

Colorado Motor Vehicle Dealer Board
Adoption of New Emergency Rule:
Emergency Regulation 44-20-402(17)-COVID DIAL 2ND EDITION

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 DIAL 2ND EDITION.

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 (“CDPHE”) has issued a number of public health orders since March 2020, including in relevant part, but not limited to:
 - Executive Order D 2020 017, *Ordering Coloradans to Stay at Home Due to the Presence of COVID-19 in the State*, dated March 25, 2020, which was subsequently amended and extended;
 - Executive Order D 2020 091, *Safer at Home and in the Vast, Great Outdoors*, dated June 1, 2020, which was subsequently amended and extended before being superseded and replaced by Executive Order D 2020 235;
 - Executive Order D 2020 127, *Protect Our Neighbors*, dated July 9, 2020, which was subsequently amended and extended before being superseded and replaced by Executive Order D 2020 235;
 - Executive Order D 2020 235, *Superseding and Replacing Executive Orders Concerning Protect Our Neighbors and Safer at Home in the Vast, Great Outdoors and Establishing Directives for the COVID-19 Dial Framework*, dated October 30, 2020, which was subsequently amended and extended;
 - Executive Order D 2020 245, *Extending Executive Orders D 2020 039, D 2020 067, D 2020 092, D 2020 110, D 2020 138, D 2020 164, D 2020 190, D 2020 219, and D 2020 237 Ordering Individuals in Colorado to Wear Non-Medical Face Coverings*, dated November 9, 2020, which was subsequently amended and extended;
 - Public Health Order 20-32, *Protect Our Neighbors*, first issued on July 10, 2020 and subsequently amended before being superseded by Public Health Order 20-36; and
 - Public Health Order 20-35, *Safer at Home Dial*, first issued on September 15, 2020 and subsequently amended before being superseded by Public Health Order 20-36.
 - Public Health Order 20-36, *COVID-19 Dial*, first issued on November 2, 2020, and subsequently amended on eight occasions.

- On February 23, 2021, Governor Polis issued Executive Order D 2021 047, *Amending and Extending Executive Order D 2020 235, D 2020 265, D 2020 289, and D 2021 023 Establishing Directives for the COVID-19 Dial Framework* (“EO D 2021 047”), establishing directives for the Dial Framework due to the presence of COVID-19 in Colorado. EO D 2021 047 requires each county or region to adhere to corresponding directives based on the county’s or region’s level on the Dial Framework.
- Under EO D 2021 047 there are six levels represented by colors on the Dial, which range from least restrictive to most restrictive, including: Green, Protect Our Neighbors; Blue, Caution; Yellow, Concern; Orange, High Risk; Red, Severe Risk; and Purple, Extreme Risk.
- Following Governor Polis’ directives in EO D 2021 047, CDPHE issued the Eighth Amended Public Health Order 20-36 (“Eighth Amended PHO 20-36”) on March 7, 2021. Eighth Amended PHO 20-36 supersedes and replaces previously issued Public Health Orders 20-32 and 20-35, as amended.
- Section V in the Eighth Amended PHO 20-36, as well as Appendix M, authorize a county to apply for a variance from CDPHE in order to implement different restrictions than what is required by the Eighth Amended PHO 20-36.
- Pursuant to the Eighth Amended PHO 20-36, automobile rental, automobile sales with no touch delivery services, auto supply and repair are considered “critical services,” which included retail dealerships that include repair and maintenance, but not in-person retail sales. According to Appendix A of the Eighth Amended PHO 20-36, “critical services” are included in the meaning of “critical businesses,” which is defined under Section IV(C) of the Eighth Amended PHO 20-36.
- Pursuant to the Eighth Amended PHO 20-36, critical businesses, at any of the six Dial levels, may continue to operate without capacity limitations, but must follow the requirements in sections III(B) and III(C) of Eighth Amended PHO 20-36.
- Pursuant to the Eighth Amended PHO 20-36, non-critical retail, which includes in-person powersports vehicle retail sales, may operate in accordance with the requirements one of the six Dial levels (Green, Protect Our Neighbors; Blue, Caution; Yellow, Concern; Orange, High Risk; Red, Severe Risk; and Purple, Extreme Risk) described in section II of the Eighth Amended PHO 20-36, depending on which Dial level the specific county in which the retail business operates is approved.
- On March 5, 2021, Governor Polis issued Executive Order D 2021 056, *Extending Executive Orders D 2020 039, D 2020 067, D 2020 092, D 2020 110, D 2020 138, D 2020 164, D 2020 190, D 2020 219, D 2020 237, D 2020 245, D 2020 276, D 2020 281, D 2021 007, and D 2021 035* (“EO D 2021 056”), requiring individuals in Colorado to wear a non-medical face covering over their nose and mouth, subject to several exceptions.
- A number of counties and municipalities throughout the State have issued public health orders/protective standards and/or have obtained variances from CDPHE.
- 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 EO D 2021 047, EO D 2021 056, and CDPHE's Eighth Amended PHO 20-36, and other guidance issued by CDPHE, 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 DIAL 2ND EDITION 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 DIAL 2ND EDITION will enable powersports vehicle dealers and used powersports vehicle dealers to conduct sales transactions and operate in accordance with the requirements and restrictions detailed in the Eighth Amended PHO 20-36.
- 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 DIAL 2ND EDITION 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 DIAL 2ND EDITION is necessary to carry out the purposes under part 1 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.

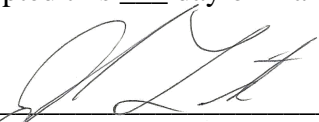
Basis and Purpose

To provide the ability to conduct powersports vehicle sales and operations during the COVID-19 pandemic while complying with Executive Order D 2021 047 dated February 23, 2021, Executive Order D 2021 056 dated March 5, 2021, Colorado Department of Public Health and Environment's Eighth Amended Public Health Order 20-36 dated March 7, 2021, 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 DIAL 2ND EDITION 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 March 16, 2021, unless sooner terminated or replaced by permanent rules adopted in accordance with section 24-4-103, C.R.S.

Adopted this 16 day of March, 2021.



John Linton, President
Colorado Motor Vehicle Dealer Board

March 16, 2021

Date