

Colorado Motor Vehicle Dealer Board
Adoption of New Emergency Rule:
Emergency Regulation 44-20-402(17)-COVID

Statement of Emergency Justification and Adoption

Pursuant to section 24-4-103(6)(a), C.R.S., the Colorado Motor Vehicle Dealer Board (“Board”) hereby adopts Emergency Regulation 44-20-402(17)-COVID.

Section 24-4-103(6)(a), C.R.S., authorizes the Board to adopt a temporary or emergency rule if the Board finds that the immediate adoption of the rule is imperatively necessary to comply with a state law or for the preservation of public health, safety, or welfare and compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

The Board hereby finds the following:

- The Board is authorized under section 44-20-404(1)(a), C.R.S. to promulgate rules necessary to implement under part 4 of Article 20 of Title 44, C.R.S., including the administration and enforcement of licenses issued to wholesalers, powersports vehicle dealers, powersports vehicle salespersons, and used powersports vehicle dealers.
- Due to the unprecedented and extraordinary impact of the COVID-19 emergency pandemic, Governor Jared Polis has issued a number of executive orders and the Colorado Department of Public Health and Environment has issued a number of public health orders since March 2020.
- On April 26, 2020, Governor Polis issued Executive Order D 2020 044, *Safer at Home*, continuing stay at home requirements for vulnerable individuals and permitting the limited reopening of postsecondary institutions and certain business operations due to the presence of coronavirus disease 2019 in Colorado.
- Executive Order D 2020 044 specifically permits a county or a municipality to adopt more protective standards as necessary than those contained in that Executive Order without the need for further approval by the State of Colorado.
- Pursuant to Governor Polis’ directive in Executive Order D 2020 044, the Colorado Department of Public Health and Environment issued Public Health Order 20-28 (“PHO 20-28”) on April 26, 2020, with an effective date of April 27, 2020.
- Pursuant to PHO 20-28, automobile rental, automobile sales with no touch delivery services, auto supply and repair were determined to be critical services that could continue to operate as normal, which included retail dealerships that include repair and maintenance, but not in-person retail sales.
- Pursuant to PHO 20-28, non-critical retail, which includes in-person powersports vehicle retail sales, may open, effective May 1, 2020, at fifty percent (50%) capacity for in-person services if the business can demonstrate compliance with requirements outlined in PHO 20-28.

- On May 25, 2020, Governor Polis issued Executive Order D 2020 079, *Amending and Extending Executive Order D 2020 044 Safer at Home*, which amended and extended Executive Order D 2020 044.
- On June 1, 2020, Governor Polis issued Executive Order D 2020 091, *Safer at Home and in the Vast, Great Outdoors*, which implemented a number of measures to allow Coloradans to return to work and recreation in the great outdoors while maintaining a sustainable level of social distancing.
- On June 30, 2020, Governor Polis issued Executive Order D 2020 123, *Amending and Extending Executive Order D 2020 091 Safer at Home and in the Vast, Great Outdoors*, which amended and extended Executive Order D 2020 091.
- On July 9, 2020, Governor Polis issued Executive Order D 2020 127, *Protect Our Neighbors*, which implemented a number of measures to allow local communities in Colorado that meet certain qualifications and have a mitigation and containment plan in place to allow all activities to occur at fifty percent (50%) capacity with social distancing with no more than five hundred (500) people in any one setting.
- Pursuant to Governor Polis' directive in Executive Order D 2020 127, the Colorado Department of Public Health and Environment issued Public Health Order 20-32 ("PHO 20-32") on July 10, 2020.
- Pursuant to PHO 20-32, counties that have not yet been certified for Protect Our Neighbors remain under the requirements of PHO 20-28 as well as any variances that have been approved by the Colorado Department of Public Health and Environment or more restrictive public health orders issued by a local public health agency.
- On July 16, 2020, Governor Polis issued Executive Order D 2020 138, *Amending and Extending Executive Orders D 2020 039, D 2020 067, D 2020 092, and D 2020 110 Ordering Individuals in Colorado to Wear Non-Medical Face Coverings*, which amended and extended Executive Orders D 2020 039, D 2020 067, D 2020 092, and D 2020 110 by requiring individuals in Colorado to wear a non-medical face covering over their nose and mouth, subject to several exceptions.
- On July 21, 2020, Governor Polis issued Executive Order D 2020 142, *Amending and Extending Executive Orders D 2020 091 and D 2020 123 Safer at Home and in the Vast, Great Outdoors*, which amended and extended Executive Orders D 2020 091 and D 2020 123.
- Pursuant to Governor Polis' directive in Executive Orders D 2020 091 as amended by Executive Order D 2020 123 and Executive Orders D 2020 142, the Colorado Department of Public Health and Environment issued the Ninth Amended Public Health Order 20-28 ("Ninth Amended PHO 20-28") on July 30, 2020.
- Section V and Appendix G to the Ninth Amended PHO 20-28 authorizes a county to apply for a variance from part or all of the executive orders after meeting specified criteria and submitting an alternative COVID-19 suppression plan to the Colorado Department of Public Health and Environment for approval.

- A number of counties and municipalities throughout the State have obtained variances from the Colorado Department of Public Health and Environment.
- In an effort to ensure powersports vehicle dealers and used powersports vehicle dealers continue retail sales to the citizens of Colorado and operations during the pendency of the COVID-19 emergency in accordance with Executive Order D 2020 044, Executive Order D 2020 079, Executive Order D 2020 091, Executive Order D 2020 123, Executive Order D 2020 127, Executive Order D 2020 138, Executive Order D 2020 142, Public Health Order 20-28 (most recently amended on July 30, 2020), Public Health Order 20-32, and other guidance issued by the Colorado Department of Public Health and Environment, the Centers for Disease Control (CDC) and local counties and municipalities, the Board finds it imperatively necessary to adopt Emergency Regulation 44-20-402(17)-COVID under 1 Code of Colorado Regulations (C.C.R.) 205-2.
- The Board finds that its promulgation of Emergency Regulation 44-20-402(17)-COVID will enable powersports vehicle dealers and used powersports vehicle dealers to conduct sales transactions and operate in accordance with the requirements and restrictions provided in the Ninth Amended PHO 20-28 and PHO 20-32.
- Pursuant to section 24-4-103(6)(a), C.R.S., the Board finds that the immediate promulgation and adoption of Emergency Regulation 44-20-402(17)-COVID is imperatively necessary for the preservation of public health, safety, or welfare.
- The Board finds that the immediate promulgation and adoption of Emergency Regulation 44-20-402(17)-COVID is necessary to carry out the purposes under part 4 of Article 20 of Title 44, C.R.S.

Statutory Authority

Statutory authority for this emergency rule is found in Colorado Revised Statutes, sections 44-20-401, 44-20-402, 44-20-403, 44-20-404(3)(a), 44-20-408, and 44-20-419.

Basis and Purpose

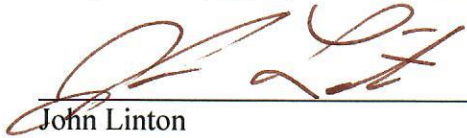
The basis and purpose of Emergency Regulation 44-20-402(17)-COVID is to provide the ability to conduct powersports vehicle sales and operations during the COVID-19 pandemic while complying with Executive Order D 2020 044 dated April 26, 2020, Executive Order D 2020 079 dated May 25, 2020, Executive Order D 2020 091 dated June 1, 2020, Executive Order D 2020 123 dated June 30, 2020, Executive Order D 2020 127 dated July 9, 2020, Executive Order D 2020 138 dated July 16, 2020, Executive Order D 2020 142 dated July 21, 2020, Colorado Department of Public Health and Environment's Ninth Amended Public Health Order 20-28 dated June 30, 2020, Colorado Department of Public Health and Environment's Public Health Order 20-32 dated July 10, 2020, and other guidance issued by the Colorado Department of Public Health and Environment, the Centers for Disease Control (CDC) and local counties and municipalities.

Adoption

For the reasons set forth above, the Board hereby adopts the attached Emergency Regulation 44-20-402(17)-COVID under 1 C.C.R. 205-2. This emergency regulation shall be effective on the date of

adoption. This emergency regulation shall be in force and effect for a period of one hundred and twenty days from August 5, 2020, unless sooner terminated or replaced by permanent rules adopted in accordance with section 24-4-103, C.R.S.

Adopted this 5 day of August, 2020.



John Linton
President
Colorado Motor Vehicle Dealer Board

8/5/2020
Date