a customer has met the requirements for service restoration under paragraph (b) in favor of restoration.

* * * *

[indicates omission of unaffected rules]

4976. Regulated Gas Utility Rule Violations, Civil Enforcement, and Civil Penalties.

An admission to or Commission adjudication for liability for an intentional violation of the following may result in the assessment of a civil penalty of up to $2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limits set in § 40-7-113.5, C.R.S.

Citation	**Description**	**Maximum Penalty Per Violation**
	Articles 1-7 of Title 40, C.R.S.	$2000

	Commission Order	$2000
Rule 4005	Records and Record Retention	$2000
Rule 4027(a)	Collection and Use of Customer Data	$1000
Rule 4027(b),	Disclosure of Customer Data	$2000
Rule 4027(c)	Tariff	$1000
Rule 4027(d)	Disclosure of Customer Data	$1000
Rule 4028(a)	Customer Notice	$1000
Rule 4029(a),(b)	Consent Form	$1000
Rule 4030(a)	Disclosure of Customer Data	$2000
Rule 4030(b)	Records	$1000
Rule 4031(a)	Disclosure of Customer Data	$2000
Rule 4031(b)	Records	$1000
Rule 4032(a)	Disclosure of Customer Data	$2000
Rules 4032(c) and (d)	Consent and Records	$1000
Rule 4033(a)	Disclosure of Aggregated Data	$2000
Rule 4033(d)	Tariff	$1000
Rule 4100(a)	Obtaining a Certificate of Public Convenience and Necessity for a Franchise	$2000
Rule 4101(a)	Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to operate in a service territory	$2000
Rule 4102(a)	Obtaining a Certificate of Public Convenience and Necessity for facilities	$2000
Rule 4103(a), (c), (d)	Amending a Certificate of Public Necessity for changes is service territory or facilities	$2000
Rule 4108(a), (c)	Keeping a Current Tariff on File with the Commission	$2000

Rule 4109	Filing a New or Changed Tariff with the Commission	$2000
Rule 4110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	$2000
Rule 4200	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	$2000
Rule 4208	Anticompetitive Conduct and Unacceptable Practices	$2000
Rule 4210	Line Extensions	$2000
Rule 4303	Meter Testing	$2000
Rule 4306	Record Retention of Tests and Meters	$2000
Rule 4309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	$2000
Rule 4401	Billing Information, Procedures, and Requirements	$2000
Rule 4754(a)-(e)	Annual DSM Report and Application for Bonus and Bonus Calculation	$2000
Rule 4803(c)	Master Meter Exemption Requirements	$2000
Rule 4004(b)-(f)	Disputes and Informal Complaints	$1000
Rule 4202	Maintaining Heating Value, Purity and Pressure Standards	$1000
Rule 4203(a)-(f)	Trouble Report Response, Interruptions and Curtailments of Service	$1000
Rule 4405	Provision of Service, Rate, and Usage Information to Customers	$1000
Rule 4406	Provision of Gas Cost Component Information to Customers	$1000
Rule 4603(a),(d)	Gas Cost Adjustments	$1000

Rule 4605(a),(b),(e),(f)	Gas Purchase Plans	$1000
Rule 4607(a)	Gas Purchase Reports and Prudence Reviews	$1000
Rule 4403(a)-(q)	Applications for Service, Customer Deposits, and Third Party Guarantees	$500
Rule 4006	Annual Reporting Requirements	$100
Rule 4304	Scheduled Meter Testing	$100
Rule 4305	Meter Testing Upon Request	$100
Rule 4402(a),(c),(d)	Meter and Billing Error Adjustments	$100
Rule 4404(a)-(h)	Availability of Installation Payments to Customers	$1000
Rule 4407	Discontinuance of Service	$2000
Rule 4408(a)-(g); (i)	Notice of Discontinuation of Service	$2000
Rule 4409	Restoration of Service	$2000
Rule 4411(c)(IV),(d)(I), d(II),(e)	Low-Income Energy Assistance Act	$100

4977. – 4999. [Reserved].

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Tracking number: 2020-00624

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 11/18/2021

4 CCR 723-4

RULES REGULATING GAS UTILITIES

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.

December 08, 2021 13:32:05

Philip J. Weiser
Attorney General
by Eric R. Olson
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Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Board of Optometry

CCR number

4 CCR 728-1

Rule title

4 CCR 728-1 STATE BOARD OF OPTOMETRY RULES AND REGULATIONS 1 - eff 01/14/2022

Effective date

01/14/2022

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.]

…

1.29 RULES REGARDING THE USE OF BENZODIAZEPINES

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204(1), 12-275-108(1)(b), and 12-275-113(5), C.R.S. The specific statutory authority for the promulgation of this Rule is section 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 12-275-120, 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 optometry practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

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Editor's Notes

History

Rules 14, 15 eff. 08/01/2009.
Rules 9, 14, 15 eff. 01/01/2010.
Rule 15 repealed eff. 09/30/2010.
Rules 9, 14 eff. 01/01/2011.
Rule 11 eff. 07/01/2011.
Rules 9.01, 17-19 eff. 12/30/2011.
Rule 16 eff. 03/01/2012.
Entire rule eff. 07/15/2014.
Rules 1.8 A.5, 1.8 B.5, 1.22 eff. 12/15/2019.
Rule 1.27 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.28 emer. rule eff. 05/11/2020; expired 09/08/2020.
Entire rule eff. 07/15/2020. Rules 1.9, 1.14, 1.17 repealed eff. 07/15/2020.
Rule 1.27 emer. rule eff. 08/30/2020.
Rule 1.28 emer. rule eff. 09/09/2020.
Rules 1.27, 1.28 emer. rules eff. 12/28/2020.
Rule 1.26, Appendix A eff. 12/30/2020.
Rule 1.29 emer. rule eff. 01/11/2021.
Rules 1.27, 1.28 emer. rules eff. 04/27/2021.
Rule 1.29 emer. rule eff. 05/11/2021.
Rules 1.27, 1.28 emer. rules eff. 07/12/2021.
Rules 1.26, Appendix A eff. 07/15/2021.

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4 CCR 728-1

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/18/2021 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.

December 08, 2021 13:35:50

Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Private Investigator Voluntary Licensure

CCR number

4 CCR 746-1

Rule title

4 CCR 746-1 OFFICE OF PRIVATE INVESTIGATOR VOLUNTARY LICENSURE 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF REGULATORY AGENCIES

Office of Private Investigator Voluntary Licensure

RULES AND REGULATIONS [REPEALED]

4 CCR 746-1

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

BASIS [REPEALED]

PURPOSE [REPEALED]

CHAPTER 1 - APPLICATION FOR VOLUNTARY LICENSURE [REPEALED]

CHAPTER 2 - EXPERIENCE AND EDUCATION REQUIREMENTS [REPEALED]

CHAPTER 3 - REPORTING REQUIREMENTS [REPEALED]

CHAPTER 4 - CONTINUING DUTY TO REPORT INFORMATION [REPEALED]

CHAPTER 5 - REINSTATEMENT OF EXPIRED LICENSE [REPEALED]

CHAPTER 6 - DECLARATORY ORDERS [REPEALED]

CHAPTER 7 - FINE SCHEDULE [REPEALED]

Editor's Notes

History

Entire rule eff. 05/01/2012.

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4 CCR 746-1

OFFICE OF PRIVATE INVESTIGATOR VOLUNTARY LICENSURE

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.

December 02, 2021 10:45:09

Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Office of Private Investigator Licensing

CCR number

4 CCR 750-1

Rule title

4 CCR 750-1 PRIVATE INVESTIGATOR LICENSURE RULES AND REGULATIONS 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF REGULATORY AGENCIES

Office of Private Investigator Licensing

4 CCR 750-1

PRIVATE INVESTIGATOR LICENSURE RULES AND REGULATIONS [REPEALED]

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

Authority [REPEALED]

Scope and Purpose [REPEALED]

1.1 Definitions [REPEALED]

1.2 Jurisdiction for Regulation of Private Investigators [REPEALED]

1.3 Application for Licensure [REPEALED]

1.4 Surety Bond [REPEALED]

1.5 Duty to Report Change of Contact Information to The Director's Office [REPEALED]

1.6 Declaratory Orders [REPEALED]

1.7 Renewal and Reinstatement [REPEALED]

1.8 Standards of Practice [REPEALED]

1.9 Duty to Report [REPEALED]

1.10 Imposition of Fines [REPEALED]

Editor's Notes

History
Entire rule eff. 03/02/2015.

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4 CCR 750-1

PRIVATE INVESTIGATOR LICENSURE RULES AND REGULATIONS

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Philip J. Weiser
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Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-23

Rule title

5 CCR 1001-23 REGULATION NUMBER 19 THE CONTROL OF LEAD HAZARDS 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 19

The Control of Lead Hazards

5 CCR 1001-23

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

Outline of Regulation

PART A Lead-Based Paint Activities

I. Scope and Applicability

II. Definitions

III. Training and Certification Requirements

IV. Inspections, Lead-Hazard Screens, and Risk Assessments

V. Abatement Requirements

VI. Delegation to Local Health or Building Departments

PART B Pre-Renovation Education in Target Housing and Child-Occupied Facilities

I. Scope and Applicability

II. Definitions

III. Information Distribution Requirements

IV. Recordkeeping Requirements

V. Acknowledgment and Certification Statements

PART C Statements of Basis, Specific Statutory Authority and Purpose

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PART A LEAD-BASED PAINT ACTIVITIES

I. Scope and Applicability

I.A. This Regulation Number 19, Part A contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This Regulation Number 19, Part A also requires that, except as discussed, all lead-based paint activities, as defined in this Regulation Number 19, Part A, be performed by certified individuals and firms.

I.B. This Regulation Number 19, Part A applies to all individuals and firms who are engaged in lead-based paint activities as defined in Section II.B.48. of this Regulation Number 19, Part A, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or unless a child residing in the building has been identified as having an elevated blood lead level.

I.C. This Regulation Number 19, Part A applies to all lead-based paint activities that are performed in target housing and child-occupied facilities and to buildings that will be converted to target housing or child-occupied facilities.

I.D. This Regulation Number 19, Part A applies to all projects designed to permanently eliminate lead-based paint hazards in target housing and child-occupied facilities. This Regulation Number 19, Part A does not apply to renovation, remodeling, landscaping, or other activities when such activities are not intended nor designed to permanently eliminate lead-based paint hazards but instead are intended to repair, restore or remodel a given structure or dwelling.

I.E. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal and State government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof is subject to, and must comply with, all State and local requirements, both substantive and procedural, including the requirements of this Regulation Number 19, Part A regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

I.F. While this Regulation Number 19, Part A establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this Regulation Number 19, Part A requires that the owner or occupant undertake any particular lead-based paint activity.

I.G. [Reserved]

II. Definitions

II.A. Incorporated Materials

Some documents may be noted in this Regulation Number 19, Part A as being incorporated by reference. Materials incorporated by reference are those in existence as of the dates indicated and do not include later amendments. The material incorporated by reference is available for public inspection during regular business hours at the Division's office, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246, or may be examined at any state publications depository library. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys.

II.B. Terms

Any terms that are not defined are given the same meaning as in the Air Quality Control Commission's Common Provisions Regulation.

II.B.1. Abatement means any measure or set of measures that will contain or permanently eliminate lead-based paint hazards or lead-based paint that might become a hazard. In contrast to interim controls, lead-based paint abatement refers to a group of measures that can be expected to eliminate or reduce exposures to lead hazards for at least 20 years under normal conditions. These measures include:

II.B.1.a. the removal of lead-based paint and lead-contaminated dust;

II.B.1.b. the permanent containment of lead-based paint;

II.B.1.c. the encapsulation of lead-based paint;

II.B.1.d. the replacement or enclosure of lead-painted surfaces or fixtures;

II.B.1.e. the removal or covering of lead-contaminated soil; and

II.B.1.f. all preparation, cleanup, disposal, monitoring, and clearance testing activities associated with the measures described in this Section II.B.1. of this Regulation Number 19, Part A.

II.B.2. Accredited training program means a training program that has been accredited by the Division pursuant to Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A to provide training for individuals engaged in lead-based paint activities.

II.B.3. Adequate quality control means a plan or design that ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

II.B.4. Arithmetic mean means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

II.B.5. Certified Lead Abatement Firm (LAF) means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform, lead-based paint abatement activities as defined in this Section II. (Definitions) of this Regulation Number 19, Part A, and to which the Division has issued a certificate of approval pursuant to Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A.

II.B.6. Certified Lead Evaluation Firm (LEF) means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform, inspection and/or risk assessment activities as defined in this Section II. (Definitions) of this Regulation Number 19, Part A, and to which the Division has issued a certificate of approval pursuant to Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A.

II.B.7. Certified inspector means an individual who has been trained and certified by the Division pursuant to Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing. Certified Inspectors must work for a certified LEF.

II.B.8. Certified abatement worker means an individual who has been trained and certified by the Division pursuant to Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A to perform abatement. Certified Workers must work for a certified LAF.

II.B.9. Certified project designer means an individual who has been trained, and certified by the Division pursuant to Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A to prepare abatement project designs, occupant protection plans, and abatement reports. Certified Project Designers must work for a certified LEF or LAF.

II.B.10. Certified risk assessor means an individual who has been trained and certified by the Division pursuant to Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing. Certified Risk Assessors must work for a certified LEF.

II.B.11. Certified supervisor means an individual who has been trained and certified by the Division pursuant to Section III. (Training and Certifications Requirements) of this Regulation Number 19, Part A to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports. Certified Supervisors must work for a certified LAF.

II.B.12. Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an “accessible surface” as defined in 42 U.S.C. 4851b (2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

II.B.13. Child-occupied facility

II.B.13.a. Child-occupied facility means a building or portion of a building that:

II.B.13.a.(i) was constructed prior to 1978;

II.B.13.a.(ii) is visited regularly by the same child who is under 7 years of age;

II.B.13.a.(iii) is visited by the same child on two or more days within any week, with each such visit totaling three or more hours; and

II.B.13.a.(iv) is visited by the same child a total of at least sixty hours in one year.

II.B.13.b. "Child-Occupied Facility" includes, but is not limited to, day-care centers, preschools, or kindergarten classrooms constructed prior to 1978.

II.B.14. Clearance levels are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

II.B.15. Commission means the Air Quality Control Commission as created by Section 25-7-104, C.R.S.

II.B.16. Common area means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

II.B.17. Common area group means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

II.B.18. Component or building component means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascia's, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

II.B.19. Concentration means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

II.B.20. Containment means a system of engineering controls designed to protect workers, the environment and the public by controlling exposures to the lead-contaminated dust and debris created during abatement.

II.B.21. Course agenda means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

II.B.22. Course test means an evaluation of the overall effectiveness of the training that must test the trainees' knowledge and retention of the topics covered during the course.

II.B.23. Course test blueprint means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

II.B.24. Deteriorated paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

II.B.25. Discipline means one of the specific types or categories of lead-based paint activities identified in this Regulation Number 19, Part A for which individuals may receive training from accredited programs and become certified by the Division. For example, "abatement worker" is a discipline.

II.B.26. Distinct painting history means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

II.B.27. Disturb means:

II.B.27.a. In the case of paint, any activity that causes cracking, flaking, chipping, peeling, or separation of the paint from the substrate of a building component. Activities that disturb paint include, but are not limited to, scraping, grinding, sanding, abrasive blasting, drilling, sawing, or the application of chemical strippers; encapsulation and enclosure systems that are applied to surfaces where the paint is not deteriorated typically do not disturb the paint.

II.B.27.b. In the case of dust or soil, any activity that causes the movement of dust or soil, such as, but not limited to, sweeping, vacuuming, digging and sifting.

II.B.28. Division means the Air Pollution Control Division in the Department of Public Health and Environment.

II.B.29. Documented methodologies means Division recognized methods or protocols used to sample for the presence of lead in paint, dust, and soil. Documented methodologies include the U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition); the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 747-R-95-001, March 1995); and other methods and guidelines determined by the Division to be equivalent methods and guidelines.

II.B.30. Dripline means the area within 3 feet surrounding the perimeter of a building.

II.B.31. Elevated blood lead level (EBL) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood ≥ 5µg/dL (micrograms of lead per deciliter of whole blood) for a single venous test or two consecutive capillary tests taken within 90 days.

II.B.32. Encapsulant means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material. The list of Division approved lead encapsulants can be found on the Division's lead web page.

II.B.33. Encapsulation means the application of an encapsulant. Painting for purposes other than controlling lead is not considered encapsulation.

II.B.34. Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

II.B.35. Exterior windowsill means the portion of the horizontal window ledge that protrudes from the exterior of the room.

II.B.36. Friction surface means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

II.B.37. Guest instructor means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

II.B.38. Hands-on skills assessment means an evaluation that tests the trainees' ability to satisfactorily perform the work practices and procedures identified in Section III.A.4. (Minimum Training Curriculum Requirements) of this Regulation Number 19, Part A, as well as any other skill taught in a training course.

II.B.39. Hazardous waste means any waste as defined in 40 CFR Section 261.3.

II.B.40. HEPA means high efficiency particulate air. A HEPA filtration system is capable of trapping and retaining at least 99.97 percent of all monodispersed particles 0.3 microns in diameter or larger.

II.B.41. High contact play area means any location on residential real property and on the property of a child-occupied facility or target housing where children under 7 years of age might commonly play. This term includes, but is not limited to, sandboxes, gardens, and swing sets.

II.B.42. [Reserved]

II.B.43. Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of doorframes.

II.B.44. Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a written report explaining the results of the investigation. Lead inspections may only be conducted by a certified inspector or risk assessor.

II.B.45. Interim control means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

II.B.46. Interior windowsill means the portion of the horizontal window ledge that protrudes into the interior of the room.

II.B.47. Lead-based paint means any paint containing more than six one-hundredths of one per cent by wet weight of lead metal, more than five-tenths of one percent by dry weight of lead metal, or more than one milligram per square centimeter of lead metal.

II.B.48. Lead-based paint activities mean in the case of target housing and child-occupied facilities, inspection, hazard screen, risk assessment, and abatement, as defined in this Section II. (Definitions) of this Regulation Number 19, Part A.

II.B.49. Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint. Lead-based paint hazard also means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified.

II.B.49.a. Paint-lead hazard. A paint-lead hazard is any of the following:

II.B.49.a.(i) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in this section.

II.B.49.a.(ii) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

II.B.49.a.(iii) Any chewable lead-based painted surface on which there is evidence of teeth marks.

II.B.49.a.(iv) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

II.B.49.b. Dust-lead hazard. A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 10 µg/ft^2 on floors or 100 µg/ ft^2 on interior window sills based on wipe samples.

II.B.49.c. Soil-lead hazard. A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (µg/g) in a play area or average of 1,200 parts per millions of bare soil in the rest of the yard based on soil samples.

II.B.50. Lead-contaminated dust means surface dust in residential dwellings or child-occupied facilities that contains an area or mass concentration of lead equal to or in excess of 10 µg/ ft^2 on interior floors, 100 µg/ ft^2 on interior window sills, 400 µg/ ft^2 in window troughs, 500 µg/ ft^2 on exterior window sills, and 800 µg/ ft^2 on exterior surfaces (e.g. patios, porches, sidewalks).

II.B.51. Lead-contaminated soil means bare soil on residential real property and on the property of a child-occupied facility that contains lead equal to or in excess of 400 µg/g in a play area or in excess of 1,200 µg/g averaged in the rest of the yard (non-play areas).

II.B.52. Lead-contaminated waste means any waste generated as a result of lead-based paint activities or the deterioration of lead-based paint in a pre-1978 residential dwelling or child-occupied facility. This term includes, but is not limited to, lead-based paint chips, lead-contaminated dust, lead-contaminated soil, abatement control devices, disposable equipment and clothing, bags and other similar packaging contaminated with lead, waste water, architectural components, and chemical stripper sludge.

II.B.53. Lead-hazard screen means a limited risk assessment activity that involves limited paint and dust sampling as described in Section IV.B. (Lead Hazard Screen) of this Regulation Number 19, Part A. A lead-hazard screen must be conducted by a certified risk assessor.

II.B.54. Living area means any area of a residential dwelling used by one or more children under 7 years of age, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

II.B.55. Loading means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

II.B.56. Mid-yard means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

II.B.57. Movable objects" means pieces of free-standing equipment or furniture, not mounted or attached in the work area which can be readily removed from the work area. Movable objects remaining in the work area which cannot be readily removed from the area must be protected pursuant to Sections V.C.2.d, V.C.3.e., V.D.2.b.(iv). and V.D.2.c.(iv), Protection of Objects, and must be able to be moved in the work area to clean under such items and to facilitate final clearance.

II.B.58. Multi-family dwelling means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

II.B.59. Paint means a liquid mixture, usually of a solid pigment in a liquid vehicle, used as a decorative or protective coating. This term includes, but is not limited to, primer, lacquer, polyurethane, and wood stain.

II.B.60. Paint in poor condition means more than two square feet of deteriorated paint per room or equivalent, twenty square feet of deteriorated paint on the exterior building, or ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

II.B.61. Permanently covered soil means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

II.B.62. Person means any individual, public or private corporation, partnership, association, firm, trust, estate, the United States or the state or any department, institution, or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

II.B.63. Play area means an area of frequent soil contact by children of less than 7 years of age as indicated by, but not limited to, such factors including the following; the presence of play equipment (e.g., sandboxes, swing sets and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

II.B.64. Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

II.B.65. Recognized laboratory means an environmental laboratory recognized by the EPA as a member of the National Lead Laboratory Accreditation Program pursuant to the Toxic Substances Control Act Section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.II.B.66. Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

II.B.67. Residential building means a building containing one or more residential dwellings.

II.B.68. Residential dwelling means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

II.B.69. Risk assessment means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards. A risk assessment must be conducted by a certified risk assessor.

II.B.70. Room means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Moveable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

II.B.71. Soil sample means a sample collected in a representative location using ASTM E1727, “Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques,” or equivalent method.

II.B.72. Target housing means housing constructed prior to 1978 other than any zero-bedroom dwelling or any housing for the elderly or a person with a disability; except that "target housing" includes housing for the elderly or a person with a disability if a child under 7 years of age resides or is expected to reside in the housing.

II.B.73. Training curriculum means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

II.B.74. Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

II.B.75. Training manager means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructor.

II.B.76. Visible emissions mean any emissions that are visually detectable without the aid of instruments, coming from lead-based paint or lead-contaminated waste material.

II.B.77. Visual inspection for clearance testing means the visual examination of a residential dwelling or a child-occupied facility following abatement to determine whether or not the abatement has been successfully completed.

II.B.78. Visual inspection for risk assessment means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

II.B.79. Weighted arithmetic mean means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 µg/ ft^2, a composite sample (three subsamples) containing 100 µg/ ft^2, and a composite sample (4 subsamples) containing 110 µg/ ft^2 is 100 µg/ ft^2. This result is based upon the equation (60+(3*100) +(4*110))/ (1+3+4).

II.B.80. Window trough means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window well.

II.B.81. Wipe sample means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

II.B.82. Work area means an area covered or contained by polyethylene sheeting to prevent the spread of lead contamination; and an area within which concentrations of lead, exceed, or may exceed, clearance levels.

II.B.83. Working day means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.II.B.84. Zero-bedroom dwelling means any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single-room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings

III. Training and Certification Requirements

III.A. Accreditation of Training Programs: Target Housing and Child-occupied Facilities

III.A.1. Scope

III.A.1.a. A training program may seek accreditation to offer lead-based paint activities courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. A training program may also seek accreditation to offer refresher courses for each of the listed disciplines.

III.A.1.b. A training program must not provide, offer, or claim to provide Division-accredited lead-based paint activities courses without applying for and receiving accreditation from the Division as required under Section III.A.2. (Application Process) of this Regulation Number 19, Part A.

III.A.2. Application Process

The following are procedures a training program must follow to receive Division accreditation to offer lead-based paint activities courses:

III.A.2.a. A training program seeking accreditation must submit a written application to the Division containing the following information:

III.A.2.a.(i) the training program's name, address, and telephone number;

III.A.2.a.(ii) a list of courses for which it is applying for accreditation; and

III.A.2.a.(iii) a statement signed by the training program manager certifying that the training program meets the requirements established in Section III.A.3. (Requirements for the Accreditation of Training Programs) of this Regulation Number 19, Part A. If a training program uses EPA-recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under 40 C.F.R. Part 745, Subpart Q the training program manager must include a statement certifying that, as well.

III.A.2.a.(iv) If a training program does not use EPA-recommended model training materials or training materials approved by an authorized State or Indian Tribe, its application for accreditation must also include:

III.A.2.a.(iv)(A) a copy of the student and instructor manuals, or other materials to be used for each course; and

III.A.2.a.(iv)(B) a copy of the course agenda for each course.

III.A.2.a.(v) All training programs must include in their application for accreditation the following:

III.A.2.a.(v)(A) a description of the facilities and equipment to be used for lecture and hands-on training;

III.A.2.a.(v)(B) a copy of the course test blue print for each course;

III.A.2.a.(v)(C) a description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

III.A.2.a.(v)(D) a copy of the quality control plan as described in Section III.A.3.i. of this Regulation Number 19, Part A.

III.A.2.b. If a training program meets the requirements in Section III.A.3. (Requirements for the Accreditation of Training Programs) of this Regulation Number 19, Part A, then the Division will approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation will be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval will be sent to the applicant. Prior to disapproval, the Division may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Division may also request additional materials retained by the training program under Section III.A.7. (Training Program Recordkeeping Requirements) of this Regulation Number 19, Part A. If the Division disapproves a training program's application, the program may reapply for accreditation at any time.

III.A.2.c. A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A.

III.A.2.d. A training program which has received accreditation from US EPA or another state whose training and certification requirements are at least as stringent as Colorado's must first apply for and receive accreditation before conducting training in Colorado.

III.A.2.e. A training program must notify the Division, on a form specified by the Division, of scheduled courses at least 2 weeks prior to the offering of the course. The training program must receive written approval for each class from the Division prior to conducting the training.

III.A.2.f. Fees for accreditation of training programs will be as follows:

III.A.2.f.(i) Inspector (24-hour) course --$1,500;

III.A.2.f.(ii) Risk Assessor (16-hour) course -- $1,000;

III.A.2.f.(iii) Supervisor (32-hour) course -- $2,000;

III.A.2.f.(iv) Project Designer (8-hour) course -- $500;

III.A.2.f.(v) Abatement Worker (16-hour) course -- $1,000; and

III.A.2.f.(vi) All refresher training courses -- $500.

III.A.3. Requirements for the Accreditation of Training Programs

For a training program to obtain accreditation from the Division to offer lead-based paint activities courses, the program must meet the following requirements:

III.A.3.a. The training program must employ a training manager who has:

III.A.3.a.(i) at least 2 years of experience, education, or training in teaching workers or adults; or

III.A.3.a.(ii) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

III.A.3.a.(iii) two years of experience in managing a training program specializing in environmental hazards; and

III.A.3.a.(iv) demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

III.A.3.b. The training manager must designate a qualified principal instructor for each course who has:

III.A.3.b.(i) demonstrated experience, education, or training in teaching workers or adults;

III.A.3.b.(ii) successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training; and

III.A.3.b.(iii) demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

III.A.3.c. The principal instructor will be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

III.A.3.d. The following documents will be recognized by the Division as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in Sections III.A.3.a. and III.A.7. (Training Program Recordkeeping Requirements) of this Regulation Number 19, Part A. This documentation need not be submitted with the accreditation application, but, if not submitted, must be retained by the training program as required by the recordkeeping requirements contained in Section III.A.7. (Training Program Recordkeeping Requirements) of this Regulation Number 19, Part A. Those documents include the following:

III.A.3.d.(i) official academic transcripts or diploma as evidence of meeting the education requirements;

III.A.3.d.(ii) résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

III.A.3.d.(iii) certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

III.A.3.e. The training program must ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

III.A.3.f. To become accredited in the following disciplines, the training program must provide training courses that meet the following training hour requirements:

III.A.3.f.(i) The inspector course must last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in Section III.A.4.a. (Inspector) of this Regulation Number 19, Part A.

III.A.3.f.(ii) The risk assessor course must last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in Section III.A.4.b. (Risk Assessor) of this Regulation Number 19, Part A.

III.A.3.f.(iii) The supervisor course must last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in Section III.A.4.c. (Supervisor) of this Regulation Number 19, Part A.

III.A.3.f.(iv) The project designer course must last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in Section III.A.4.d. (Project Designer) of this Regulation Number 19, Part A.

III.A.3.f.(v) The abatement worker course must last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in Section III.A.4.e. (Abatement Worker) of this Regulation Number 19, Part A.

III.A.3.g. For each course offered, the training program must conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

III.A.3.g.(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in Section III.A.4. (Minimum Training Curriculum Requirements) of this Regulation Number 19, Part A.

III.A.3.g.(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

III.A.3.g.(iii) The course test must be developed in accordance with the test blueprint submitted with the training accreditation application.

III.A.3.h. The training program must issue unique course completion certificates to each individual who passes the training course. The course completion certificate must include:

III.A.3.h.(i) the name, a unique identification number, and address of the individual;

III.A.3.h.(ii) the name of the particular course that the individual completed;

III.A.3.h.(iii) dates of course completion/test passage; and

III.A.3.h.(iv) the name, address, and telephone number of the training program.

III.A.3.i. The training manager must develop and implement a quality control plan. The plan must be used to maintain and improve the quality of the training program over time. This plan must contain at least the following elements:

III.A.3.i.(i) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

III.A.3.i.(ii) procedures for the training manager's annual review of principal instructor competency.

III.A.3.j. The training program must offer courses that teach the work practice standards for conducting lead-based paint activities contained in this Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A, and other standards developed by EPA pursuant to Title IV of TSCA. These standards must be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

III.A.3.k. The training manager will be responsible for ensuring that the training program complies at all times with all of the requirements in this Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A.

III.A.3.l. The training manager must allow the Division, at no cost to the Division, to audit the training program to verify the contents of the application for accreditation as described in Section III.A.2. (Application Process) of this Regulation Number 19, Part A.

III.A.4. Minimum Training Curriculum Requirements

To become accredited to offer lead-based paint courses instruction in the specific disciplines listed, training programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

III.A.4.a. Inspector

III.A.4.a.(i) Role and responsibilities of an inspector.

III.A.4.a.(ii) Background information on lead and its adverse health effects.

III.A.4.a.(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

III.A.4.a.(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing. *

III.A.4.a.(v) Paint, dust, and soil sampling methodologies. *

III.A.4.a.(vi) Clearance standards and testing, including random sampling. *

III.A.4.a.(vii) Preparation of the final inspection report. *

III.A.4.a.(viii) Recordkeeping.

III.A.4.b. Risk Assessor

III.A.4.b.(i) Role and responsibilities of a risk assessor.

III.A.4.b.(ii) Collection of background information to perform a risk assessment.

III.A.4.b.(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

III.A.4.b.(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards. *

III.A.4.b.(v) Lead hazard screen protocol.

III.A.4.b.(vi) Sampling for other sources of lead exposure. *

III.A.4.b.(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards. *

III.A.4.b.(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

III.A.4.b.(ix) Preparation of a final risk assessment report.

III.A.4.c. Supervisor

III.A.4.c.(i) Role and responsibilities of a supervisor.

III.A.4.c.(ii) Background information on lead and its adverse health effects.

III.A.4.c.(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

III.A.4.c.(iv) Liability and insurance issues relating to lead-based paint abatement.

III.A.4.c.(v) Risk assessment and inspection report interpretation. *

III.A.4.c.(vi) Development and implementation of an occupant protection plan and abatement report.

III.A.4.c.(vii) Lead-based paint hazard recognition and control. *

III.A.4.c.(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices. *

III.A.4.c.(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods. *

III.A.4.c.(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods. *

III.A.4.c.(xi) Clearance standards and testing.

III.A.4.c.(xii) Cleanup and waste disposal.

III.A.4.c.(xiii) Recordkeeping.

III.A.4.d. Project Designer

III.A.4.d.(i) Role and responsibilities of a project designer.

III.A.4.d.(ii) Development and implementation of an occupant protection plan for large scale abatement projects.

III.A.4.d.(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

III.A.4.d.(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

III.A.4.d.(v) Clearance standards and testing for large scale abatement projects.

III.A.4.d.(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

III.A.4.e. Abatement Worker

III.A.4.e.(i) Role and responsibilities of an abatement worker.

III.A.4.e.(ii) Background information on lead and its adverse health effects.

III.A.4.e.(iii) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.

III.A.4.e.(iv) Lead-based paint hazard recognition and control. *

III.A.4.e.(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices. *

III.A.4.e.(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction. *

III.A.4.e.(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction. *

III.A.4.f. The training program must allow the Division, without any cost to the Division, to audit the training program to evaluate the quality of the course as well as to verify the contents of the application for accreditation as described in Section III.A.2. (Application Process) of this Regulation Number 19, Part A.

III.A.5. Requirements for the Accreditation of Refresher Training Programs

A training program may seek accreditation to offer refresher training courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. To obtain Division accreditation to offer refresher training, a training program must meet the following minimum requirements:

III.A.5.a. Each refresher course must review the curriculum topics of the full-length courses listed under Section III.A.4. (Minimum Training Curriculum Requirements) of this Regulation Number 19, Part A, as appropriate. In addition, to become accredited to offer refresher training courses, training programs must ensure that their courses of study include, at a minimum, the following:

III.A.5.a.(i) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

III.A.5.a.(ii) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

III.A.5.a.(iii) Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

III.A.5.b. Each refresher course, except for the project designer course, must last a minimum of 8 training hours. The project designer refresher course must last a minimum of 4 training hours.

III.A.5.c. For each course offered, the training program must conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

III.A.5.d. A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in Section III.A.2. (Application Process) of this Regulation Number 19, Part A. If so, the Division will use the approval procedure described in Section III.A.2. (Application Process) of this Regulation Number 19, Part A. In addition, the minimum requirements contained in Sections III.A.3. (Requirements for the Accreditation of Training Programs) (except for the requirements in Section III.A.3.f.), and III.A.5.a., III.A.5.b., and III.A.5.c. of this Regulation Number 19, Part A will also apply.

III.A.5.e. A training program seeking accreditation to offer refresher training courses only must submit a written application to the Division containing the following information:

III.A.5.e.(i) The refresher training program's name, address, and telephone number.

III.A.5.e.(ii) A list of courses for which it is applying for accreditation.

III.A.5.e.(iii) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in Section III.A.3. (Requirements for the Accreditation of Training Programs) of this Regulation Number 19, Part A, except for the requirements in Section III.A.3.f. of this Regulation Number 19, Part A. If a training program uses US EPA-developed model training materials, or training materials approved by a State or Indian Tribe that has been authorized by US EPA under 40 C.F.R., Section 745.324 to develop its refresher training course materials, the training manager must include a statement certifying that, as well.

III.A.5.e.(iv) If the refresher training course materials are not based on US EPA-developed model training materials or training materials approved by an authorized State or Indian Tribe, the training program's application for accreditation must include:

III.A.5.e.(iv)(A) a copy of the student and instructor manuals to be used for each course; and

III.A.5.e.(iv)(B) a copy of the course agenda for each course.

III.A.5.e.(v) All refresher training programs must include in their application for accreditation the following:

III.A.5.e.(v)(A) a description of the facilities and equipment to be used for lecture and hands-on training;

III.A.5.e.(v)(B) a copy of the course test blue print for each course;

III.A.5.e.(v)(C) a description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

III.A.5.e.(v)(D) a copy of the quality control plan as described in Section III.A.3.i. of this Regulation Number 19, Part A.

III.A.5.e.(vi) The requirements in Sections III.A.3.a. through III.A.3.e., and III.A.3.g. through III.A.3.l. of this Regulation Number 19, Part A applies to refresher training providers.

III.A.5.e.(vii) If a refresher training program meets the requirements listed in this Section III.A.5. (Requirements for the Accreditation of Training Programs) of this Regulation Number 19, Part A, then the Division will approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation will be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval will be sent to the applicant. Prior to disapproval, the Division may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Division may also request additional materials retained by the refresher training program under Section III.A.7. (Training Program Recordkeeping Requirements) of this Regulation Number 19, Part A. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

III.A.6. Re-accreditation of Training Programs

III.A.6.a. Unless re-accredited, a training program's accreditation (including refresher training accreditation) will expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program will be re-accredited.

III.A.6.b. A training program seeking re-accreditation must submit an application to the Division no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the Division cannot guarantee that the program will be re-accredited before the end of the accreditation period.

III.A.6.c. The training program's application for re-accreditation must contain:

III.A.6.c.(i) The training program's name, address, and telephone number.

III.A.6.c.(ii) A list of courses for which it is applying for re-accreditation.

III.A.6.c.(iii) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the student’s ability to learn.

III.A.6.c.(iv) A statement signed by the program manager stating:

III.A.6.c.(iv)(A) That the training program complies at all times with all requirements in Sections III.A.3. (Requirements for the Accreditation of Training Programs) and III.A.5. (Requirements for the Accreditation of Refresher Training Programs) of this Regulation Number 19, Part A, as applicable; and

III.A.6.c.(iv)(B) The recordkeeping and reporting requirements of Section III.A.7. (Training Program Recordkeeping Requirements) of this Regulation Number 19, Part A must be followed.

III.A.6.d. The training program must allow the Division, at no cost to the Division, to audit the training program to verify the contents of the application for re-accreditation as described in Section III.A.6.c. of this Regulation Number 19, Part A.

III.A.6.e. Fees for re-accreditation of training programs will be as follows:

III.A.6.e.(i) Inspector (24-hour) course --$1,500;

III.A.6.e.(ii) Risk Assessor (16-hour) course -- $1,000;

III.A.6.e.(iii) Supervisor (32-hour) course -- $2,000;

III.A.6.e.(iv) Project Designer (8-hour) course -- $500;

III.A.6.e.(v) Abatement Worker (16-hour) course -- $1,000; and

III.A.6.e.(vi) Any refresher training course -- $500.

III.A.7. Training Program Recordkeeping Requirements

III.A.7.a. Accredited training programs must maintain, and make available to the Division, upon request, the following records:

III.A.7.a.(i) all documents specified in Section III.A.3.d. of this Regulation Number 19, Part A that demonstrate the qualifications listed in Sections III.A.3.a. and III.A.3.b. of this Regulation Number 19, Part A of the training manager and principal instructors;

III.A.7.a.(ii) current curriculum/course materials and documents reflecting any changes made to these materials;

III.A.7.a.(iii) the course test blue print; and

III.A.7.a.(iv) information regarding how the hands-on assessment is conducted including, but not limited to:

III.A.7.a.(iv)(A) who conducts the assessment;

III.A.7.a.(iv)(B) how the skills are graded;

III.A.7.a.(iv)(C) what facilities are used; and

III.A.7.a.(iv)(D) the pass/fail rate.

III.A.7.a.(v) the quality control plan as described in Section III.A.3.i. of this Regulation Number 19, Part A;

III.A.7.a.(vi) results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate; and

III.A.7.a.(vii) any other material not listed in Sections III.A.7.a.(i) through III.A.7.a.(vi) of this Regulation Number 19, Part A that was submitted to the Division as part of the program's application for accreditation.

III.A.7.b. The training program must retain these records at the address specified on the training program accreditation application (or as modified in accordance with Section III.A.7.c. of this Regulation Number 19, Part A) for a minimum of 3 years and 6 months.

III.A.7.c. The training program must notify the Division in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

III.B. Certification of Individuals and Firms Engaged in Lead-based Paint Activities: Target Housing and Child-occupied Facilities

III.B.1. Certification of Individuals

III.B.1.a. Individuals seeking certification by the Division to engage in lead-based paint activities must either:

III.B.1.a.(i) submit to the Division an application on a form specified by the Division demonstrating that they meet the requirements established in Sections III.B.2. (Inspector, Risk Assessor or Supervisor) or III.B.3. (Abatement Worker and Project Designer) of this Regulation Number 19, Part A for the particular discipline for which certification is sought; or

III.B.1.a.(ii) submit to the Division an application on a form specified by the Division with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a State or Tribal program that has been authorized by EPA pursuant to 40 C.F.R., Part 745, Subpart Q.

III.B.1.b. Individuals seeking Colorado certification as an inspector, risk assessor or supervisor must submit a fee to the Division according to the following structure:

III.B.1.b.(i) Inspector -- $230 for the first year and $180 for each year thereafter;

III.B.1.b.(ii) Risk Assessor -- $230 for the first year and $180 for each year thereafter; and

III.B.1.b.(iii) Supervisor -- $230 for the first year and $180 for each year thereafter.

III.B.1.c. Individuals seeking Colorado certification as a worker or project designer must submit a fee to the Division according to the following structure:

III.B.1.c.(i) Worker -- $180 for each year of certification sought; and

III.B.1.c.(ii) Project Designer -- $180 for each year of certification sought.

III.B.1.d. Individuals may first apply to the Division for certification to engage in lead-based paint activities pursuant to this section on or after the effective date of this Regulation Number 19, Part A.

III.B.1.e. Following the submission of an application demonstrating that all the requirements of this section have been met, the Division will certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

III.B.1.f. Upon receiving Division certification, individuals conducting lead-based paint activities must comply with the work practice standards for performing the appropriate lead-based paint activities as established in Section IV (Inspections, Lead-Hazard Screens, and Risk Assessments) and Section V. (Abatement Requirements) of this Regulation Number 19, Part A.

III.B.2. Inspector, Risk Assessor or Supervisor

III.B.2.a. To become certified by the Division as an inspector, risk assessor, or supervisor, pursuant to Section III.B.1.a.(i) of this Regulation Number 19, Part A, an individual must:

III.B.2.a.(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

III.B.2.a.(ii) Pass the certification exam in the appropriate discipline offered by the Division.

III.B.2.a.(iii) Meet or exceed the following experience and/or education requirements:

III.B.2.a.(iii)(A) Inspectors

III.B.2.a.(iii)(A)(1) no additional experience and/or education requirements.

III.B.2.a.(iii)(A)(2) [Reserved]

III.B.2.a.(iii)(B) Risk Assessors

III.B.2.a.(iii)(B)(1) successful completion of an accredited training course for inspectors; and

III.B.2.a.(iii)(B)(2) Bachelor's degree and 1 year of experience in a related field (e.g., lead,

asbestos, environmental remediation work, or construction), or an Associate's degree and 2 years' experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

III.B.2.a.(iii)(B)(3) certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

III.B.2.a.(iii)(B)(4) a high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

III.B.2.a.(iii)(C) Supervisor

III.B.2.a.(iii)(C)(1) one year of experience as a certified lead-based paint abatement worker; or

III.B.2.a.(iii)(C)(2) at least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

III.B.2.b. The following documents will be recognized by the Division as evidence of meeting the requirements listed in Section III.B.2.b.(iii) of this Regulation Number 19, Part A:

III.B.2.b.(i) official academic transcripts or diploma, as evidence of meeting the education requirements;

III.B.2.b.(ii) résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

III.B.2.b.(iii) course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

III.B.2.c. In order to take the certification examination for a particular discipline an individual must:

III.B.2.c.(i) successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

III.B.2.c.(ii) meet or exceed the education and/or experience requirements in Section III.B.2.a.(iii) of this Regulation Number 19, Part A.

III.B.2.d. After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in Section III.B.2.a. of this Regulation Number 19, Part A, an individual will be issued a certificate by the Division. To maintain certification, an individual must be re-certified as described in Section III.B.5. (Re-certification) of this Regulation Number 19, Part A.

III.B.2.e. An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

III.B.2.f. If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from the Division.

III.B.3. Abatement Worker and Project Designer

III.B.3.a. To become certified by the Division as an abatement worker or project designer, pursuant to Section III.B.1.a. of this Regulation Number 19, Part A, an individual must:

III.B.3.a.(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

III.B.3.a.(ii) Meet or exceed the following additional experience and/or education requirements.

III.B.3.a.(ii)(A) Abatement Workers

III.B.3.a.(ii)(A)(1) no additional experience and/or education requirements.

III.B.3.a.(ii)(A)(2) [Reserved]

III.B.3.a.(ii)(B) Project Designers

III.B.3.a.(ii)(B)(1) successful completion of an accredited training course for supervisors; and

III.B.3.a.(ii)(B)(2) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

III.B.3.a.(ii)(B)(3) four years of experience in building construction and design or a related field.

III.B.3.b. The following documents will be recognized by the Division as evidence of meeting the requirements listed in this Section III.B.3. (Abatement Worker and Project Designer) of this Regulation Number 19, Part A:

III.B.3.b.(i) official academic transcripts or diploma, as evidence of meeting the education requirements;

III.B.3.b.(ii) résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

III.B.3.b.(iii) course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

III.B.3.c. After successfully completing the appropriate training courses and meeting any other qualifications described in Section III.B.3.a. of this Regulation Number 19, Part A, an individual will be issued a certificate from the Division. To maintain certification, an individual must be re-certified as described in Section III.B.5. (Re-certification) of this Regulation Number 19, Part A.

(Reserved)III.B.5. Re-certification

III.B.5.a. To maintain certification in a particular discipline, a certified individual must apply to and be re-certified by the Division in that discipline by the Division either:

III.B.5.a.(i) every 3 years if the individual completed a training course with a course test and hands-on assessment; or

III.B.5.a.(ii) every 5 years if the individual completed a training course with a proficiency test.

III.B.5.b. An individual will be re-certified if the individual successfully completes the appropriate accredited refresher training course prior to the expiration of their current certification, submits a valid copy of the appropriate refresher course completion certificate to the Division and submits a fee to the Division according to the following structure:

III.B.5.b.(i) Inspector -- $180 for each year of certification sought;

III.B.5.b.(ii) Risk Assessor -- $180 for each year of certification sought;

III.B.5.b.(iii) Supervisor -- $180 for each year of certification sought;

III.B.5.b.(iv) Worker -- $180 for each year of certification sought; and

III.B.5.b.(v) Project Designer -- $180 for each year of certification sought.

III.B.5.c. An individual whose certification has expired is required to retake the initial class prior to re-certification.

III.B.6. Certification of Lead Abatement or Lead Evaluation Firms

III.B.6.a. All firms that perform or offer to perform any of the lead-based paint activities described in Section IV. (Inspections, Lead-Hazard Screens, and Risk Assessments) and/or Section V. (Abatement Requirements) of this Regulation Number 19, Part A must be certified by the Division.

III.B.6.a.(i). Cities, counties, municipalities or any other governmental entity employing appropriately trained and certified personnel will be exempt from obtaining certification as a LEF and paying the fee.

III.B.6.b. A firm seeking certification must submit to the Division a letter attesting that the firm will only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees will follow the work practice standards in Section IV. (Inspections, Lead-Hazard Screens, and Risk Assessments) and/or Section V. (Abatement Requirements) of this Regulation Number 19, Part A for conducting lead-based paint activities.

III.B.6.b.(i) Firms seeking Colorado certification as a Lead Abatement Firm or Lead Evaluation Firm must submit, along with their application, a fee to the Division according to the following structure:

III.B.6.b.(i)(A) Lead Abatement Firm: one-year certification for Lead Abatement Firms -- $600;

III.B.6.b.(i)(B) Lead Evaluation Firm: one-year certification for inspection, lead hazard screen and risk assessment firms -- $500.

III.B.6.c. From the date of receiving the firm's complete application requesting certification, the Division will have 45 days to approve or disapprove the firm's request for certification. Within that time, the Division will respond with either a certificate of approval or a letter describing the reasons for a disapproval.

III.B.6.d. The firm must maintain all records pursuant to the requirements in Section IV. (Inspections, Lead-hazard Screens, and Risk Assessments) and/or Section V. (Abatement Requirements) of this Regulation Number 19, Part A.

III.B.6.e. Firms must first apply to the Division for certification to engage in lead-based paint activities pursuant to this section on or after the effective date of this Regulation Number 19, Part A.

III.B.6.f. Firms will be responsible for ensuring that anyone engaging in lead-based paint activities for their firm are properly trained and certified by the Division pursuant to the requirements of this Regulation Number 19, Part A.

III.B.6.g. Firms will be responsible for ensuring that anyone engaging in lead-based paint activities for their firm have a valid training certificate or Colorado certification photo identification card on the worksite at all times.

IV. Inspections, Lead-Hazard Screens, and Risk Assessments

When performing any lead-based paint activity involving an inspection, lead-hazard screen or risk assessment of a pre-1978 residential dwelling or child-occupied facility, a certified individual must perform that activity in compliance with the appropriate requirements.

IV.A. Inspection

IV.A.1. An inspection must be conducted only by a person certified by the division pursuant to this Regulation Number 19, Part A as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in Section IV.A. (Inspection) of this Regulation Number 19, Part A.

IV.A.2. When conducting an inspection, the following locations must be selected according to documented methodologies and tested for the presence of lead-based paint:

IV.A.2.a. In the portion of a pre-1978 residential dwelling and child-occupied facility being inspected, each component with a distinct painting history and each exterior component with a distinct painting history must be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

IV.A.2.b. In the portion of a pre-1978 multi-family dwelling or child-occupied facility being inspected, each component with a distinct painting history in every common area must be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

IV.A.3. Paint must be sampled in the following manner:

IV.A.3.a. the analysis of paint to determine the presence of lead must be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

IV.A.3.b. all collected paint chip samples must be analyzed according to Section IV.D. (Collection and Laboratory Analysis of Samples) of this Regulation Number 19, Part A, to determine if they contain detectable levels of lead that can be quantified numerically.

IV.A.4. The certified inspector or risk assessor must prepare an inspection report that must include the following information:

IV.A.4.a. date of each inspection;

IV.A.4.b. address of building;

IV.A.4.c. date of construction;

IV.A.4.d. apartment numbers (if applicable);

IV.A.4.e. name, address, and telephone number of the owner or owners of each pre-1978 residential dwelling or child-occupied facility;

IV.A.4.f. name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

IV.A.4.g. name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;

IV.A.4.h. each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;

IV.A.4.i. specific locations of each painted component tested for the presence of lead-based paint; and

IV.A.4.j. the results of the inspection expressed in terms appropriate to the sampling method used.

IV.B. Lead Hazard Screen

IV.B.1. A lead hazard screen must be conducted only by a person certified by the division as a risk assessor and, if conducted, must be conducted according to the procedures in this Section IV.B. (Lead Hazard Screen) of this Regulation Number 19, Part A.

IV.B.2. If conducted, a lead hazard screen must be conducted as follows:

IV.B.2.a. Background information regarding the physical characteristics of the pre-1978 residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under 7 years of age must be collected.

IV.B.2.b. A visual inspection of the pre-1978 residential dwelling or child-occupied facility must be conducted to:

IV.B.2.b.(i) determine if any deteriorated paint is present, and

IV.B.2.b.(ii) locate at least two dust sampling locations.

IV.B.2.c. If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, must be tested for the presence of lead.

IV.B.2.d. In residential dwellings two composite dust samples must be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children, under 7 years of age, are most likely to come in contact with dust.

IV.B.2.e. In pre-1978 multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in Section IV.B.2.d. of this Regulation Number 19, Part A, the risk assessor must also collect composite dust samples from common areas where one or more children, under 7 years of age, are most likely to come into contact with dust.

IV.B.3. Dust samples must be collected and analyzed in the following manner.

IV.B.3.a. all dust samples must be taken using documented methodologies that incorporate adequate quality control procedures; and

IV.B.3.b. all collected dust samples must be analyzed according to Section IV.D. (Collection and Laboratory Analysis of Samples) of this Regulation Number 19, Part A, to determine if they contain detectable levels of lead that can be quantified numerically.

IV.B.4. Paint must be sampled in the following manner:

IV.B.4.a. the analysis of paint to determine the presence of lead must be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

IV.B.4.b. all collected paint chip samples must be analyzed according to Section IV.D (Collection and Laboratory Analysis of Samples) of this Regulation Number 19, Part A, to determine if they contain detectable levels of lead that can be quantified numerically.

IV.B.5. The risk assessor must prepare a lead hazard screen report, which must include the following information:

IV.B.5.a. The information required in a risk assessment report as specified in Section IV.C. (Risk Assessment) of this Regulation Number 19, Part A, including Sections IV.C.10.a. through IV.C.10.n. of this Regulation Number 19, Part A, and excluding Sections IV.C.10.o. through IV.C.10.r. of this Regulation Number 19, Part A. Additionally, any background information collected pursuant to Section IV.B.2.a. of this Regulation Number 19, Part A, must be included in the risk assessment report.

IV.B.5.b. Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

IV.C. Risk Assessment

IV.C.1. A risk assessment must be conducted only by a person certified by the division as a risk assessor and, if conducted, must be conducted according to the procedures in this Section IV.C. (Risk Assessment) of this Regulation Number 19, Part A.

IV.C.2. A visual inspection for risk assessment of the pre-1978 residential dwelling or child-occupied facility must be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

IV.C.3. Background information regarding the physical characteristics of the pre-1978 residential dwelling, or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under 7 years of age must be collected.

IV.C.4. The following surfaces that are determined, using documented methodologies, to have a distinct painting history, must be tested for lead;

IV.C.4.a. Each friction surface or impact surface with visibly deteriorated paint; and

IV.C.4.b. All other surfaces with visibly deteriorated paint.

IV.C.5. In pre-1978 residential dwellings, dust samples (either composite or single-surface samples) from the interior window sills and floor must be collected in all living areas where one or more children, under 7 years of age, are most likely to come into contact with dust.

IV.C.6. For pre-1978 multi-family dwellings and child-occupied facilities, the samples required in Section IV.C.4. of this Regulation Number 19, Part A, must be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) must be collected in the following locations:

IV.C.6.a. common areas adjacent to the sampled pre-1978 residential dwelling or child-occupied facility; and

IV.C.6.b. other common areas in the building where the risk assessor determines that one or more children, under 7 years of age, are likely to come into contact with dust.

IV.C.7. For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected in each room, hallway or stairwell utilized by one or more children, under 7 years of age, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, under 7 years of age, are likely to come into contact with dust.

IV.C.8. Soil samples must be collected and analyzed for lead concentrations in the following locations:

IV.C.8.a. exterior play areas where bare soil is present; and

IV.C.8.b. The rest of the yard (i.e., non-play areas) where bare soil is present.

IV.C.8.c. Any paint, dust, or soil sampling or testing must be conducted using documented methodologies that incorporate adequate quality control procedures.

IV.C.9. Any collected paint chip, dust, or soil samples must be analyzed according to Section IV.D. (Collection and Laboratory Analysis of Samples) of this Regulation Number 19, Part A, to determine if they contain detectable levels of lead that can be quantified numerically.

IV.C.10. The certified risk assessor must prepare a risk assessment report that must include the following information:

IV.C.10.a. date of assessment;

IV.C.10.b. address of each building;

IV.C.10.c. date of construction of buildings;

IV.C.10.d. apartment number (if applicable);

IV.C.10.e. name, address, and telephone number of each owner of each building;

IV.C.10.f. name, signature, and certification of the certified risk assessor conducting the assessment;

IV.C.10.g. name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

IV.C.10.h. name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

IV.C.10.i. results of the visual inspection;

IV.C.10.j. testing method and sampling procedure for paint analysis employed;

IV.C.10.k. specific locations of each painted component tested for the presence of lead;

IV.C.10.l. all data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device;

IV.C.10.m. all results of laboratory analysis on collected paint, soil, and dust samples;

IV.C.10.n. any other sampling results;

IV.C.10.o. any background information collected pursuant to Section IV.C.3. of this Regulation Number 19, Part A;

IV.C.10.p. to the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

IV.C.10.q. a description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

IV.C.10.r. a description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard; if the use of an encapsulant or enclosure is recommended, the report must recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

IV.D. Collection and Laboratory Analysis of Samples

Any paint chip, dust, or soil samples collected as required by the work practice standards contained in this Section IV. (Inspections, Lead Hazard Screens, and Risk Assessments) of this Regulation Number 19, Part A must be:

IV.D.1. collected by persons certified by the division pursuant to this Regulation Number 19, Part A as an inspector or risk assessor; and

IV.D.2. analyzed by a recognized laboratory.

IV.E. Composite Dust Sampling

Composite dust sampling may only be conducted in the situations specified in Sections IV.B. (Lead Hazard Screen) and IV.C. (Risk Assessment) of this Regulation Number 19, Part A. If such sampling is conducted, the following conditions will apply:

IV.E.1. composite dust samples must consist of at least two subsamples;

IV.E.2. every component that is being tested must be included in the sampling; and

IV.E.3. composite dust samples must not consist of subsamples from more than one type of component.

IV.F. Recordkeeping

All reports or plans required in this Section must be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also must provide copies of these reports to the building owner who contracted for its services.

IV.G. Alternative Procedures and Variances

The division may, at its discretion, grant a variance from the requirements in this Section IV. (Inspections, Lead Hazard Screens, and Risk Assessments) of this Regulation Number 19, Part A, allowing use of an alternative procedure for the inspection, risk assessment, and lead hazard screen provided that the person requesting the variance submit an alternative procedure in writing to the division and demonstrates to the satisfaction of the division that compliance with this Regulation Number 19, Part A is not practical or that the proposed alternative procedures provides equivalent means for determining the presence of lead and lead-based paint hazards.

IV.H. Determinations

IV.H.1. Lead-based paint is present:

IV.H.1.a. On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

IV.H.1.b. On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

IV.H.2. A paint-lead hazard is present:

IV.H.2.a. On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in this Regulation Number 19, Part A.

IV.H.2.b. On any chewable lead-based paint surface on which there is evidence of teeth marks;

IV.H.2.c. Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is cause by impact from a related component (such as a door knob that knocks into a wall or a door that knocks against its door frame: and

IV.H.2.d. If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

IV.H.3. A dust-lead hazard is present in a residential dwelling or child-occupied facility:

IV.H.3.a. On the floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 10 µg/ ft^2 for floors and 100 µg/ ft^2 for interior window sills, respectively:

IV.H.3.b. On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

IV.H.3.c. On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area group on the property.

IV.H.4. A soil-lead hazard is present:

IV.H.4.a. In a play area when the soil-lead concentration from a composite area sample of bare soil is equal to or greater than 400 parts per million: or

IV.H.4.b. In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

V. Abatement Requirements

V.A. General Requirements

V.A.1. Except for those persons and activities exempted in Section I. (Scope and Applicability) of this Regulation Number 19, Part A, persons performing lead-based paint abatement in or to a pre-1978 residential dwelling or child-occupied facility must comply with all the requirements of Section III. (Training and Certification Requirements) and this Section V. (Abatement Requirements) of this Regulation Number 19, Part A, if any of the following conditions apply:

V.A.1.a. two or more square feet of lead-based paint or lead contaminated dust is being abated per room or equivalent.

V.A.1.b. twenty or more square feet of lead-based paint, lead contaminated dust, or lead contaminated soil is being abated from or on the exterior building.

V.A.1.c. at least one window is being abated.

V.A.2. An abatement must be conducted only by individuals certified by the division working for a certified LAF, and if conducted, must be conducted according to the procedures in this Section V. (Abatement Requirements) of this Regulation Number 19, Part A.

V.A.3. A certified supervisor is required for each abatement project and must be onsite during all abatement activities.

V.A.4. The certified supervisor and the certified LAF employing that supervisor must ensure that all abatement activities are conducted according to the requirements of this Section V. (Abatement Requirements) of this Regulation Number 19, Part A, and all other Federal, State and local requirements.

V.A.5. Notification

V.A.5.a. Notification of the commencement of lead-based paint abatement in or to a pre-1978 residential dwelling or child-occupied facility must be provided on a form specified by the Division and postmarked or delivered to the division a minimum of 10 working days prior to the commencement of abatement activities.

V.A.5.b. The 10 working day notification may be waived by the Division if one or more of the following conditions exist:

V.A.5.b.(i) a child with an elevated blood lead level resides within the pre-1978 residential dwelling or child-occupied facility or regularly visits the child-occupied facility where the abatement will occur; or

V.A.5.b.(ii) the Division determines that an imminent danger to health exists; or

V.A.5.b.(iii) the Division determines that an unavoidable hardship would result.

V.A.5.c. The applicable notification fee given must accompany the notification form for the notice to be accepted by the Division.

VALUATION OF WORK	NOTIFICATION FEE
$2,000 or less	$155
$2,001 - $50,000	$145 base plus $8.00 per $1,000 in valuation or fraction thereof of total valuation
$50,001 - $100,000	$195 base plus $7.00 per $1,000 in valuation or fraction thereof of total valuation
$100,001 - $500,000	$295 base plus $6.00 per $1,000 in valuation or fraction thereof of total valuation
Over $500,000	$795 base plus $5.00 per $1,000 in valuation or fraction thereof of total valuation

V.A.6. Occupant Protection Plan

A written occupant protection plan must be developed for all abatement projects and must be prepared according to the following procedures:

V.A.6.a. The occupant protection plan must be unique to each pre-1978 residential dwelling or child-occupied facility, be developed prior to the abatement and submitted with the lead abatement permit application for review and approval. The occupant protection plan must describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. At a minimum, the plan must include a site-specific description of how the contractor will implement the applicable occupant protection measures contained in Sections V.B. (Work Practice Restrictions and Prohibitions) through V.K. (Waste Handling) of this Regulation Number 19, Part A. In addition, the plan must specifically address whether occupant relocation during abatement activities is necessary.

V.A.6.b. A certified supervisor or project designer must prepare the occupant protection plan.

V.A.6.c. The occupant protection plan must also provide sufficient detail for the Division to understand and evaluate the following:

V.A.6.c.(i). The scope of work for the project. Include types and amounts of material to be abated.

V.A.6.c.(ii) Submit a floor plan or drawing of the project location. Indicate on the floor plan or drawing, the location of lead hazard(s) to be abated as well as the work areas and containments labelled accordingly.

V.A.6.c.(iii) Describe the work practices to be implemented. Describe specific work practices for each unique abatement activity.

V.A.6.c.(iv) Explain the abatement methods that will be used.

V.A.6.c.(v) Explain the clearance procedures that will be used to clear this project, including the sampling methods, number of samples that will be taken, the final clearance inspector name and their certification number.

V.A.6.c.(vi) Provide the name and certification number of the individual who prepared the occupant protection plan. This person must also sign and date the occupant protection plan.

V.A.7. The integrity of all containment systems must be maintained during abatement to prevent the potential spread of any lead contamination outside the work area. Should a breach occur, the areas contaminated with lead must be cleaned in accordance with the applicable requirements in Section V.H (Cleaning) of this Regulation Number 19, Part A, and cleared in accordance with the applicable requirements in Section V.J (Final Clearance) of this Regulation Number 19, Part A.

V.B. Work Practice Restrictions and Prohibitions

The work practices listed will be restricted as follows during an abatement.

V.B.1. Open-flame burning or torching of lead-based paint is prohibited.

V.B.2. Machine sanding or grinding or abrasive blasting or sandblasting or drilling or cutting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control that continually captures all particulate from the surface being abated.

V.B.3. Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets.

V.B.4. Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

V.B.5. Uncontained hydroblasting or high-pressure water washing is prohibited unless the point of operation is completely self-contained within a local shroud and the water is captured within the shroud.

V.B.6. Chemical stripping methods may only be used to remove lead-based paint from highly decorative or ornate components or surfaces that are otherwise difficult to abate by any other method.

V.B.7. Dry, hand sanding is prohibited.

V.C. Interior Abatement Requirements (excluding window abatements)

V.C.1. The following containment system must be used for all interior abatement projects. For window abatement see Section V.E

V.C.1.a. A containment level I-1, I-2 or I-3, as described in this Section V.C. (Interior Abatement Requirements) of this Regulation Number 19, Part A, must be used in those work areas if the amount of lead-based paint or lead-contaminated dust that will be disturbed per room, hallway, or stairwell is less than 2 square feet.

V.C.1.b. A containment level I-2 or I-3, as described in this Section V.C. (Interior Abatement Requirements) of this Regulation Number 19, Part A, must be used in those work areas if the amount of lead-based paint or lead-contaminated dust that will be disturbed per room, hallway, or stairwell is 2 or more square feet.

V.C.1.c. Regardless of the requirements in Sections V.C.1.a. and b. of this Regulation Number 19, Part A, an interior containment level I-3, as described in Section V.C.4. of this Regulation Number 19, Part A, must be used to contain the work area if either one of the following conditions apply:

V.C.1.c.(i) if any amount of floor surface that is painted with lead-based paint, or was at one time painted with lead-based paint, is machine sanded; or

V.C.1.c.(ii) if any amount of lead-based paint is abated by abrasive blasting.

V.C.2. Interior containment level I-1 must consist of the following elements:

V.C.2.a. Warning Signs. At a minimum, warning signs must be posted at all entryways to the work area. The warning signs must, in a language understandable by all occupants, state the following warning:

WARNING
LEAD ABATEMENT WORK AREA
HAZARDOUS LEAD DUST
POISON
DO NOT ENTER

V.C.2.b. Warning Barriers. A physical barrier (furniture, wood planking) must be placed around the work area perimeter so as to prevent inadvertent access by children.

V.C.2.c. Ventilation System Shutdown. Vents that are within 5 feet from the surface being abated must be sealed with 6-mil thickness polyethylene sheeting to prevent contaminated air from leaving the work area.

V.C.2.d. Protection of Objects. Furniture and other movable objects within 5 feet in all directions of the surface to be abated must be moved outside the room, hallway, or stairwell. Objects or furniture that cannot be moved must be covered with a minimum of one layer of 6-mil polyethylene sheeting sealed to the floor, wall or ceiling as applicable.

V.C.2.e. Floor Protection. At a minimum, one layer of 6-mil thickness polyethylene sheeting or greater must be sealed to the floor at least 5 feet beyond the perimeter of the surface being abated in all directions, so as to prevent contamination of the floor. Floors must be pre-cleaned of debris as required in Section V.H.1. (Pre-cleaning) of this Regulation Number 19, Part A prior to sealing polyethylene sheeting on the floor.

V.C.2.f. Cleanup. All surfaces and floors extending 5 feet in all directions from the abated surface, and all adjacent areas used as a pathway to the work area, must be cleaned by HEPA vacuuming, wet washing, and HEPA vacuuming, and as required in Section V.H. (Cleaning) of this Regulation Number 19, Part A.

V.C.3. Interior containment level I-2 must consist of the following elements:

V.C.3.a. Warning Signs. At a minimum, warning signs must be posted at all entryways to the work area. The warning signs must, in a language understandable by all occupants, at least state the following warning:

WARNING
LEAD ABATEMENT WORK AREA
HAZARDOUS LEAD DUST
POISON
DO NOT ENTER

V.C.3.b. Ventilation System Shutdown. The ventilation system supplying air to the work area must be turned off or otherwise prevented from supplying air to the work area until clearance has been achieved. All registers, vents and openings in the work area must be sealed with 6-mil thickness polyethylene sheeting.

V.C.3.c. Barriers. All openings to the work area must be sealed off from the rest of the building with a minimum of 1 layer of 6-mil thickness polyethylene sheeting to prevent air flow out of the work area.

V.C.3.d. Work Area Egress. Entry into and egress out of the work area must be through an airlock that, at a minimum, must consist of a single chamber with self-closing triple flaps or “Z-flaps” on either side of the chamber. Disposable clothing and footwear must be worn by all persons entering the containment area. Disposable clothing and footwear used inside the containment must be deposited in this airlock chamber prior to personnel exiting containment.

V.C.3.e. Protection of Objects. Furniture and other movable objects must be moved outside the room, hallway, or stairwell. Objects or furniture that cannot be moved must be covered with a minimum of one layer of 6-mil polyethylene sheeting sealed to the floor, wall or ceiling as applicable.

V.C.3.f. Floor Protection. The entire floor within the work area must be sealed with a minimum of 2 layers of 6-mil thickness polyethylene sheeting. The polyethylene sheeting must be installed such that removal of the top most layer of polyethylene sheeting will not cause the underlying polyethylene sheeting to lose its seal. Floors must be pre-cleaned of debris as required in Section V.H.1. (Pre-cleaning) of this Regulation Number 19, Part A prior to sealing polyethylene sheeting on the floor.

V.C.3.g. Cleanup. All surfaces in the work area and all adjacent areas used as a pathway to the work area must be cleaned by HEPA vacuuming, wet washing, and HEPA vacuuming, and as required in Section V.H. (Cleaning) of this Regulation Number 19, Part A. Polyethylene sheeting must be removed in accordance with Section V.H.4. (Polyethylene Sheeting Removal Procedures) of this Regulation Number 19, Part A.

V.C.4. Interior containment level I-3 must consist of the following elements:

V.C.4.a. Containment. At a minimum, all the level I-2 containment requirements as described in Section V.C.3. of this Regulation Number 19, Part A.

V.C.4.b. Work Area Egress. Entry into and egress out of the work area must be through a 3-stage decontamination unit with a shower equipped with hot and cold water that is adjustable inside the shower unit. Each airlock in the decontamination unit must be constructed with self-closing triple flaps or “Z-flaps” separating each individual chamber. Persons entering the abatement work area prior to final clearance must don disposable clothing and footwear. Prior to exiting the containment, personnel must dispose of the suits in the chamber adjacent to the work area and shower.

V.C.4.c. Negative Pressure/Airflow. The containment must have a negative pressure differential of at least -0.02 inches’ water column between the inside of the work area and the adjacent outside area The pressure differential must be continuously recorded with a recording manometer. The air within the work area must be exchanged at a minimum rate of 10 times per hour and exhausted to the exterior of the building. Air flow must always be from the outside of containment to within, as verified by smoke testing. Smoke tubes must be on site at all times during abatement.

V.D. Exterior Abatement Requirements

V.D.1. Exterior Abatement Project Restrictions

All exterior abatement projects subject to this Regulation Number 19, Part A, except for abatement work areas sufficiently contained with an exterior containment level of X-2 or X-3, must comply with the following restrictions.

V.D.1.a. Exterior abatement, except for cleanup to prevent the spread of lead contamination, must not proceed if the local wind gusts are, or are expected to be, greater than 20 miles per hour.

V.D.1.b. Exterior abatement must stop and cleanup must occur before rain begins.

V.D.2. Containment Requirements

V.D.2.a. The following containment system must be used for all exterior abatement projects. For window abatement see Section V.E., for soil abatement see Section V.F.

V.D.2.a.(i) An exterior containment level X-1, X-2, or X-3, as described in this Section V.D.2. (Containment Requirements) of this Regulation Number 19, Part A, must be used if the amount of lead-based paint that will be disturbed is less than 20 square feet.

V.D.2.a.(ii) An exterior containment level X-2 or X-3, as described in this Section V.D.2. (Containment Requirements) of this Regulation Number 19, Part A, must be used if the amount of lead-based paint that will be disturbed is 20 or more square feet.

V.D.2.a.(iii) Regardless of the requirements in Sections V.D.2.a.(i) and (ii) of this Regulation Number 19, Part A, an exterior containment level X-3 as described in Section V.D.2.d. of this Regulation Number 19, Part A must be used if either one of the following conditions apply:

V.D.2.a.(iii)(A) any amount of floor surface (e.g. patio, step, deck) that is painted with lead-based paint, or was at one time painted with lead-based paint, is power sanded; or

V.D.2.a.(iii)(B) any amount of lead-based paint is abated by abrasive blasting.

V.D.2.b. Exterior containment level X-1 must consist of the following elements:

V.D.2.b.(i) Warning Signs. Post warning signs on the building and at a 20-foot perimeter around the building (or less if distance to the next building or sidewalk is less than 20 feet). The warning signs must, in a language understandable by all occupants, state the following warning:

WARNING
LEAD ABATEMENT WORK AREA
HAZARDOUS LEAD DUST
POISON
DO NOT ENTER

V.D.2.b.(ii) Warning Barriers. Erect temporary fencing or barrier tape at a 20-foot perimeter around working surfaces (or less if distance to the next building or sidewalk is less than 20 feet). If an entryway to the building is within 10 feet of the working surfaces, an alternate entryway must be provided. At least one lead-safe entryway must be made available to occupants at all times, unless the occupants have been relocated until final clearance has been achieved.

V.D.2.b.(iii) Barriers. All windows within 20 feet of the working surfaces must be closed or sealed, including windows in adjacent structures.

V.D.2.b.(iv) Protection of Objects. All movable objects must be moved to a minimum of 20 feet away from abatement surfaces in all directions. Objects that cannot be removed must be covered with a minimum of 1 layer of 6-mil thickness polyethylene sheeting sealed to the floor, wall or ceiling as applicable.

V.D.2.b.(v) Ground Protection. At a minimum, the ground, including decks, driveways, and porches, extending 10 feet beyond the perimeter of the abatement surfaces in all directions must be covered with one layer of 6-mil thickness polyethylene sheeting. The edges of the polyethylene sheeting must be sealed to the building such that no gaps between the polyethylene sheeting and the building exist. The edges of the polyethylene sheeting must be raised to create a basin to contain contaminated runoff. The polyethylene sheeting must be weighted down or otherwise secured to prevent movement. The ground must be pre-cleaned of visible debris as required in Section V.H.1. (Pre-cleaning) of this Regulation Number 19, Part A prior to sealing it with polyethylene sheeting.

V.D.2.b.(vi) Cleanup. All debris and ground polyethylene sheeting must be removed from the work area before leaving the site each night. Polyethylene sheeting must be cleaned and removed in accordance with Section V.H.4. (Polyethylene Sheeting Removal Procedures) of this Regulation Number 19, Part A. Paint chips in the soil must be HEPA vacuumed and properly disposed.

V.D.2.c. Exterior containment level X-2 must consist of the following elements:

V.D.2.c.(i) Warning Signs. Post visible warning signs on the building and on the outside of the containment barriers. The warning signs must, in a language understandable by all occupants, state the following warning:

WARNING LEAD ABATEMENT WORK AREA HAZARDOUS LEAD DUST POISON DO NOT ENTER

V.D.2.c.(ii) Barriers. All openings to the work area must be sealed off with a minimum of 1 layer of 6-mil thickness polyethylene sheeting to prevent air flow out of the work area.

V.D.2.c.(iii) Work Area Egress. Entry into and egress out of the work area must be through an airlock that, at a minimum, must consist of a single chamber with self-closing triple flaps or “Z-flaps” on either side of the chamber. Disposable clothing and footwear must be worn by all persons entering the containment area. Disposable clothing and footwear used inside the containment must be deposited in this airlock chamber prior to personnel exiting containment.

V.D.2.c.(iv) Protection of Objects. All movable objects must be removed from the work area. Objects that cannot be removed must be covered with a minimum of 1 layer of 6-mil thickness polyethylene sheeting sealed to the floor, wall or ceiling as applicable.

V.D.2.c.(v) Ground Protection. At a minimum, the ground, including decks, driveways and porches, within the work area must be covered with two layers of 6-mil thickness polyethylene sheeting. The edges of the polyethylene sheeting must be sealed to the building such that no gaps between the polyethylene sheeting and the building exist. The edges of the polyethylene sheeting must be raised to create a basin to contain contaminated runoff. The polyethylene sheeting must be weighted down or otherwise secured to prevent movement. The ground must be pre-cleaned of visible debris as required in Section V.H.1. (Pre-cleaning) of this Regulation Number 19, Part A prior to sealing it with polyethylene sheeting.

V.D.2.c.(vi) Cleanup. Polyethylene barriers must be cleaned and removed in accordance with Section V.H.4. (Polyethylene Sheeting Removal Procedures) of this Regulation Number 19, Part A. All surfaces and floors within the containment and all adjacent areas used as a pathway to the work area, must be cleaned by HEPA vacuuming, wet washing, and HEPA vacuuming, and as required in Section V.H. (Cleaning) of this Regulation Number 19, Part A. Paint chips in the soil must be HEPA vacuumed and properly disposed.

V.D.2.d. Exterior containment level X-3 must consist of the following elements:

V.D.2.d.(i) Containment. At a minimum, all the exterior level X-2 containment requirements as described in Section V.D.2.c. of this Regulation Number 19, Part A.

V.D.2.d.(ii) Work Area Egress. Entry into and egress out of the work area must be through a 3-stage decontamination unit with a shower equipped with hot and cold water that is adjustable inside the shower. Each airlock in the decontamination unit must be constructed with self-closing triple flaps or “Z-flaps” separating each individual chamber. Persons entering the abatement work area prior to final clearance must don disposable clothing and footwear. Prior to exiting the containment, personnel must dispose of the suits in the chamber adjacent to the work area and shower.

V.D.2.d.(iii) Negative Pressure/Airflow. The containment must have a negative pressure differential of at least -0.02 inches’ water column between the work area and the clean area. The pressure differential must be continuously recorded with a recording manometer. The air within the work area must be exchanged at a minimum rate of 10 times per hour. Air flow must always be from the outside of containment to within, as verified by smoke testing. Smoke tubes must be on site at all times during abatement.

V.E. Window Abatement

Window abatement requires the person performing the abatement to select and utilize one of the three options (V.E.1., V.E.2., or V.E.3.)

V.E.1. When abating windows from the exterior of a pre-1978 residential dwelling or child-occupied facility, the person performing the abatement must comply with the following requirements:

V.E.1.a. Comply with the restrictions in Section V.D.1. (Exterior Abatement Project Restrictions) of this Regulation Number 19, Part A.

V.E.1.b. At a minimum, seal two layers of 6-mil thickness polyethylene sheeting to the inside wall covering the window so as to prevent dust from migrating inside the building during abatement; and

V.E.1.c. At a minimum, comply with all the exterior containment level X-1, level X-2 or level X-3 requirements described in Section V.D.2. (Containment Requirements) of this Regulation Number 19, Part A.

V.E.2. When abating windows from the interior of a pre-1978 residential dwelling or child-occupied facility, the person performing the abatement must comply with the following requirements:

V.E.2.a. at a minimum, secure two layers of 6-mil thickness polyethylene sheeting to the exterior wall so as to prevent dust from migrating outside the building during abatement; and

V.E.2.b. comply with all interior containment level I-2 or level I-3 requirements as described in Section V.C. (Interior Abatement Requirements) of this Regulation Number 19, Part A.

V.E.3. When abating windows, the person performing the abatement can do so by following all three elements:

V.E.3.a. Comply with all interior containment level I-2 or level I-3 requirements as described in Section V.C.3 and V.C.4. (Interior Abatement Requirements) of this Regulation Number 19, Part A.

V.E.3.b. Comply with the restrictions in Section V.D.1. (Exterior Abatement Project Restrictions) of this Regulation Number 19, Part A.

V.E.3.c. At a minimum, comply with all the exterior containment level X-2 or level X-3requirements described in Section V.D.2.c. and V.D.2.d. (Exterior Abatement Requirements) of this Regulation Number 19, Part A.

V.E.4. If the polyethylene sheeting described in Sections V.E.1.b or V.E.2.a. is breached, then surfaces on both sides of the window must be cleaned in accordance with the applicable requirements in Section V.H. (Cleaning) of this Regulation Number 19, Part A, and cleared in accordance with the applicable requirements in Section V.J. (Final Clearance) of this Regulation Number 19, Part A.

V.F. Soil Abatement

V.F.1. If conducted, or required pursuant to Section V.J.1.g.(ii) of this Regulation Number 19, Part A, soil abatement must be conducted in one of the following ways:

V.F.1.a. If soil is removed the person performing the removal must:

V.F.1.a.(i) comply with the exterior abatement project restrictions as described in Section V.D.1. (Exterior Abatement Project Restrictions) of this Regulation Number 19, Part A and the exterior containment level X-1, level X-2, or level X-3 requirements, as described in Section V.D. (Exterior Abatement Requirements) of this Regulation Number 19, Part A; and

V.F.1.a.(ii) replace the lead-contaminated soil with soil no greater than 400 µg/g of lead.

V.F.1.a.(iii) the soil that is removed must not be used as top soil at another residential property or child-occupied facility.

V.F.1.b. If soil is not removed, the lead-contaminated soil must be permanently covered, as defined in Section II.B.61. of this Regulation Number 19, Part A.

V.F.2. The abatement, handling, transportation, and disposal of lead-contaminated soil must be performed in a manner that prevents the spread of lead contamination to areas outside the abatement work area and the approved landfill.

V.G. Encapsulation and Enclosure Requirements

V.G.1. Encapsulation and enclosure systems must be dust tight for a design life of at least 20 years. Encapsulation and enclosure systems must not be used on unsound substrates that cannot be stabilized or repaired to support the enclosure or encapsulation systems for at least 20 years.

V.G.2. Encapsulation and enclosure systems must be sealed in accordance with Section V.I.2. (Sealing Replacement Components, Enclosure and Encapsulation) of this Regulation Number 19, Part A.

V.G.3. The surface behind the enclosure must be permanently labeled every 2 feet with the following warning, "Danger: Lead-Based Paint." A durable drawing of the property floor plan identifying the enclosed areas must be mounted in a visible location within the structure (e.g. utility room, furnace area, garage).

V.G.4. Only those encapsulants explicitly recognized by the Division may be used for abatement projects subject to this Regulation Number 19, Part A. The list of Division approved lead encapsulants can be found on the Division’s lead web page.

V.H. Cleaning

V.H.1. Pre-cleaning. Visible paint chips and lead-contaminated dust must be removed from the work area prior to laying polyethylene sheeting on the floor but after all other containment barriers have been erected.

V.H.2. Daily Cleaning. All horizontal surfaces in the work area must be cleaned of visible dust and debris prior to ceasing work for the day.

V.H.3. Carpet, Upholstery and Forced Air Duct Cleaning

V.H.3.a. Carpet and Rugs. All carpets or rugs that are contaminated with lead-contaminated dust that will be cleaned, and all carpet in the work area that will not be disposed of as lead-contaminated waste, must be cleaned as set forth:

V.H.3.a.(i) HEPA vacuums must be used to vacuum all rugs and carpets. A HEPA vacuum equipped with a beater bar or agitator attachment on the vacuum head to dislodge embedded dust must be used when vacuuming the pile side of carpets.

V.H.3.a.(ii) For wall to wall carpeting, the carpet must be vacuumed for not less than 4 minutes per 10 square feet of carpeting, divided into two time segments of at least 2 minutes for each 10 square feet. The two time vacuuming segments must be performed in perpendicular directions.

V.H.3.a.(iii) For area rugs, the top and bottom of the carpet must be vacuumed for not less than 1 minute for every 10 square feet per side. After the initial vacuuming of the carpet, the floor below the area rug must also be vacuumed. Following the vacuuming of the floor, the pile side of the rug must again be vacuumed at a rate not less than 2 minutes per 10 square feet of rug.

V.H.3.a.(iv) When carpet or rugs are removed from the work area for off-site cleaning or disposal, the carpet or rugs must be misted, carefully rolled and sealed with 6-mil thickness polyethylene sheeting to prevent the release of dust.

V.H.3.b. Upholstery. All upholstery that is contaminated with lead-contaminated dust that will be cleaned, and all upholstered surfaces in the work area that are not disposed of as lead-contaminated waste, must be HEPA vacuumed with a minimum of three passes over each surface at a total rate of 2 minutes per 10 square feet.

V.H.3.c. Air Ducts. Air vent registers within the work area must be HEPA vacuumed and wet cleaned. Horizontal surfaces in the duct work that can be reached with a vacuum attachment must be cleaned of visible dust and debris. The Division recommends that air filters on heating units and air conditioners be replaced at the same time as dust removal.

V.H.4. Polyethylene Sheeting Removal Procedures. Prior to final cleaning, protective polyethylene sheeting coverings must be cleaned of visible debris by HEPA vacuuming and/or wet wiped so that they are visibly clean prior to removal. Multiple layers of polyethylene sheeting must be removed one layer at a time and only after each individual layer has been wet wiped clean of visible debris.

V.H.5. Final Cleaning. No sooner than 1 hour after the completion of removal, encapsulation, or enclosure activities have ceased, and prior to final clearance, all surfaces in the work area must be cleaned by HEPA vacuuming, followed by wet cleaning, followed by a second HEPA vacuuming. In addition, persons performing the cleaning must comply with the following requirements:

V.H.5.a. HEPA vacuuming must take place only after the surfaces in the work area being vacuumed are dry.

V.H.5.b. Wet cleaning must use clean water mixed with a cleaning agent. The proportion of cleaning agent to water must be in accordance with the manufacturer's specifications. At a minimum, the cleaning mixture must be changed after its use in each room, hallway, or stairwell to avoid recontaminating an area by cleaning it with dirty water.

V.I. Coating and Sealing

V.I.1. Coating

V.I.1.a. A visual inspection to ensure that lead-based paint hazards in the work area are eliminated must be conducted prior to the coating of surfaces as required in Section V.I.1.a. of this Regulation Number 19, Part A. The visual inspection must be performed only by a certified inspector or risk assessor.

V.I.1.b. All abated surfaces in the work area shall be sealed with polyurethane or deck enamel, painted, or similarly coated so that the surfaces are easily cleanable by occupants. The coating may be applied prior to conducting final clearance wipe sampling.

V.I.1.c. The installation of resilient coverings over an existing lead-based paint enclosure system is exempt from this Section V.I.1. (Coating) of this Regulation Number 19, Part A. Surfaces enclosed with resilient coverings such as vinyl, aluminum coil stock, or materials traditionally not repainted are exempt from this Section V.I.1. (Coating) of this Regulation Number 19, Part A.

V.I.2. Sealing Replacement Components, Enclosures and Encapsulation. All replacement components, encapsulation systems and enclosures must be made dust-tight for at least 20 years. All crevices, holes, seams, edges, joints, and cracks must be caulked. The underside of all components and enclosures must be back-caulked to further prevent leaded dust and lead residues from escaping the abated surface.

V.J. Final Clearance

V.J.1. The following post-abatement clearance procedures must be performed only by a certified inspector or risk assessor.

V.J.1.a. Visual inspection. Following an abatement, a visual inspection must be performed to determine that all of the following conditions have been met prior to the continuation of the clearance procedures:

V.J.1.a.(i) Deteriorated painted surfaces and/or visible amounts of dust, debris or residue are not still present in the work area. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

V.J.1.a.(ii) All surfaces in the work area are properly sealed and re-painted in accordance with Section V.I. (Coating and Sealing) of this Regulation Number 19, Part A, such that the surfaces are easily cleanable. These surfaces must be dry to the touch before the visual inspection and wipe sampling takes place.

V.J.1.a.(iii) All enclosure and encapsulation systems are properly installed, caulked and are dust tight in accordance with Sections V.G. (Encapsulation and Enclosure Requirements), and V.I. (Coating and Sealing) of this Regulation Number 19, Part A.

V.J.1.a.(iv) All areas adjacent to the work areas that were used as pathways to the work area are visibly free of lead-contaminated dust, debris or residue.

V.J.1.b. Following the visual inspection and any post-abatement cleanup required by Section V.J.1.a. (Visual Inspection) of this Regulation Number 19, Part A, clearance sampling for lead-contaminated dust and soil must be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

V.J.1.c. Dust and soil samples for clearance purposes must be taken using documented methodologies that incorporate adequate quality control procedures.

V.J.1.d. Dust and soil samples for clearance purposes must be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.

V.J.1.e. The following post-abatement clearance activities must be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the pre-1978 residential dwelling, or child-occupied facility:

V.J.1.e.(i) Clearance Sampling of Interior Abatement Projects

V.J.1.e.(i)(A) After conducting an abatement, at least one dust sample must be taken from one interior window sill and from one window trough (if available) and at least one dust sample must be taken from the floor of no less than four rooms, hallways or stairwells within the containment area. In addition, at least one dust sample must be taken from the floor outside the containment area and within 10 feet of containment where potential contamination is likely. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells must be sampled.

V.J.1.e.(ii) Clearance Sampling of Exterior Abatement Projects

V.J.1.e.(ii)(A) After conducting an exterior lead-based paint abatement, the following samples must be collected:

V.J.1.e.(ii)(A)(1) At least two dust samples must be collected from the work area if a paved surface or window are within the work area. At a minimum, one dust sample must be taken from one window (if any) and one dust sample must be collected from the floor of each patio, deck, driveway, or paved surface (if any) within the work area. Window samples must be collected from the window sill or window trough, alternating between rooms.

V.J.1.e.(ii)(A)(2) At least two composite soil samples must be collected from the soil within the work area. At a minimum, one composite soil sample must be collected from the soil along the building perimeter and one composite soil sample must be collected from the child's principle play area (if any in the work area). Each composite soil sample must consist of at least 5 and no more than 10 aliquots of soil from areas selected in accordance with documented methodologies.

V.J.1.e.(ii)(B) If the exterior abatement project involved only the covering or removing of bare soil then the collection of clearance soil samples specified in this Section V.J.1.e. (ii)(A) of this Regulation Number 19, Part A is not required. The visual inspection requirement specified in Section V.J.1.a. (Visual Inspection) of this Regulation Number 19, Part A, still applies to soil-only abatement projects.

V.J.1.f. The rooms, hallways or stairwells or exterior areas selected for sampling must be selected according to documented methodologies.

V.J.1.g. The certified inspector or risk assessor must compare the residual lead level (as determined by the laboratory analysis) from each dust and soil sample with applicable clearance levels for lead in dust and soil on floors, windows, and other surfaces.

V.J.1.g.(i) If the residual lead level in a single surface dust sample equals or exceeds 10 µg/ ft^2 on interior floors, 100 µg/ ft^2 on interior window sills, 400 µg/ ft^2 on window troughs, 500 µg/ ft^2 on exterior window sills, or 800 µg/ ft^2 on exterior surfaces (e.g. patios, porches, sidewalks), or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, all the components represented by the failed sample must be re-cleaned and re-tested until clearance levels are met.

V.J.1.g.(ii) If the residual lead levels in a soil sample exceed 400 µg/g in a play area, or 1,200 µg/g in the rest of the yard, the soil must be abated in accordance with Section V.F. (Soil Abatement) of this Regulation Number 19, Part A.

V.J.2. In a pre-1978 multi-family dwelling with similarly constructed and maintained pre-1978 residential dwellings, random sampling for the purposes of clearance may be conducted provided:

V.J.2.a. the certified individuals who abate or clean the pre-1978 residential dwellings do not know which residential dwellings will be selected for the random samples;

V.J.2.b. in accordance with Appendix A, a sufficient number of pre-1978 residential dwellings are selected for dust and soil sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels specified in Section V.J.1.g. of this Regulation Number 19, Part A; and

V.J.2.c. the randomly selected pre-1978 residential dwellings are sampled and evaluated for clearance according to the procedures found in Section V.J.1. of this Regulation Number 19, Part A.

V.J.3. An abatement report must be prepared by a certified supervisor or project designer. The abatement report must be completed within ninety days following the successful clearance of the project and include the following information:

V.J.3.a. start and completion dates of abatement;

V.J.3.b. the name and address of each certified LAF conducting the abatement and the name of each supervisor assigned to the abatement project;

V.J.3.c. the occupant protection plan prepared pursuant to Section V.A.6. (Occupant Protection Plan) of this Regulation Number 19, Part A;

V.J.3.d. the name and address of each certified LEF and the name, address and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

V.J.3.e. the results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

V.J.3.f. a detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, any suggested monitoring of encapsulants or enclosure, and any suggested post-abatement maintenance and cleaning methods.

V.J.4. Collection and laboratory analysis of samples. Any dust or soil samples collected pursuant to this Section V.J. (Final Clearance) of this Regulation Number 19, Part A must be:

V.J.4.a. collected by persons certified by the Division as an inspector or risk assessor working for a LEF; and

V.J.4.b. analyzed by a recognized laboratory.

V.J.5. Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in this Section V.J. (Final Clearance) of this Regulation Number 19, Part A. If such sampling is conducted, the following conditions must apply:

V.J.5.a. composite dust samples must consist of at least two subsamples, but no more than four subsamples;

V.J.5.b. every component that is being tested must be included in the sampling; and

V.J.5.c. composite dust samples must not consist of subsamples from more than one type of component.

V.K. Waste Handling

Each person handling any lead-contaminated waste must comply with the following requirements:

V.K.1. wrap and seal lead-contaminated waste in at least 6-mil thick polyethylene sheeting prior to removing the waste from the containment or abatement work area;

V.K.2. store the waste in a covered container within a designated secure (locked) area, if not transported immediately off-site;

V.K.3. do not cut or break painted materials or perform any action that is likely to generate leaded dust;

V.K.4. comply with all local, State and Federal waste handling and disposal requirements; and

V.K.5. discharge no visible emissions during any handling of lead-contaminated waste outside the work area.

V.L. Recordkeeping

All reports or plans required in this Section V. (Abatement Requirements) of this Regulation Number 19, Part A, must be retained for no fewer than 3 years by the certified firm or individual who prepared the report. The certified firm or individual also must provide copies of these reports to the building owner who contracted for its services. Additionally, these records, if requested, must be made available to the Division to demonstrate compliance with this Section V.L.

V.M. Alternative Procedures and Variances

The Division may, at its discretion, grant a variance from the requirements in this Section V. (Abatement Requirements) of this Regulation Number 19, Part A, allowing use of an alternative procedure for the clearance of abatement projects or the control of emissions from a lead abatement project provided that the person conducting the abatement submit an alternative procedure in writing to the Division and demonstrates to the satisfaction of the Division that compliance with this Regulation Number 19, Part A is not practical or that the proposed alternative procedures provide equivalent control of lead.

Within forty-five (45) days of the receipt of the request the Division will notify the applicant in writing of its decision to either grant or deny the variance. If the variance is denied, the Division will provide a reason for the denial to the applicant. No person may begin abatement using such a procedure until a variance has been requested and approved in writing. Any violation of any condition of the variance will be considered a violation of this Regulation.

VI. Delegation to Local Health or Building Departments

VI.A. Other than training and certification requirements specified in Section III. (Training and Certification Requirements) of this Regulation Number 19, Part A, the Division may delegate, at its discretion, the implementation or enforcement of standards in this Regulation Number 19, Part A to any local health or building department, if requested by such a local department.

VI.B. To receive delegation of a program for regulating lead-based paint activities pursuant to Section VI.A. of this Regulation Number 19, Part A, the local department must:

VI.B.1. adopt standards that are at least as stringent as the standards in this Regulation Number 19, Part A;

VI.B.2. demonstrate to the Division that the local enforcement program is equivalent to the Division's enforcement program; and

VI.B.3. demonstrate to the Division that the appropriate infrastructure or government capacity exists to effectively carry out a local program.

APPENDIX A

Number of Units to be Tested in Pre-1978 Multifamily Developments

(Section V.J.2.b.)

Number of Similar Units, Similar Common Areas or Exterior Sites in a Building or Development	Pre-1960 or Unknown-age building or Development: Number to Test	1960-1977 Building or Development: Number to Test
1-9	All	All
10-13	All	10
14	All	11
15	All	12
16-17	All	13
18	All	14
19	All	15
20	All	16
21-26	20	16
27	21	17
28	22	18
29	23	18
30	23	19
31	24	19

32	25	19
33-34	26	19
35	27	19
36	28	19
37	29	19
38-39	30	20
40-48	31	21
49-50	31	22
51	32	22
52-53	33	22
54	34	22
55-56	35	22
57-58	36	22
59	37	23
60-69	38	23
70-73	38	24
74-75	39	24
76-77	40	24
78-79	41	24
80-88	42	24
89-95	42	25
96-97	43	25
98-99	44	25
100-109	45	25
110-117	45	26
118-119	46	26

120-138	47	26
139-157	48	26
158-159	49	26
160-177	49	27
178-197	50	27
198-218	51	27
219-258	52	27
259-279	53	27
280-299	53	28
300-279	54	28
380499	55	28
500-776	56	28
777-939	57	28
970-1004	57	29
1005-1022	58	29
1023-1032	59	29
1033-1039	59	30
1500	87	44
2000	116	58
2500	145	73
3000	174	87
3500	203	102
4000	232	116

PART B PRE-RENOVATION EDUCATION IN TARGET HOUSING AND CHILD-OCCUPIED FACILITIES

I. Scope and Applicability

I.A. This Regulation Number 19, Part B, applies to all renovations of target housing or child-occupied facilities performed for compensation except as provided in Section I.B. of this Regulation Number 19, Part B.

I.B. This Regulation Number 19, Part B, does not apply to renovation activities that are limited to the following:

I.B.1. Minor Repair and Maintenance means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disturb 2 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practice restrictions and prohibitions in Section V. B. are used and where the work does not involve window replacement or destruction of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface area disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

I.B.2. Emergency renovation operations.

I.B.3. Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor certified by the Division pursuant to Regulation Number 19, Part A, that the components affected by the renovation are free of lead-based paint.

II. Definitions

For purposes of this Regulation Number 19, Part B, the definitions in Regulation Number 19, Part A, as well as the following definitions, apply. Any terms that are not defined in Regulation Number 19, Part A, are given the same meaning as in the Air Quality Control Commission's Common Provisions Regulation.

II.A. Emergency renovation operations means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

II.B. Multi-family housing means a housing property consisting of more than four dwelling units.

II.C. Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

II.D. Pamphlet means the Environmental Protection Agency (EPA) pamphlet developed under section 406(a) of the Toxic Substance Control Act (TSCA) for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or a State of Colorado pamphlet approved by EPA pursuant to 40 Code of Federal Regulations (CFR) 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information in the EPA pamphlet). The pamphlet can be found on the Division's lead web page.

II.E. Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by Regulation Number 19, Part A. The term renovation includes, but is not limited to: the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g. walls, ceiling, large surface re-plastering, major re-plumbing); and window replacement.

II.F. Renovator means any person who performs or directs workers who perform a renovation for compensation.

III. Information Distribution Requirements

III.A. Renovations in target housing - renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the renovator must:

III.A.1. Provide the owner of the unit with the pamphlet, and comply with one of the following:

III.A.1.a. Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, or

III.A.1.b. Obtain a certificate of mailing at least 7 days prior to the renovation.

III.A.2. In addition to the requirements in Section III.A.1. of this Regulation Number 19, Part B, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

III.A.2.a. Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature. Sample language for such certifications is provided in Section V.B. (Certification of attempted delivery) of this Regulation Number 19, Part B; or

III.A.2.b. Obtain a certificate of mailing at least 7 days prior to the renovation.

III.B. Renovations in target housing - renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-family housing, the renovator must:

III.B.1. Provide the owner with the pamphlet, and comply with one of the following:

III.B.1.a. Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, or

III.B.1.b. Obtain a certificate of mailing at least 7 days prior to the renovation.

III.B.2. Comply with one of the following:

III.B.2.a. Notify in writing, or ensure written notification of, each unit of the multifamily housing and make the pamphlet available upon request prior to the start of renovation. Such notification must be accomplished by distributing written notice to each affected unit. The notice must describe the general nature and locations of the planned renovation activities; the anticipated start and completion dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required by this Regulation Number 19, Part B, Section IV.B. at no cost to the occupant, or.

III.B.2.b. While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by this Regulation Number 19, Part B, Section IV.B or obtain a copy from the renovation firm at no cost to the occupants.

III.B.3. Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

III.B.4. If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the renovator must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the renovator initiates work beyond that which was described in the original notice.

III.C. Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the person performing the renovation must:

III.C.1. Provide the owner of the building with the pamphlet, and comply with one of the following:

III.C.1.a. Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet or,

III.C.1.b. Obtain a certificate of mailing at least 7 days prior to the renovation.

III.C.2. If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

III.C.2.a. Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature or,

III.C.2.b. Obtain a certificate of mailing at least 7 days prior to the renovation.

III.C.3. Provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature and locations of the renovation and the anticipated start and completion dates, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by this Regulation 19, Section IV.B, or obtain a copy at no cost to the occupants by complying with one of the following:

III.C.3.a. Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility or,

III.C.3.b. While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records or obtain a copy at no cost to the parents or guardians.

III.C.4. The renovator must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

III.D. Written acknowledgment. Sample language for such acknowledgments is provided in Section V.A. (Acknowledgement statement) of this Regulation Number 19, Part B. The written acknowledgments required in Sections III.A.1.a., III.A.2.a., III.B.1.a., III.C.1.a. and III.C.2.a. of this Regulation Number 19, Part B must:

III.D.1. Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

III.D.2. Be either a separate page or part of any written contract or service agreement for the renovation.

III.D.3. Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner-occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

IV. Recordkeeping Requirements

IV.A. Renovators must retain and, if requested, make available to the Division all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation activities in target housing or child-occupied facilities. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable Federal, Tribal or local laws or regulations.

IV.B. Records that must be retained pursuant to Section IV.A. of this Regulation Number 19, Part B must include (where applicable):

IV.B.1. Reports certifying that a determination had been made by an inspector or risk assessor, certified by the Division pursuant to Regulation Number 19, Part A, that lead-based paint is not present in the area affected by the renovation, as described in Section I.B.3. of this Regulation Number 19, Part B.

IV.B.2. Signed and dated acknowledgments of receipt as described in Sections III.A.1.a., III.A.2.a., III.B.1.a., III.C.1.a. or III.C.2.a. of this Regulation Number 19, Part B.

IV.B.3. Certifications of attempted delivery as described in Section III.A.2.a. or III.C.2.a. of this Regulation Number 19, Part B.

IV.B.4. Certificates of mailing as described in Sections III.A.1.b., III.A.2.b., III.B.1.b., III.C.1.b. or III.C.2.b. of this Regulation Number 19, Part B.

IV.B.5. Records of notification activities performed regarding renovations in target housing common areas, as described in Sections III.B.3. and III.B.4. or renovations in child-occupied facilities as described in Section III.C.4. of this Regulation Number 19, Part B.

V. Acknowledgment and Certification Statements

V.A. Acknowledgment statement

V.A.1. As required in Section III.D.1. of this Regulation Number 19, Part B, acknowledgments must include a statement of receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

V.A.2. Sample acknowledgment language. The following is a sample of language that could be used for such acknowledgments:

I have received a copy of the lead hazard information pamphlet, [insert the title of the pamphlet provided], informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

_____

Printed Name

_____

Signature

_____

Date

_____

Unit Address

_____

V.B. Certification of attempted delivery

V.B.1. When an occupant is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the renovator is permitted by Section III.A.2.b. of this Regulation Number 19, Part B to certify delivery for each instance. The certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g. occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.

V.B.2. Sample certification language. The following is a sample of language that could be used under those circumstances:

V.B.2.a. Refusal to sign

I certify that I have made a good faith effort to deliver the lead hazard information pamphlet, [insert the title of the pamphlet], to the unit listed, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

_____

Printed Name

_____

Signature

_____

Date

_____

Unit Address

_____

Attempted delivery dates and times

V.B.2.b. Unavailable for signature

I certify that I have made a good faith effort to deliver the lead hazard information pamphlet, [insert the title of the pamphlet], to the unit listed at the dates and times indicated, and that the occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door or by [fill in how the pamphlet was left at the dwelling unit].

_____

Printed Name

_____

Signature

_____

Date

_____

Unit Address

_____

Attempted delivery dates and times

PART C Statements of Basis, Specific Statutory Authority and Purpose

I. Adopted: August 21, 1998

Background

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, section 24-4-103(4), C.R.S. and the Colorado Air Pollution Prevention and Control Act, sections 25-7-110 and 25-7-110.5, C.R.S.

Basis

U.S. Environmental Protection Agency ("US EPA") promulgated a regulation that allows states to promulgate US EPA-approved lead-based paint abatement programs and receive monies from US EPA to fund the initial development of state programs. (40 C.F.R. Part 745.) In 1997, the Colorado Legislature passed an act granting the Commission authority to promulgate a regulatory program for lead-based paint abatement. (SB 97-136, Prevention, Intervention, and Reduction of Lead Exposure.)

Authority

The authority for this regulation is contained in the Colorado Air Pollution Prevention and Control Act ("Colorado Act"), sections 25-7-1101 through 1107, which provides the Commission the authority to develop and adopt a lead-based paint abatement program.

Purpose

The Colorado Legislature has declared that exposure of children to lead represents a significant environmental health problem that is preventable by developing a regulatory program that leads to the creation of housing and facilities where no significant lead-based paint hazard is present. In addition, the Legislature declared that the achievement of uniformity in the regulation of lead abatement practices and uniformity in the qualifications for and certification of persons who perform such abatement is necessary statewide. The purpose of this regulation is to protect children from exposure to lead from lead-based paint by regulating how lead-based paint abatement is conducted in “target housing” and “child-occupied facilities”. As a result, the scope of Regulation Number 19, Part A is limited to homes constructed prior to 1978, child-occupied facilities, and only those projects where the intent is to abate lead-based paint hazards. Regulation Number 19, Part A is intended to fulfill the requirements of the Lead-based Paint Hazard Reduction Act of 1992, pertaining to target housing and child-care facilities. The Commission finds that the work practice requirements contained in Regulation Number 19, Part A are necessary for the protection of the public in targeted housing and child-care facilities.

Action Taken

The Commission concludes that adoption of this regulation is an appropriate step to begin to protect children from exposure to lead from lead-based paint as a result of lead-based paint abatement in “target housing” and “child-occupied facilities”. At this time, the Commission adopts language substantially similar to the federal lead-based paint abatement requirements. In the Commission's view, the requirements adopted will satisfy US EPA's requirements for a state lead-based paint abatement program.

Training and Certification

The Commission concludes that implementation of the training and certification provisions in this regulation will result in uniformity in the qualifications for and certification of persons who perform such abatement. The training and certification provisions will also aid in ensuring that trained and qualified individuals are available to advise consumers about lead hazards in general and about specific measures that may be needed to control such hazards. The training and certification requirements in the rule are identical to the training and certification requirements in the federal rule, except that the State rule: (1) establishes fees pursuant to section 25-7-1103, C.R.S.; (2) requires division approval of training courses; and (3) Does not include the provisions of the federal rule that allow accredited training courses to issue an interim certification valid for six months. Such interim certification is not necessary in the State program because, unlike the US EPA, the division is prepared to begin implementing the certification requirements immediately. Such variations from the federal rule are consistent with state statute, are administrative in nature, and do not constitute training and certification requirements that are more stringent than the federal requirements. Therefore, the training and certification provisions are not more stringent than the training and certification requirements established by the federal “Residential Lead-based Paint Hazard Reduction Act of 1992" and federal rules promulgated pursuant to that act or any training and certification requirements of any US EPA-approved state program that has been established under the Federal “Residential Lead-based Paint Hazard Reduction Act of 1992."

Performance Standards and Practices

Pursuant to section 25-7-1103(1)(b), C.R.S., the Commission adopts performance standards and practices for lead abatement. The Commission concludes that the performance standards and practices in Regulation Number 19, Part A will result in uniformity in the regulation of lead abatement practices in the State of Colorado. These standards and practices require that abatement contractors employ consistent standards and procedures to remove, enclose, and encapsulate lead-based paint to remove lead hazards from target housing and child-occupied facilities. The standards and practices include US EPA's work practice standards and work practice measures that an abatement contractor must include in an occupant protection plan and comply with before, during, and after abatement. The work practice standards and measures were developed based upon US EPA's regulatory requirements and U.S. Department of Housing and Urban Development's ("HUD's") requirements.

The State rule includes work practices that are not required by the federal act, and that are, in some cases, otherwise more stringent than the federal requirements. The additional work practices in the State rule include the prohibition of uncontained hydroblasting and high-pressure washing, the prohibition of dry sanding, the restriction of chemical stripping, and the requirement that a supervisor be on-site at all times while abatement is occurring. Such requirements are not incorporated into the State implementation plan and, therefore, are consistent with section 25-7-105.1, C.R.S. In addition, the federal rule does not explicitly require the establishment of containment barriers; however, they do require an occupant protection plan that may require the use of containment barriers. The State rule expressly requires containment barriers.

US EPA requires a written occupant protection plan be developed for each residential dwelling or child-occupied facility prior to the abatement. (40 C.F.R. 745.227(e)(5).) The occupant protection plan "must describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards." (40 C.F.R. 745.227(e)(5)(i).) US EPA does not provide the abatement contractor the minimum abatement work practice measures that will be required for the occupant protection plan. The Commission pursuant to its authority in section 25-7-1103(1)(b), C.R.S., adopts the work practice measures in Regulation Number 19, Part A as the minimum work practice measures that must be included in an occupant protection plan and followed during abatement to ensure building occupants are protected from exposure to any lead-based paint hazards.

Certain standards and methodologies adopted by the Commission were developed by the HUD. The Commission adopts such standards and methodologies, because: 1) HUD has successfully implemented and enforced its lead-based paint abatement program and the associated guidelines and methodologies for the past eight years; 2) US EPA cites to HUD guidelines and methodologies in the Federal regulation (i.e., 40 C.F.R. section 745.227(a)(3)) as acceptable standards for Federal and state programs; 3) the HUD Guidelines are considered by industry as state-of-the-art; 4) several commenters in the workgroup stressed the importance of not reinventing the wheel and being consistent with HUD; and 5) the HUD Guideline incorporates the results of studies that indicate work practices and standards necessary to contain lead-based paint hazards and protect children's health.

The Commission adopts the requirement that a certified supervisor to be onsite during all work site preparation, abatement, and during post-abatement cleanup of the work areas, because such a practice is necessary to ensure workers properly conduct lead-based paint abatement. The Commission agrees that US EPA's requirement that a certified supervisor need only be reachable by telephone and is not required to be onsite is inadequate for the State of Colorado. In addition, the State rule contains project notification requirements and establishes a project clearance level.

The federal rule also requires notification but US EPA has not yet specified rules for such notification. US EPA may propose specific notification requirements before August 31, 1998. US EPA proposed a regulation for public comment identifying dangerous levels of lead in June of 1998. US EPA's proposal for soil hazard levels differs from HUD standard and the division's proposal by not including a separate, more stringent, standard for high contact play areas. Although US EPA's regulation is not final, it's justification for a single soil level is persuasive and the Commission adopts that single soil level.

Procedures for Approval of Trained Persons

Regulation Number 19, Part A, as adopted, includes procedures for the approval of persons or companies who provide training or accreditation for workers, supervisors, inspectors, risk assessors, or project designers performing lead-based paint activities in target housing or child-occupied facilities pursuant to the Commission's authority in section 25-7-1103(1)(c), C.R.S.

Notification of Appropriate Persons

The Commission finds that the notification requirements in Regulation Number 19, Part A are necessary and adequate to provide the Air Pollution Control Division ("Division") with notice of lead-based paint abatement projects occurring in the State of Colorado. The Division recommends that the Commission adopt a requirement that an abatement contractor notify the Division ten days prior to the commencement of lead-based paint abatement activities if the amount of lead-based paint, lead contaminated soil, or lead contaminated dust is greater than two square feet on interior surfaces or ten square feet on exterior surfaces. The Commission also adopts fee provisions intended to cover the cost of processing notifications. The Commission agrees with the division and includes such a requirement in the notification provisions of Regulation Number 19, Part A.

Fees for Certification of Persons

Regulation Number 19, Part A includes requirements for fees for certification of persons conducting lead abatement services, for any necessary monitoring of such persons to ensure compliance with Regulation Number 19, Part A, and for approval of persons or companies involved in the training or accreditation of workers pursuant to the Commission's authority at section 25-7-1103(1)(e), C.R.S. The Commission concludes that the fee provisions in this Regulation Number 19, Part A are adequate to fully fund the division's lead-based paint abatement program, if projected activity levels are accurate.

Definition of Child-Occupied Facilities

The rule incorporates the definition of the term "child-occupied facility" set out in section 25-7-1102(2)(a), C.R.S. Pursuant to the statutory definition, day-care centers, pre-schools and kindergarten classrooms constructed prior to 1978 are "child-occupied facilities" whether or not such facilities are visited by children for a total of at least six hours per visit. That is, the definitions set out in paragraphs (a) and (b) of subsection (2) of section 25-7-1102, C.R.S., are independent definitions. Day-care centers, pre-schools and kindergarten classrooms are child-occupied facilities whether or not they meet the definition set out in section 25-7-1102(2)(a), C.R.S.

The foregoing interpretation of section 25-7-1102(2), C.R.S., is based on the plain language of the statute. Furthermore, such a reading furthers the legislative intent evident in section 25-7-1103(1), C.R.S., to establish a program that implements the requirements of the federal program. The definition of "child-occupied facility" set out in section 25-7-1102(2)(a), C.R.S., differs from the federal definition expressed in 40 C.F.R. section 745.223. The difference between the two definitions concerns the length of time in which a child must visit a facility in order for the facility to be a "child-occupied facility." Pursuant to the federal definition, the critical time is defined as "combined weekly visits [of at least] six hours."

The definition in section 25-7-1102(2)(a), C.R.S., requires each visit to total at least six hours. Many pre-schools and kindergarten classrooms operate more than six hours per week, but less than six hours per day. Such classrooms are included in the federal definition, but would not be included in the definition set out in section 25-7-1102(2)(a), C.R.S. Reading sections 25-7-1102(2)(a) and (2)(b), C.R.S., as independent definitions captures most, if not all, of the facilities that are included in the federal definition but excluded from the definition in section 25-7-1102(2)(a), C.R.S. Such a reading furthers the legislative intent to implement the federal program.

Findings Pursuant to Section 25-7-110.8, C.R.S.

The regulation promulgated by the Commission is based on reasonably available, validated, reviewed and sound scientific methodologies demonstrating that exposure to lead is hazardous to children under the age of seven, and that lead-based paint was commonly in use in residences and child-occupied facilities prior to 1978. Interested parties did not provide the Commission with any other validated, reviewed, and sound scientific methodologies or information. The work practices in the regulation are designed to minimize airborne lead-contaminated dust during lead abatement projects. Therefore, such practices will result in a demonstrable reduction in air pollution associated with such projects. The remaining requirements of the regulation are administrative in nature and are not subject to the requirements of section 25-7-110.8(1)(b), C.R.S. No one proposed an alternative that would comply with the state statutory requirements in a more cost-effective manner.

Delay of Effective Date of Regulation

The Commission delayed the effective date of this regulation for persons conducting abatement activities in dwellings that they own and occupy in order to provide homeowners time to be able to comply with this regulation.

Commission Directions to Staff

The Commission intends that the Department of Public Health and Environment’s lead program, in September 1998, notify the primary care giver of known children with elevated blood lead levels of this regulation. The Commission intends that the division review the application of this regulation to renovation activities, and that it complete this review by December 31, 1998. The Commission intends that the division will maintain current lists of certified lead abatement contractors, supervisors and certification courses, and will make these lists available to the public.

II. Adopted: December 19, 2002 Revisions to Regulation Number 19, Part A

Background

This Statement of Basis, Specific Statutory Authority and Purpose comply with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

Regulation Number 19, Part A sets forth the Air Quality Control Commission’s lead-based paint abatement program. Colorado's program is tailored after the Federal program. In January of 2001, the United States Environmental Protection Agency ("EPA") adopted revisions to the Federal program. EPA has given the state until June 7, 2003 to revise its regulation in order to make Colorado's program consistent with EPA's newly revised regulation. These revisions to Regulation Number 19, Part A are intended to comply with this mandate. Additionally, obsolete provisions have been deleted and certain minor language changes have been made to help clarify the regulation.

Finally, changes to the certification fee structure have been made to minimize the burden on the regulated community and encourage the type of growth necessary to serve the needs of the public while allowing the program to be fully funded from the collection of fees as required pursuant to § 25-7-1105, C.R.S.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in various sections of the Colorado Air Pollution Prevention and Control Act. Section, 25-7-105(1), C.R.S., gives the Air Quality Control Commission general authority to promulgate rules and regulations necessary for the proper implementation of the Air Pollution Prevention and Control Act ("Act"). Section 25-7-1103(1), C.R.S. gives the Commission specific authority to promulgate regulations necessary to establish and implement a state lead-based paint abatement program, including regulations regarding lead-based paint abatement performance standards and certification requirements. Finally, § 25-7-1105, C.R.S. allows the Commission to set fees that are sufficient to cover the costs of the program.

Purpose

The purpose of the revised regulation is to continue to protect children from lead exposure by establishing standards for lead-based paint abatement in "target housing" and "child occupied-facilities." The primary purpose of these revisions is to make the Colorado regulation consistent with the recently adopted Federal regulations governing lead-based paint abatement. To accomplish this, revisions have been made to Sections II. (Definitions), III. (Training and Certification Requirements), IV. (Inspections, Lead Hazard Screens, and Risk Assessments) and V. (Abatement Requirements) of Regulation Number 19, Part A. Changes have also been made to the table in Appendix A, governing the number of sample that must be taken in clearing projects in multi-family dwellings constructed prior to 1978. The new table is consistent with the revised HUD Guidelines for Lead-Based Paint, and therefore serves to make Regulation Number 19, Part A consistent with the federal program.

Action Taken

In addition to the changes necessary to make the State program consistent with Federal requirements, certain additional changes were made in order to clarify program requirements. For example, surplus language was removed from the provisions set forth in Section III.B.1.b., while the language in Section IV.B.1 was expanded to clarify that risk assessments are to be conducted in accordance with requirements of Section IV. (Inspections, Lead Hazard Screens, and Risk Assessments). These changes are not substantive and are not intended to change any program requirements.

A limited number of minor substantive changes were made to remove obsolete provisions, correct unintended consequences of the old regulatory language, and eliminate unnecessarily burdensome requirements. For example, the notification fee table set forth in Section V.A.5.c. sets forth the amount of fees that need to be paid based on the size of the project. Due to errors in the table, fees for larger projects could actually be less than fees for smaller projects. These errors have been corrected to create a graduated fee schedule. Section V.J.3. of the old regulation required that a supervisor or project designer prepare an abatement report, but failed to specify a time frame for completion of the report, thereby rendering enforcement of this requirement difficult. The revisions correct this oversight by providing a ninety-day time frame for report completion. Finally, Section V.C.2.c. has been changed to eliminate the requirement that ventilation systems be shut down during level I-1 projects. This requirement was deemed unnecessary given the nature of such projects and the fact that vents must be adequately sealed prior to abatement.

Several changes were made with respect to certification requirements. EPA's regulations require that all abatement, inspection and risk assessment firms be certified. For some reason, the prior version of Regulation Number 19, Part A failed to require certification for inspection or risk assessment firms. The revisions correct this oversight. The revisions also set certification fees for risk assessment and inspection firms, as well as modify the fees for abatement firms. The fee levels were based on an analysis of the amount of money that needs to be collected through fees in order to cover the costs of the program as required pursuant to § 25-7-1105, C.R.S. Given the continued growth of the program, and the addition of certification fees for inspection and risk assessment firms, the fee levels for abatement firms were able to be substantially reduced. These new fees will apply to firms seeking certification after the effective date of these revisions. Firms certified prior to the effective date shall not be entitled to a refund of any previously paid fees.

Findings Pursuant to § 25-7-110.8, C.R.S.

These revisions are based on reasonably available, validated and reviewed, and sound scientific methodologies demonstrating that exposure to lead is hazardous to children under the age of seven, and that lead based-paint was commonly used in residences and child-occupied facilities prior to 1978. Interested parties did not provide the Commission with any other validated, reviewed and scientifically sound methodologies or information. Based on the evidence presented on the record, the requirements of this revised regulation will reduce the amount of airborne lead-contaminated dust occurring during lead-based paint abatement projects, and therefore reduce the risks to human health and the environment thereby justifying the costs associated with this regulation. The revisions represent the regulatory alternative presented to the Commission, which best balances cost-effectiveness, flexibility to the regulated community and maximization of air quality benefits.

III. Adopted: February 15, 2007 Revisions to Pre-Renovation Education in Target Housing in Regulation Number 19, Part B

Background

This Statement of Basis, Specific Statutory Authority and Purpose comply with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

In 1996 the U.S. Environmental Protection Agency (“US EPA”) promulgated a regulation that establishes the requirements that state programs must meet for authorization by the Administrator to administer requirements established under the Toxic Substance Control Act section 406 and establishes the procedures EPA will follow in approving state programs. (40 CFR 745, Subpart Q.) In 1998 the US EPA promulgated a regulation that requires contractors to provide owners and occupants a lead hazard information pamphlet before renovating target housing. (40 C.F.R. Part 745, Subpart E.) In 2006 the Colorado Legislature passed an act granting the Air Quality Control Commission (“Commission”) authority to promulgate a regulatory program for lead hazard education before renovation of target housing. (HB 06-1265, Concerning Additional Requirements Pertaining to Lead-Based Paint Abatement.)

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Section 25-7-1103(1)(f), C.R.S., which gives the Commission specific authority to promulgate regulations necessary to establish and implement requirements for each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

Purpose

The purpose of the proposed revised regulation is to continue to protect children from lead exposure by simply requiring contractors to distribute a lead hazard information pamphlet to owners and occupants of target housing before renovation takes place. This requirement already exists in Colorado under US EPA's *Lead; Requirements for Hazard Education Before Renovation of Target Housing*, final rule. Creating and implementing a state lead hazard education program allows Colorado to make improvements to the required pamphlet by including up-to-date and state-specific information and allows the State to take over lead hazard education outreach, compliance, and related enforcement activities from the US EPA, and therefore serves to make Regulation Number 19 consistent with the federal program.

Action Taken

In addition to the changes necessary to make the State program consistent with Federal requirements, certain additional changes were made in order to make the US EPA regulation work on a state level. For example, the US EPA's table of contents, self-references and references to other state and tribal programs do not make sense in the context of Colorado Air Quality Control Commission regulations.

Findings Pursuant to §25-7-110.8, C.R.S.

These revisions are based on reasonably available, validated and reviewed, and sound scientific methodologies, which demonstrate that exposure to lead is hazardous to children under the age of seven, and that lead-based paint was commonly used in residences prior to 1978.

The requirements of this revised regulation will allow individuals to reduce their exposure and their family's exposure to airborne lead-contaminated dust occurring during renovation projects, and therefore reduce the risks to human health.

Further, these revisions will include any typographical and grammatical errors throughout the regulation.

IV. Adopted: December 20, 2007 Revisions to Regulation Number 19 Part A, Sections III.B.1., III.B.5., III.B.6., and V.A.5.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted revisions to Part A, Sections III.B.1., III.B.5., III.B.6., and V.A.5. in order to increase the certification and permit fees charged to persons certified to perform lead-based paint activities in target housing and child-occupied facilities in Colorado, commencing in 2008. The increases are necessary to help offset increasing program costs.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Section 25-7-1105, C.R.S., which allows the Commission to adjust fees so that the revenue generated is sufficient to cover direct and indirect costs to implement the lead hazard reduction program.

Purpose

The revisions to Part A, Sections III.B.1., III.B.5., III.B.6., and V.A.5. were adopted to cover existing and anticipated revenue shortfalls.

V. Adopted: November 18, 2021 Revisions to Regulation Number 19, Parts A and B

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act ("Act"), and the Air Quality Control Commission's ("Commission") Procedural Rules

Basis

Regulation Number 19 sets forth the Commission's lead control program which is tailored after the Federal program. Subchapter IV of the Federal Toxic Substances Control Act ("TSCA") addresses Lead Exposure Reduction. *See* 15 U.S.C. §§ 2681-2692. The U.S. Environmental Protection Agency ("EPA") promulgated regulations implementing requirements for Lead-Based Paint Poisoning in Certain Residential Structures. *See* 40 C.F.R. 745, Subparts A-Q. Colorado has delegated authority from EPA to administer and enforce the lead control program. However, to receive and maintain such delegated authority, Colorado's lead control program must be at least as protective of human health and the environment as the Federal program, contain certain requirements and provide adequate enforcement. *See* 40 C.F.R 745, Subpart Q. These revisions to Regulation 19 ensure that Colorado's program is at least as protective as the Federal program and contains certain federal requirements. Additionally, certain definitions have been added, minor reorganization and language changes have been made to clarify the regulation and reference materials have been updated. Lastly, language has been added to clarify requirements for abatement activities; and extend the requirements of Part B to child-occupied facilities.

Specific Statutory Authority

The Act, §§ 25-7-101, C.R.S., *et seq.*, specifically § 25-7-105(1), gives the Commission general authority to promulgate rules and regulations, necessary for the proper implementation of the Act. Part 11 of the Act, §§ 25-7-1101, C.R.S., *et seq.,* addresses lead-based paint abatement. Section 25-7-1103, C.R.S. directs the Commission to promulgate such rules as are necessary to implement Part 11 "under the requirements of federal 'Residential Lead-Based Paint Hazard Reduction Act of 1992', 15 U.S.C. secs. 2682, 2684, and 2686", which is part of TSCA.

Section 25-7-1103(1)(a), C.R.S. directs the Commission to promulgate rules that address procedures for a training and certification program for persons and companies involved in inspection, risk assessment, planning, project design, supervision, or conduct of the abatement of surfaces containing lead-based paint. Section 25-7-1103(1)(c), C.R.S. directs the Commission to promulgate rules regarding procedures for the approval of persons or companies who provide training or accreditation for workers, supervisors, inspectors, risk assessors, or project designers performing lead-based paint activities in target housing or child-occupied facilities. Section 25-7-1103(1)(d), C.R.S. directs the Commission to promulgate rules that address procedures for notification to appropriate persons regarding lead-based paint projects in target housing or child-occupied facilities.

Purpose

The purpose of the revisions is to continue to protect children from lead exposure by establishing standards for lead-based paint abatement in "target housing" and "child occupied-facilities." A primary purpose of these revisions is to make the Colorado regulation consistent with updated Federal regulations as well as the Centers for Disease Control and Prevention (CDC) and the Colorado Board of Health (BOH) rule.

In addition to the changes necessary to make Colorado's program consistent with Federal requirements, certain changes were made in order to clarify program requirements.

The revisions also correct typographical, grammatical, and formatting errors found throughout the regulation, made global stylistic changes and reorganized the regulation to conform to current AQCC language requirements.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

PART A. LEAD-BASED PAINT ACTIVITES

Incorporated Materials (Section II.B.)

Section 24-4-103(12.5), C.R.S. of the State Administrative Procedure Act allows the Commission to incorporate by reference codes, standards, guidelines or rules. The Commission included updates to reference methods incorporated in Regulation Number 19.

Terms (Section II.B.)

The Commission updated definitions that were unclear or incomplete. The Commission also added definitions for Certified Lead Abatement Firm, Certified Lead Evaluation Firm, Movable Objects, Records and Zero-bedroom dwelling as these are all commonly used terms that were not previously defined.

In Section II.B.30., the Commission changed the numerical standard and testing protocols in the definition of Elevated Blood Level to mirror changes in the CDC definition as well as the BOH Rule.

In Sections II.B.48.b and II.B.49. respectively, the Commission lowered the numerical standards in the definitions of Dust-lead hazard and Lead-contaminated dust to mirror changes in the federal regulation.

Section III. Training and Certification Requirements

Certification Based on Prior Training (Section III.B.4)

The Commission removed this section as it is no longer applicable or used.

Recertification (Section III.B.5)

The Commission clarified the process for when and how an individual can be re-certified.

Certification of Lead Abatement or Lead Evaluation Firms (Section III.B.6.)

The Commission also clarified that cities, counties and municipalities or other governmental entity employing appropriately trained and certified personnel, as required by this Regulation 19, will be exempt from paying the Certified Lead Evaluation Firm fee. The Commission's intent in exempting these entities is to allow for the governmental agencies to provide a service to their constituents where commercial services are less readily available.

Section IV. Inspections, Lead-Hazard Screens, and Risk Assessments

In Section IV.H.3.a., the Commission updated the residual lead levels to ensure it is equally protective as the Federal regulation.

Section V. Abatement Requirements

General Requirements

The Commission clarified that persons intending to conduct lead-based paint abatement must comply with the requirements of Regulation Number 19 if at least one window is being abated.

Occupant Protection Plan (Section V.A.6.)

The Commission clarified what must be included in an occupant protection plan ("OPP") for the Division to understand and evaluate the OPP and that it must be submitted to the Division along with the permit application.

Window Abatement (Section V.E.3.)

The Commission clarified the steps that must be taken when abating windows and added a third abatement option.

Coating and Sealing (Section V.I.1.b.)

The Commission moved the section regarding when coating must be applied to abated surfaces to more accurately reflect when coatings should be applied during the abatement sequence.

Final Clearance (Section V.J.1.g.)

The Commission updated the clearance levels to comply with changes to the Federal regulation.

Final Clearance (Section V.J.3.d.)

The Commission required that the name and address of the certified Lead Evaluation Firm is included in the abatement report.

Recordkeeping (Section V.L.)

The Commission clarified that records must be available to the Division upon request in order to demonstrate compliance.

Alternative Procedures and Variances (Section V.M.)

The Commission added a requirement that within forty-five (45) days of the receipt of a variance request the Division will notify the applicant in writing of its decision to either grant or deny the variance. Previously, there was no timeframe for the Division to respond to a variance request.

PART B. PRE-RENOVATION EDUCATION IN TARGET HOUSING AND CHILD-OCCUPIED FACILITIES

Section I. Scope and Applicability

Definition of Minor Repair and Maintenance (Section I.B.1.)

The Commission clarified what minor repair and maintenance means, which is an activity that is exempt from Regulation Number 19, Part B requirements.

Section III. Information and Distribution Requirements

Renovations in child-occupied facilities (Section III.D)

The Commission added a section regarding information distribution in child-occupied facilities in order to be as stringent as Federal requirements. *See* 40 C.F.R. § 745.84(c).

Findings Pursuant to § 25-7-110.5(5), C.R.S.

EPA's lead rules do not limit states from developing more stringent requirements for lead. However, in accordance with C.R.S. § 25-7-110.5(5)(b) and after considering all of the evidence in the record, the Commission determines:

(I) EPA established national standards for lead. EPA's national rules do not limit states from developing more stringent requirements for lead.

(II) The federal rules discussed in (I) are primarily performance-based and there is flexibility in those requirements.

(III) The TSCA does not address the issues that are of concern to Colorado and did not take into account concerns unique to Colorado.

(IV) The proposed revisions will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements and increasing certainty.

(V) Federal lead regulation has already been implemented in Colorado, however changes to this federal regulation requires updates to ensure Regulation 19 is equally as protective.

(VI) The proposed revisions will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.

(VII) The proposed revisions maintain reasonable equity in the requirements for various sources by evaluating the overall concerns and instituting the same requirements to reduce and/or eliminate lead-based paint poisoning in certain residential structures.

(VIII) Colorado residents and building owners may face increased costs from lead-based paint poisoning if the proposed revisions are not adopted.

(IX) The proposed revisions include minimal monitoring, recordkeeping, and procedural requirements that correlate to the federal requirements.

(X) Demonstrated technology is available to comply with the proposed revisions since the revisions will only clarify what has already been implemented or previously enforced by other agencies.

(XI) As set forth in the Economic Impact Analysis, the proposed revisions contribute to the prevention of harmful lead-based paint poisoning in a cost-effective manner.

(XII) Although alternative revisions may reduce lead exposure, the Commission determined that the Division's proposal was reasonable and cost-effective.

Findings Pursuant to §25-7-110.8, C.R.S.

After considering all of the information in the record, the Commission makes the determination that:

(I) These revisions are based on reasonably available, validated and reviewed, and sound scientific methodologies demonstrating that exposure to lead creates a public health hazard. The Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the requirements of these revisions will reduce public exposure to lead-based paint poisoning and therefore reduce the risks to human health and the environment thereby justifying the costs associated with this regulation.

(III) Evidence in the record supports the finding that the revisions are the most cost-effective, which best balances cost-effectiveness, flexibility to the regulated community and maximization of air quality benefits

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Office of the Attorney General

Tracking number: 2021-00517

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 11/18/2021

5 CCR 1001-23

REGULATION NUMBER 19 THE CONTROL OF LEAD HAZARDS

The above-referenced rules were submitted to this office on 11/18/2021 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.

December 02, 2021 10:50:50

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 1

Rule title

6 CCR 1007-2 Part 1 SOLID WASTE SITES AND FACILITIES 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Section 10 Waste Tire Amendments

(Adopted by the Solid and Hazardous Waste Commission on November 16, 2021)

1) Amend Section 10.12.5 (Rebate Amount) by revising paragraph (B) to read as follows:

10.12 WASTE TIRE END USERS FUND

10.12.5 REBATE AMOUNT

A. The Department will pay the rebate amount on a per-ton basis.

B. Beginning January 1, 2022, the amount of the rebate is as follows:

(1) Tier 1: $80 per ton;

(2) Tier 2: $40 per ton;

(3) Tier 3: $20 per ton; and

(4) Waste Tire Hauler: $20 per ton.

C. If the tons approved for the rebate in any one quarter multiplied by the amount of the rebate rates in Section 10.12.5(B) exceeds the balance of the Fund, then the Department must reduce the per ton amount of the rebate that quarter to a rate that will not cause a deficit in the Fund. The Department must reduce the per ton rates proportionally until all rebate funds are exhausted.

Any applicant who does not receive a full rebate due to not enough moneys in the Fund cannot later claim the missing funds in a later application submittal or request.

D. Twenty-five percent of the expected annual rebate amount will be held in reserve before paying the first quarterly rebate.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Hazardous Materials and Waste Management Division

on 11/16/2021

6 CCR 1007-2 Part 1

SOLID WASTE SITES AND FACILITIES

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.

December 02, 2021 10:43:18

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 1

Rule title

6 CCR 1007-2 Part 1 SOLID WASTE SITES AND FACILITIES 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Amendment of Section 13 Medical Waste Regulations

(Adopted by the Solid and Hazardous Waste Commission on November 16, 2021)

1) Amend Section 13.2.5 to read as follows:

13.2 GENERAL PROVISIONS

****

13.2.5 Incorporation by Reference.

(A) References to material incorporated by reference in this Section 13 refer to those versions in effect on November 16, 2021, and do not include any later amendments or editions.

(B) Information concerning all materials or regulations incorporated by reference may be obtained by contacting:

Regulatory and Program Authorization Coordinator
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

(C) The specific materials or regulations incorporated by reference in these regulations are available for public examination during normal business hours at the Department. All federal agency regulations incorporated by reference herein are available, at no cost, in the online edition of the Code of Federal Regulations (CFR) hosted by the United States Government Printing Office, online at www.govinfo.gov.

****

2) Amend Section 13.3 by revising paragraphs 13.3.1(B) – (B)(2), and revising paragraph 13.3.2 to read as follows:

13.3 CERTIFICATE OF DESIGNATION REQUIRED

13.3.1 Exemptions - the following sites and facilities shall be approved sites and facilities for which it shall not be necessary to obtain a Certificate of Designation unless the Department determines that the site or facility may adversely affect human health and the environment:

(A) *******

(B) Medical waste generators that operate equipment for treatment of medical wastes generated onsite or that is generated through the normal operation of their business at other locations operated by the same business and self-transported by private motor carrier from their other locations for consolidation and/or treatment that:

(1) are in compliance with:

(i) Section 13.3.1(A).

(ii) Section 13.6 Standards for Medical Waste Treatment; and

(2) Notify the Department that they perform onsite treatment of medical waste. Onsite treatment notification is a one-time notification that must be sent to the Department prior to initiating treatment operations, or for facilities that are currently treating medical waste, within 90 days of the effective date of this regulation.

****

13.3.2 No person, unless exempted under Section 13.3.1, shall operate a medical waste treatment, processing or disposal facility without having received a Certificate of Designation in accordance with Section 1.6 of these regulations.

****

3) Amend Section 13.5 by deleting and reserving paragraph 13.5.2(C) to read as follows:

13.5 STANDARDS FOR COMMERCIAL MEDICAL WASTE STORAGE FACILITIES

****

13.5.2 Commercial medical waste storage facilities must comply with:

(A) Section 13.1 Applicability.

(B) Section 13.2 General Provisions.

(C) Reserved

(D) Section 13.7 Engineering Design and Operations Plan Requirements.

(E) Section 13.8 Operating Requirements.

(F) Section 13.10 Transportation Requirements.

4) Amend Section 13.7 by revising paragraph 13.7.2(C)(4) to read as follows:

13.7 ENGINEERING DESIGN AND OPERATION PLAN REQUIREMENTS FOR COMMERCIAL STORAGE AND TREATMENT FACILITIES

****

(C) The Engineering Design and Operations Plan shall contain the following operational information.

****

(4) A waste characterization and acceptance plan, including waste screening methods to be used, radioactive material scanning, waste exclusion procedures and rejection of prohibited wastes, handling methods for wastes that require special or non-standard handling, and a contingency plan for handling prohibited wastes.

****

****

5) Amend Section 13.9.3 by revising paragraphs 13.9.3(D) and 13.9.3(E) to read as follows:

13.9 STANDARDS FOR MEDICAL WASTE DISPOSAL

****

13.9.3 Trace chemotherapy waste and waste pharmaceuticals.

****

(D) Waste pharmaceuticals that contain controlled substances must be managed in accordance with the US DEA requirements in 21 CFR 1307.11 or 21 CFR 1317.

(E) Waste pharmaceuticals that are both hazardous waste and contain controlled substances must be managed in accordance with the Colorado Hazardous Waste Act (Title 25 Article 15 Parts 1, 2, 3, and 5 CRS, as amended) and implementing regulations (6 CCR 1007-3) and the US DEA requirements in 21 CFR 1307.11 or 21 CFR 1317.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Hazardous Materials and Waste Management Division

on 11/16/2021

6 CCR 1007-2 Part 1

SOLID WASTE SITES AND FACILITIES

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.

December 02, 2021 10:41:15

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

6 CCR 1007-3 HAZARDOUS WASTE 1 - eff 01/14/2022

Effective date

01/14/2022

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-3

HAZARDOUS WASTE

Modification of Universal Waste Regulations Regarding Aerosol Cans

(Adopted by the Solid and Hazardous Waste Commission on November 16, 2021)

1) Amend Section 260.10 by revising the definitions of “Aerosol can", and “Universal Waste Handler” to read as follows:

§ 260.10 Definitions

****

"Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

****

"Universal Waste Handler":

(1) Means:

(i) A generator (as defined in this section) of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats (except under the provisions of § 273.13(a), (c), (d), (e), or (f), or § 273.33(a), (c), (d), (e), or (f)), disposes of, or recycles (except under the provisions of § 273.13(d) or § 273.33(d)) universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

****

2) Amend Section 273.2 by revising paragraph (b)(2)(ii) to read as follows:

§ 273.2 Applicability.

****

(b) Applicability -- pesticides.

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(2) **Pesticides not covered under Part 273.**

The requirements of this part do not apply to persons managing the following pesticides:

****

(ii) Pesticides not meeting the conditions set forth in paragraph (b)(1) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in Parts 260 through 268, and Parts 99 and 100 of these regulations except that aerosol cans as defined in § 273.9 that contain pesticides may be managed as aerosol can universal waste under § 273.13(d) or § 273.33(d));

******

****

3) Amend Section 273.2 by adding paragraph (d)(2)(iii) and revising paragraph (d)(3)(i) to read as follows:

(d) Applicability -- Aerosol cans.

(1) Aerosol cans covered under Part 273. The requirements of this part apply to persons managing aerosol cans as described in § 273.9 of this part, except those listed in paragraph (d)(2) of this section.

(2) Aerosol cans not covered under Part 273. The requirements of this part do not apply to persons managing the following aerosol cans:

(i) Aerosol cans, as described in § 273.9, that are not yet wastes under Part 261 of these regulations, including those that do not meet the criteria for waste generation in paragraph (d)(3) of this section.

(ii) Aerosol cans, as described in § 273.9, that are not hazardous waste. An aerosol can must be managed as a hazardous waste if its contents exhibit one or more of the characteristics

identified in Part 261, Subpart C of these regulations, or if its contents are listed in Part 261, Subpart D of these regulations.

(iii) Aerosol cans that meet the standard for empty containers under § 261.7 of these regulations.

(3) Generation of waste aerosol cans.

(i) A used aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of these regulations, an aerosol can is considered to be no longer useable when: the can is as empty as proper work practices allow; the spray mechanism no longer operates as designed; the propellant is spent; or the product is no longer used.

(ii) An unused aerosol can becomes a waste on the date the handler decides to discard it.

4) Amend Section 273.9 by revising the definitions of “Aerosol can” and “Universal Waste Handler” to read as follows:

§ 273.9 Definitions

"Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

****

Universal Waste Handler:

(a) Means:

(1) A generator (as defined in this section) of universal waste; or

(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

(1) A person who treats (except under the provisions of § 273.13(a), (c), (d), (e), or (f), or § 273.33(a), (c), (d), (e), or (f)), disposes of, or recycles (except under the provisions of § 273.13(d) or § 273.33(d)) universal waste; or

(2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

****

5) Amend Section 273.13 by revising paragraphs (c)(2)(iii) and (iv) to read as follows:

(c) **Universal waste mercury-containing devices**: A small quantity handler of universal waste must manage universal waste mercury-containing devices in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

****

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing devices provided the handler:

****

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that is subject to all applicable requirements of Parts 260 through 268 and Parts 99 and 100 of these regulations;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that is subject to all applicable requirements of Parts 260 through 268 and Parts 99 and 100 of these regulations;

****

****

6) Section 273.13(d) is amended to read as follows:

§ 273.13 Waste management.

****

(d) **Universal Waste Aerosol Cans**. A small quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (d)(4) of this section.

(3) A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) Sorting aerosol cans by type;

(ii) Mixing intact cans in one container; and

(iii) Removing actuators to reduce the risk of accidental release.

(4) A small quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of § 262.14, § 262.15, § 262.16, or § 262.17 of these regulations.

(v) Conduct a hazardous waste determination on the contents of the emptied aerosol can per § 262.11 of these regulations. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of Parts 260 through 268 and Parts 99 and 100 of these regulations. The handler is considered the generator of the hazardous waste and is subject to Part 262 of these regulations.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

****

7) Amend Section 273.14 by revising paragraph (e) to read as follows:

§ 273.14 Labeling/marking.

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

****

(e) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the universal waste aerosol cans are contained or accumulated, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Aerosol Can(s)", "Waste Aerosol Can(s)" or “Used Aerosol Can(s)”.

****

8) Amend Section 273.33 by revising paragraphs (c)(2)(iii) and (iv) to read as follows:

(c) Universal waste mercury-containing devices: A large quantity handler of universal waste must manage universal waste mercury-containing devices in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

****

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing devices provided the handler:

****

(iii) ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that is subject to all applicable requirements of Parts 260 through 268 and Parts 99 and 100 of these regulations;

(iv) immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that is subject to all applicable requirements of Parts 260 through 268 and Parts 99 and 100 of these regulations;

****

.

****

9) Amend Section 273.33(d) to read as follows:

§ 273.33 Waste management.

****

(d) **Universal Waste Aerosol Cans**. A large quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (d)(4) of this section.

(3) A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) Sorting aerosol cans by type;

(ii) Mixing intact cans in one container; and

(iii) Removing actuators to reduce the risk of accidental release.

(4) A large quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of § 262.14, § 262.15, § 262.16, or § 262.17 of these regulations.

(v) Conduct a hazardous waste determination on the contents of the emptied aerosol can per § 262.11 of these regulations. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of Parts 260 through 268 and Parts 99 and 100 of these regulations. The handler is considered the generator of the hazardous waste and is subject to Part 262 of these regulations.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

****

10) Amend Section 273.34 by revising paragraph (e) to read as follows:

§ 273.34 Labeling/marking.

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

****

(e) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the universal waste aerosol cans are contained or accumulated, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Aerosol Can(s)", "Waste Aerosol Can(s)" or “Used Aerosol Can(s)”.

****

11) Add Section 8.98 (Statement of Basis for the Rulemaking Hearing of November 16, 2021) to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of November 16, 2021

8.98 Basis and Purpose.

These amendments to 6 CCR 1007-3, Parts 260 and 273 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of Universal Waste Regulations Regarding Aerosol Cans

On January 16, 1996, Colorado adopted state regulations for the management of aerosol cans as universal waste under Part 273 of the Colorado Hazardous Waste Regulations (6 CCCR 1007-3).

On December 9, 2019, the Environmental Protection Agency (EPA) issued a final rule adding aerosol cans to the federal list of universal wastes regulated under the standards for universal waste management found at 40 CFR Part 273.

The adoption of these amendments to Colorado's Hazardous Waste Regulations and Part 273 Universal Waste Management Standards are minor conforming changes necessary to maintain state equivalency to and provide consistency with the federal requirements.

The amendments being adopted as part of this rulemaking include the following:

a. Revision of the definitions of "Aerosol can" and "Universal Waste Handler" in § 260.10 and § 273.9: The definition of "Aerosol can" is being revised to be consistent with the Department of Transportation (DOT) regulations. As revised, "Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas. The definition of "Universal Waste Handler" is being modified to clarify that a universal waste handler does not apply to a person who recycles universal waste aerosol cans, except under the waste management standards of § 273.13(d) for small quantity handlers (SQHs) of universal waste aerosol cans and the waste management standards of § 273.33(d) for large quantity handlers (LQHs) of universal waste aerosol cans.

b. Revision of the § 273.2(b) applicability standards for pesticides: § 273.2(b)(2)(ii) is being amended to clarify that aerosol cans as defined in § 273.9 that contain pesticides may be managed as aerosol can universal waste under § 273.13(d) or § 273.33(d).

c. Revision of the § 273.2(d) applicability standards for aerosol cans: § 273.2(d)(2)(iii) is being added to specify that the requirements of Part 273 do not apply to aerosol cans that meet the standard for empty containers under § 261.7 of the regulations. § 273.2(d)(3)(i) is being revised to state that a "used" aerosol can becomes a waste on the date it is discarded.

d. Revision of § 273.13(c)(2)(iii) and (iv): The waste management standards for small quantity handlers of universal waste mercury-containing devices at § 273.13(c)(2)(iii) and (iv) of the regulations are being revised to require that mercury from broken ampules be transferred to a

container subject to all applicable requirements of Parts 260 through 268 and Part 99 and 100 of the regulations.

e. Revision of § 273.13(d): The waste management standards at § 273.13(d) for SQHs of universal waste aerosol cans are being re-organized and revised to align with the federal requirements of 40 CFR § 273.13(e).

f. Revision of § 273.14(e): The labeling/marking requirements § 273.14(e) for SQHs of universal waste aerosol cans are being revised to allow the SQH to label the aerosol can or the container in which aerosol cans are contained or accumulated to be labeled as “Used Aerosol Can(s)”.

g. Revision of § 273.33(c)(2)(iii) and (iv): The waste management standards for large quantity handlers of universal waste mercury-containing devices at § 273.33(c)(2)(iii) and (iv) of the regulations are being revised to require that mercury from broken ampules be transferred to a container subject to all applicable requirements of Parts 260 through 268 and Part 99 and 100 of the regulations.

h. Revision of § 273.33(d): The waste management standards at § 273.33(d) for LQHs of universal waste aerosol cans are being re-organized and revised to align with the federal requirements of 40 CFR § 273.33(e).

i. Revision of § 273.34(e): The labeling/marking requirements § 273.34(e) for LQHs of universal waste aerosol cans are being revised to allow the LQH to label the aerosol can or the container in which aerosol cans are contained or accumulated to be labeled as “Used Aerosol Can(s)”.

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for the EPA regulations as published in the Federal Register at 84 FR 67202-67220, December 9, 2019.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2021-00662

Opinion of the Attorney General rendered in connection with the rules adopted by the

Hazardous Materials and Waste Management Division

on 11/16/2021

6 CCR 1007-3

HAZARDOUS WASTE

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.

December 02, 2021 10:40:04

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 - Colorado Medical Board

CCR number

3 CCR 713-49

Rule title

3 CCR 713-49 Rules Regarding the Use of Benzodiazepines 1 - eff 11/18/2021

Effective date

11/18/2021

Expiration date

03/18/2022

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

Rule 180 – Rules Regarding the Use of Benzodiazepines

3 CCR 713-49

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

49.1 INTRODUCTION

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204(1), 12-240-106(1)(a), and 12-240-123, C.R.S. The specific statutory authority for the promulgation of this Rule is section 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.

49.2 RULES AND REGULATIONS

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 12-240-121, 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 medical practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for an EMERGENCY RULE

Colorado Medical Board

On June 28, 2021, Governor Jared Polis signed Colorado House Bill 21-1276 (*Concerning the prevention of substance use disorders*). This bill became effective on November 1, 2021.

BASIS
The basis for this rule is to carry out the provisions of Colorado House Bill 21-1276, and the Medical Practice Act at section 12-240-101, *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 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), 12-240-106(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 18, 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 18th day of November 2021.

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: 2021-00749

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 11/18/2021

3 CCR 713-49

RULE 180 - RULES REGARDING THE USE OF BENZODIAZEPINES

The above-referenced rules were submitted to this office on 11/18/2021 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.

December 02, 2021 11:02:36

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 11/18/2021

Effective date

11/18/2021

Expiration date

03/18/2022

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.]

…

1.29 RULES REGARDING THE USE OF BENZODIAZEPINES

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204(1), 12-275-108(1)(b), and 12-275-113(5), C.R.S. The specific statutory authority for the promulgation of this Rule is section 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 12-275-120, 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 optometry practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

…

Editor's Notes

History

Rules 14, 15 eff. 08/01/2009.
Rules 9, 14, 15 eff. 01/01/2010.
Rule 15 repealed eff. 09/30/2010.
Rules 9, 14 eff. 01/01/2011.
Rule 11 eff. 07/01/2011.
Rules 9.01, 17-19 eff. 12/30/2011.
Rule 16 eff. 03/01/2012.
Entire rule eff. 07/15/2014.
Rules 1.8 A.5, 1.8 B.5, 1.22 eff. 12/15/2019.
Rule 1.27 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.28 emer. rule eff. 05/11/2020; expired 09/08/2020.
Entire rule eff. 07/15/2020. Rules 1.9, 1.14, 1.17 repealed eff. 07/15/2020.
Rule 1.27 emer. rule eff. 08/30/2020.
Rule 1.28 emer. rule eff. 09/09/2020.
Rules 1.27, 1.28 emer. rules eff. 12/28/2020.
Rule 1.26, Appendix A eff. 12/30/2020.
Rule 1.29 emer. rule eff. 01/11/2021.
Rules 1.27, 1.28 emer. rules eff. 04/27/2021.
Rule 1.29 emer. rule eff. 05/11/2021.
Rules 1.27, 1.28 emer. rules eff. 07/12/2021.
Rules 1.26, Appendix A eff. 07/15/2021.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for an EMERGENCY RULE

State Board of Optometry

On June 28, 2021, Governor Jared Polis signed Colorado House Bill 21-1276 (*Concerning the prevention of substance use disorders*). This bill became effective on November 1, 2021.

BASIS
The basis for this rule is to carry out the provisions of Colorado House Bill 21-1276, and the Optometrists Practice Act at section 12-275-101, *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 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), 12-275-108(1)(b), 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 18, 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 18th day of November, 2021.

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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Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2021-00748

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - State Board of Optometry

on 11/18/2021

4 CCR 728-1

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 11/18/2021 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.

December 08, 2021 13:38:16

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/23/2021

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

December 25, 2021

Raise Base Wage for Pediatric Personal Care Direct Care Workers to $15/hour

The Department of Health Care Policy and Financing (Department) intends to submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to increase the rate for pediatric personal care services to support a $15/hour base wage for direct care workers providing pediatric personal care services, effective January 1, 2022. The Department has received state and federal approval to use American Rescue Plan Act (ARPA) funding to increase direct care worker wages as of January 1, 2022. This rate increase impacts direct care workers providing pediatric personal care services by increasing the base wage to $15/hour.

The annual aggregate increase in pediatric personal care expenditures (including state funds and federal funds) is $197,835 in FFY 2022 and $263,780 in FFY 2023.

General Information

A link to this notice will be posted on the Department's website starting on December 25, 2021. Written comments may be addressed to:

Director, Health Programs Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

County Contact Information

Copies of the proposed changes are available for public review at the following county locations:

County Name	Official Name	Physical Address	Mailing Address
Adams	Adams County Human Services Department	11860 Pecos Street Westminster, CO 80234	Same as physical

Alamosa	Alamosa County Department of Human Services	8900 C Independence Way, Alamosa, CO 81101	PO Box 1310, Alamosa, CO 81101
Arapahoe	Arapahoe County Human Services	14980 E. Alameda Dr., Aurora, CO 80012	14980 E. Alameda Dr., Aurora, CO 80012
Arapahoe	Satellite Office	1690 W. Littleton Blvd., Littleton, CO 80120	
Archuleta	Archuleta County Human Services	551 Hot Springs Blvd., Pagosa Springs, CO 81147	PO Box 240, Pagosa Springs, CO 81147
Baca	Baca County Department of Social Services	772 Colorado St. Ste #1, Springfield, CO 81073	Same as physical
Bent	Bent County Social Services	138 6th Street, Las Animas, CO 81054	Same as physical
Boulder	Boulder County Department of Housing & Human Services	3400 Broadway, Boulder, CO 80304	PO Box 471, Boulder, CO 80306
Broomfield	Broomfield Health and Human Services	100 Spader Way, Broomfield, CO 80020	Same as physical
Chaffee	Chaffee County Department of Human Services	448 E. 1st St, Ste 166, Salida, CO 81201	PO Box 1007, Salida, CO 81201
Cheyenne	Cheyenne County Department of Human Services	560 W. 6 N, Cheyenne Wells, CO 80810	PO Box 146, Cheyenne Wells, CO 80810
Conejos	Conejos County Department of Social Services	12989 Cty. Rd. G.6, Conejos, CO 81129	PO Box 68, Conejos, CO 81129
Costilla	Costilla County Department of Social Services	233 Main St, San Luis, CO 81152	Same as physical
Crowley	Crowley County Department of Human Services	631 Main Street Ste 100, Ordway, CO 81063	Same as physical
Custer	Custer County Department of Human Services	205 S. 6th St., Westcliffe, CO 81252	PO Box 929 Westcliffe, CO 81252
Delta	Delta County Department of Human Services	560 Dodge St, Delta, CO 81416	Same as physical
Denver	Denver Department of Human Services	1200 Federal Blvd, Denver, CO 80204	Same as physical
Dolores	Dolores County Department of Social Services	409 Main Street, Dove Creek, CO 81324	PO Box 485 Dove Creek, CO 81324
Douglas	Douglas County Department of Human Services	4400 Castleton Court, Castle Rock, CO 80109	Same as physical

Eagle	Eagle County Department of Human Services	551 Broadway, Eagle, CO 81631	PO Box 660, Eagle, CO 81631
El Paso	El Paso County Department of Human Services	1675 W. Garden of the Gods Road, Colorado Springs, CO 80907	Same as physical
Elbert	Elbert County Health and Human Services	75 Ute. Ave, Kiowa, CO 80117	PO Box 924, Kiowa, CO 80117
Fremont	Fremont County Department of Human Services	172 Justice Center Road, Canon City, CO 81212	Same as physical
Garfield	Garfield County Department of Human Services	195 W. 14th St., Rifle, CO 81650	Same as physical
Gilpin	Gilpin County Department of Human Services	2960 Dory Hill Rd. Ste 100, Black Hawk, CO 80422	Same as physical
Grand	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Huerfano	Huerfano County Department of Social Services	121 W. 6th St., Walsenburg, CO 81089	Same as physical
Jackson	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Jefferson	Jefferson County Human Services	900 Jefferson County Parkway, Golden, CO 80401	Same as physical
Kiowa	Kiowa County Department of Social Services	1307 Maine St., Eads, CO 81036	PO Box 187, Eads, CO 81036-0187
Kit Carson	Kit Carson County Department of Human Services	252 S. 14th St., Burlington, CO 80807	PO Box 70, Burlington, CO 80807
La Plata	La Plata County Department of Human Services	10 Burnett Court 1st Floor, Durango, CO 81301	Same as physical
Lake	Lake County Department of Human Services	112 W. 5th St. Leadville, CO 80461	PO Box 884 Leadville, CO 80461
Larimer	Larimer County	1501 Blue Spruce Drive	Same as physical
Las Animas	Las Animas County Department of Human Services	204 S. Chestnut St., Trinidad, CO 81082	Same as physical
Lincoln	Lincoln County Department of Human Services	103 3rd Ave, Hugo, CO 80821	PO Box 37, Hugo, CO 80821
Logan	Logan County Department of Human Services	508 S. 10th Ave, STE B, Sterling, CO 80751	Same as physical

Mesa	Mesa County Department of Human Services	510 29 1/2 Rd, Grand Junction, CO 81504	PO Box 20000, Grand Junction, CO 81502
Mineral	Rio Grande/Mineral County Department of Social Services	1015 6th St, Del Norte, CO 81132	Same as physical
Moffat	Moffat County Department of Social Services	595 Breeze St., Craig, CO 81625	Same as physical
Montezuma	Montezuma County Department of Social Services	109 W. Main St. Room 2013, Cortez, CO 81321	Same as physical
Montrose	Montrose County Health & Human Services	1845 S. Townsend Ave., Montrose, CO 81401	PO Box 216, Montrose, CO 81402-216
Morgan	Morgan County Department of Human Services	800 E. Beaver Ave., Fort Morgan, CO 80701	PO Box 220, Fort Morgan, CO 80701
Otero	Otero County Department of Human Services	215 Raton Ave, La Junta, CO 81050	PO Box 494, La Junta, CO 81050
Ouray	Ouray DSS	177 Sherman St., Unit 104, Ridgway, CO 81432	PO Box 530 Ridgway, CO 81432
Phillips	Phillips County Department of Social Services	127 E Denver St., Holyoke, CO, 80734	Same as physical
Pitkin	Pitkin County Department of Health and Human Services	0405 Castle Creek Rd., Suite 104, Aspen, CO 81611	Same as physical
Pueblo	Pueblo County Department of Social Services	201 W. 8th St, Pueblo, CO 81003	320 W. 10th St, Pueblo, CO 81003
Rio Blanco	Rio Blanco County Department of Health and Human Services	345 Market St., Meeker, CO 81641	Same as physical
Routt	Routt County Department of Human Services	135 6th St., Steamboat Springs, CO 80477	PO Box 772790, Steamboat Springs, CO 80477
Saguache	Saguache County Department of Social Services	605 Christy Ave, Saguache, CO 81149	PO Box 215, Saguache, CO 81149
San Miguel	San Miguel DSS	333 W. Colorado Ave, Telluride, CO 81435 (San Miguel);	PO Box 96 Telluride, CO 81435
Sedgwick	Sedgwick County Human Services	118 W. 3rd St., Julesburg, CO 80737	PO Box 27, Julesburg, CO 80737
Washington	Washington County DHS	126 W. 5th St., Akron, CO 80720	PO Box 395, Akron, CO 80720

Yuma	Yuma County Department of Human Services	340 S. Birch, Wray, CO 80758	Same as physical

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/23/2021

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

PUBLIC NOTICE

December 25, 2021

Prudent Layperson Standard for Emergency Department Cost Sharing

The Department of Health Care Policy and Financing (Department) intends to submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to apply a prudent layperson standard for cost-sharing imposed for non-emergency use of a hospital's emergency department, effective January 1, 2022. For cost sharing to be imposed on a member seeking non-emergency services in a hospital emergency department, the hospital must first provide the appropriate medical screening examination required by the Emergency Medical Treatment and Labor Act (EMTALA) and ancillary services such as laboratory and radiology, in accordance with 42 CFR 489.24, subpart G, to determine that the medical condition does not meet the following emergency care services definition:

> "Emergency care services means services for a medical condition, including active labor and delivery, manifested by acute systems of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in: (1) placing the client's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part."

The annual aggregate increase in emergency care services expenditures (including state funds and federal funds) is $0 in FFY 2022 and $0 in FFY 2023.

General Information

A link to this notice will be posted on the Department's website starting on December 25, 2021. Written comments may be addressed to:

Director, Health Programs Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

County Contact Information

Copies of the proposed changes are available for public review at the following county locations:

County Name	Official Name	Physical Address	Mailing Address
Adams	Adams County Human Services Department	11860 Pecos Street Westminster, CO 80234	Same as physical
Alamosa	Alamosa County Department of Human Services	8900 C Independence Way, Alamosa, CO 81101	PO Box 1310, Alamosa, CO 81101
Arapahoe	Arapahoe County Human Services	14980 E. Alameda Dr., Aurora, CO 80012	14980 E. Alameda Dr., Aurora, CO 80012
Arapahoe	Satellite Office	1690 W. Littleton Blvd., Littleton, CO 80120	
Archuleta	Archuleta County Human Services	551 Hot Springs Blvd., Pagosa Springs, CO 81147	PO Box 240, Pagosa Springs, CO 81147
Baca	Baca County Department of Social Services	772 Colorado St. Ste #1, Springfield, CO 81073	Same as physical
Bent	Bent County Social Services	138 6th Street, Las Animas, CO 81054	Same as physical
Boulder	Boulder County Department of Housing & Human Services	3400 Broadway, Boulder, CO 80304	PO Box 471, Boulder, CO 80306
Broomfield	Broomfield Health and Human Services	100 Spader Way, Broomfield, CO 80020	Same as physical
Chaffee	Chaffee County Department of Human Services	448 E. 1st St, Ste 166, Salida, CO 81201	PO Box 1007, Salida, CO 81201
Cheyenne	Cheyenne County Department of Human Services	560 W. 6 N, Cheyenne Wells, CO 80810	PO Box 146, Cheyenne Wells, CO 80810
Conejos	Conejos County Department of Social Services	12989 Cty. Rd. G.6, Conejos, CO 81129	PO Box 68, Conejos, CO 81129
Costilla	Costilla County Department of Social Services	233 Main St, San Luis, CO 81152	Same as physical
Crowley	Crowley County Department of Human Services	631 Main Street Ste 100, Ordway, CO 81063	Same as physical
Custer	Custer County Department of Human Services	205 S. 6th St., Westcliffe, CO 81252	PO Box 929 Westcliffe, CO 81252
Delta	Delta County Department of Human Services	560 Dodge St, Delta, CO 81416	Same as physical

Denver	Denver Department of Human Services	1200 Federal Blvd, Denver, CO 80204	Same as physical
Dolores	Dolores County Department of Social Services	409 Main Street, Dove Creek, CO 81324	PO Box 485 Dove Creek, CO 81324
Douglas	Douglas County Department of Human Services	4400 Castleton Court, Castle Rock, CO 80109	Same as physical
Eagle	Eagle County Department of Human Services	551 Broadway, Eagle, CO 81631	PO Box 660, Eagle, CO 81631
El Paso	El Paso County Department of Human Services	1675 W. Garden of the Gods Road, Colorado Springs, CO 80907	Same as physical
Elbert	Elbert County Health and Human Services	75 Ute. Ave, Kiowa, CO 80117	PO Box 924, Kiowa, CO 80117
Fremont	Fremont County Department of Human Services	172 Justice Center Road, Canon City, CO 81212	Same as physical
Garfield	Garfield County Department of Human Services	195 W. 14th St., Rifle, CO 81650	Same as physical
Gilpin	Gilpin County Department of Human Services	2960 Dory Hill Rd. Ste 100, Black Hawk, CO 80422	Same as physical
Grand	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Huerfano	Huerfano County Department of Social Services	121 W. 6th St., Walsenburg, CO 81089	Same as physical
Jackson	Grand County Department of Social Services	620 Hemlock St., Hot Sulphur Springs, CO 80451	PO Box 204, Hot Sulphur Springs, CO 80451
Jefferson	Jefferson County Human Services	900 Jefferson County Parkway, Golden, CO 80401	Same as physical
Kiowa	Kiowa County Department of Social Services	1307 Maine St., Eads, CO 81036	PO Box 187, Eads, CO 81036-0187
Kit Carson	Kit Carson County Department of Human Services	252 S. 14th St., Burlington, CO 80807	PO Box 70, Burlington, CO 80807
La Plata	La Plata County Department of Human Services	10 Burnett Court 1st Floor, Durango, CO 81301	Same as physical
Lake	Lake County Department of Human Services	112 W. 5th St. Leadville, CO 80461	PO Box 884 Leadville, CO 80461
Larimer	Larimer County	1501 Blue Spruce Drive	Same as physical

Las Animas	Las Animas County Department of Human Services	204 S. Chestnut St., Trinidad, CO 81082	Same as physical
Lincoln	Lincoln County Department of Human Services	103 3rd Ave, Hugo, CO 80821	PO Box 37, Hugo, CO 80821
Logan	Logan County Department of Human Services	508 S. 10th Ave, STE B, Sterling, CO 80751	Same as physical
Mesa	Mesa County Department of Human Services	510 29 1/2 Rd, Grand Junction, CO 81504	PO Box 20000, Grand Junction, CO 81502
Mineral	Rio Grande/Mineral County Department of Social Services	1015 6th St, Del Norte, CO 81132	Same as physical
Moffat	Moffat County Department of Social Services	595 Breeze St., Craig, CO 81625	Same as physical
Montezuma	Montezuma County Department of Social Services	109 W. Main St. Room 2013, Cortez, CO 81321	Same as physical
Montrose	Montrose County Health & Human Services	1845 S. Townsend Ave., Montrose, CO 81401	PO Box 216, Montrose, CO 81402-216
Morgan	Morgan County Department of Human Services	800 E. Beaver Ave., Fort Morgan, CO 80701	PO Box 220, Fort Morgan, CO 80701
Otero	Otero County Department of Human Services	215 Raton Ave, La Junta, CO 81050	PO Box 494, La Junta, CO 81050
Ouray	Ouray DSS	177 Sherman St., Unit 104, Ridgway, CO 81432	PO Box 530 Ridgway, CO 81432
Phillips	Phillips County Department of Social Services	127 E Denver St., Holyoke, CO, 80734	Same as physical
Pitkin	Pitkin County Department of Health and Human Services	0405 Castle Creek Rd., Suite 104, Aspen, CO 81611	Same as physical
Pueblo	Pueblo County Department of Social Services	201 W. 8th St, Pueblo, CO 81003	320 W. 10th St, Pueblo, CO 81003
Rio Blanco	Rio Blanco County Department of Health and Human Services	345 Market St., Meeker, CO 81641	Same as physical
Routt	Routt County Department of Human Services	135 6th St., Steamboat Springs, CO 80477	PO Box 772790, Steamboat Springs, CO 80477
Saguache	Saguache County Department of Social Services	605 Christy Ave, Saguache, CO 81149	PO Box 215, Saguache, CO 81149

San Miguel	San Miguel DSS	333 W. Colorado Ave, Telluride, CO 81435 (San Miguel);	PO Box 96 Telluride, CO 81435
Sedgwick	Sedgwick County Human Services	118 W. 3rd St., Julesburg, CO 80737	PO Box 27, Julesburg, CO 80737
Washington	Washington County DHS	126 W. 5th St., Akron, CO 80720	PO Box 395, Akron, CO 80720
Yuma	Yuma County Department of Human Services	340 S. Birch, Wray, CO 80758	Same as physical

Calendar of Hearings

Hearing Date/Time	Agency	Location
01/18/2022 09:00 AM	Motor Vehicle Dealer Board	Webex Virtual Meeting
01/18/2022 09:00 AM	Motor Vehicle Dealer Board	Webex Virtual Meeting
01/20/2022 09:15 AM	Division of Gaming - Rules promulgated by Gaming Commission	video conference only
01/18/2022 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver CO 80202
01/14/2022 09:00 AM	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/.
01/25/2022 09:30 AM	Division of Private Occupational Schools	Virtual Meeting via Zoom
02/02/2022 01:00 PM	Colorado State Patrol	Zoom Virtual Hearing- Online
02/02/2022 01:00 PM	Colorado State Patrol	ZOOM Virtual Hearing- See Additional Information for Details
02/02/2022 01:00 PM	Colorado State Patrol	ZOOM Virtual Hearing- See Additional Information
02/02/2022 01:00 PM	Colorado State Patrol	ZOOM Virtual Hearing- See Additional Information for Details
01/27/2022 11:00 AM	Executive Director of Health Care Policy and Financing	1570 Grant St, Hibiscus, Denver, CO 80203