



## **NOTICE OF PUBLIC RULEMAKING HEARING**

### **FOR AMENDMENTS TO**

#### **“Bureau of Animal Protection Rules”**

#### **8 CCR 1201-18, Parts 4, 5, and 9.6**

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: November 30, 2022  
TIME: 9:00 am  
LOCATION: This hearing will be held via [Zoom](#)  
CALL INFORMATION: 1-719-359-4580  
MEETING ID: 832 7830 9318  
PASSCODE: 826851

In order to maintain a proper hearing record you are encouraged to pre-register by completing this [Google form](#). If you do not have access to Google you may send your name and telephone number to [Jenifer.Gurr@state.co.us](mailto:Jenifer.Gurr@state.co.us). Pre-registration is not required to participate in the hearing.

The purpose of this rulemaking is to streamline the training, continuing education, renewal process, and statistics reporting for BAP agents.

The statutory authority for these rules is §35-42-106, C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at [Jenifer.Gurr@state.co.us](mailto:Jenifer.Gurr@state.co.us). A copy of the proposed rule is available on the Department of Agriculture's website at [www.colorado.gov/ag](http://www.colorado.gov/ag) or may be obtained by calling 303-869-9002. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



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## **DEPARTMENT OF AGRICULTURE**

### **Animal Health Division**

#### **BUREAU OF ANIMAL PROTECTION RULES**

#### **8 CCR 1201-18**

##### **Part 1. Definitions**

As used in this document, unless the context otherwise requires:

- 1.1. "Abandon" means the leaving of an animal without adequate provisions for the animal's proper care by its owner, the person responsible for the animal's care or custody, or any other person having possession of such an animal.
- 1.2. "Animal" means any living dumb creature.
- 1.3. "Commissioned agent" or "agent" means an agent of the Bureau of Animal Protection approved by the Colorado Agricultural Commission and appointed by the Commissioner.
  - 1.3.1. "Non-profit agent" means a commissioned agent of the Bureau of Animal Protection who is employed by a Colorado non-profit agency.
  - 1.3.2. "Municipal agent" means a commissioned agent of the Bureau of Animal Protection who is employed by a county, city, or other municipal organization.
  - 1.3.3. "Law enforcement agent" means a commissioned agent of the Bureau of Animal Protection who is employed by a law enforcement agency and whose employment relationship defines the scope of the agent's law-enforcement authorities.
  - 1.3.4. "Colorado Department of Agriculture agent" means an agent of the Bureau of Animal Protection who is employed by the department's Division of Animal Health or the Division of Brand Inspection.
- 1.4. "Commissioner" means the Colorado Commissioner of Agriculture or his or her designee.
- 1.5. "Companion Animal" means domestic dogs, domestic cats, small pet birds, and other non-livestock species.
- 1.6. "Cruelty to Animals" means criminal offenses set forth in part 2 of article 9 of title 18, C.R.S.
- 1.7. "Department" means the Colorado Department of Agriculture.
- 1.8. "Euthanasia" means to produce a humane death by techniques accepted by the American Veterinary Medical Association as defined at section 18-9-201(2.7), C.R.S.
- 1.9. "Investigation" means a fact-finding process to gather evidence to support a criminal charge of cruelty to animals, or to support a civil charge for neglect, mistreatment, or abandonment of an animal.

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- 1.10. "Livestock" means cattle, swine, sheep, goats, and such horses, mules, asses, and other animals used in the farm or ranch production of food, fiber, or other products defined by the Commissioner as agricultural products.
- 1.11. "Mistreat" means every act or omission which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering.
- 1.12. "Neglect" means failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual, and accepted for an animal's health and well-being consistent with species, breed, and type of animal.

## **Part 2. Agent Authorities**

- 2.1. Civil Investigations, Allegations of Mistreatment, Abandonment, or Neglect
  - 2.1.1. An agent may gather evidence, including interviewing witnesses, to establish the probable cause necessary to support an allegation that a person has committed a civil violation of mistreatment, neglect, or abandonment of an animal in any circumstance so that the animal's life or health is in danger. If necessary, the Commissioner may authorize an agent, in conjunction with the Department of Agriculture and the Office of the Attorney General, to obtain an administrative search warrant.
  - 2.1.2. Of the four classifications of commissioned agents defined above in Part 1.3, the authority to investigate an allegation that any person has committed a civil violation of mistreatment, neglect, or abandonment of any livestock in any circumstance so that the livestock's life or health is in danger is restricted to Colorado Department of Agriculture agents as well as law enforcement agents employed by a sheriff and within their jurisdiction.
- 2.2. Criminal Investigations, Summons and Complaints, Misdemeanor Cruelty to Animals
  - 2.2.1. An agent may issue a criminal summons and complaint to enforce the provisions of part 2 of article 9 of title 18 as granted peace officers under section 16-2-104, C.R.S., which provides, "A summons and complaint may be issued by a peace officer for an offense constituting a misdemeanor or a petty offense committed in his presence or, if not committed in his presence, which he has probable cause to believe was committed and has probable cause to believe was committed by the person charged." Section 16-2-104, C.R.S.
  - 2.2.2. To establish the probable cause necessary to issue a summons and complaint for an alleged misdemeanor violation of cruelty to animals, an agent may gather necessary evidence, including interviewing witnesses, except when gathering evidence would require the execution of a criminal search warrant. An agent may not execute a criminal search warrant.
  - 2.2.3. Of the four classifications of commissioned agents defined above in Part 1.3, the authority to investigate alleged criminal offenses of animal cruelty involving livestock is restricted to Colorado Department of Agriculture agents as well as law enforcement agents employed by a sheriff and within their jurisdiction.
- 2.3. Provide Adequate Food and Water to Confined Animals

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If any animal is found to be confined without adequate food and water, an agent may as necessary enter into any and upon any area or building where such animal is confined and supply it with adequate food and water.

- 2.3.1. Such entry by an agent shall not be made into any building which is a person's residence.
- 2.3.2. The agent must post a Notice of Entry and Care at an entrance to or at a conspicuous place upon such area or building where such animal is confined.
- 2.3.3. In the case of a companion animal, if such animal is not cared for by a person other than an agent or officer of the bureau or a peace officer or veterinarian within seventy-two hours of the posting a Notice of Entry and Care, such animal shall be presumed to have been abandoned under circumstances in which the animal's life or health is endangered.
  - 2.3.3.1. An agent may refer this circumstance of abandonment to the commissioner's designee for potential civil proceedings; or,
  - 2.3.3.2. An agent may issue a criminal summons and complaint for a misdemeanor cruelty to animals offense.

2.4. Lawful Interference to prevent mistreatment, neglect, abandonment or cruelty

An agent may lawfully interfere to prevent the perpetration of an act of mistreatment, neglect, abandonment, or cruelty, pursuant to part 2 of article 9 of title 18, C.R.S., which act occurs in his or her presence.

2.5. Euthanasia

Any agent may lawfully euthanize or cause to be euthanized any animal in his or her charge when, in the judgment of such agent, and in the opinion of a licensed veterinarian, the animal is experiencing extreme pain or suffering or is severely injured past recovery, severely disabled past recovery, or severely diseased past recovery. In the event a licensed veterinarian is not available, the animal may be euthanized by an agent if, by the written certificate of two persons, one of whom may be selected by the owner if the owner so requests, called to view the animal in the presence of the agent, the animal appears to be severely injured past recovery, severely disabled past recovery, severely diseased past recovery, or unfit for any useful purpose.

### **Part 3. Agent Training Requirements**

In addition to the applicable requirements set forth in section 35-42-107 C.R.S., each applicant must satisfy the requirements set forth below to be eligible to receive a commission, unless the Commissioner determines that an applicant's experience and training constitute equivalent qualification for a commission.

- 3.1. 40 hours of prior training, to include:
  - 3.1.1. Legal authority for investigations to include the constitutional rights of property owners;
  - 3.1.2. Animal care, behavior, and handling;
  - 3.1.3. Occupational safety;
  - 3.1.4. Crisis intervention and conflict resolution;

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- 3.1.5. Report writing;
- 3.1.6. Professionalism and ethics;
- 3.1.7. Animal husbandry and body condition scoring; and
- 3.1.8. Optional training, which may include but is not limited to:
  - 3.1.8.1. Cost of Care;
  - 3.1.8.2. Evidence collection and chain of custody;
  - 3.1.8.3. Courtroom preparation; and
  - 3.1.8.4. Cross reporting.
- 3.2. Equine endorsement: anyone who desires an equine endorsement must complete a minimum of 8 hours of equine husbandry and body condition scoring training.
- 3.3. Training provided by the Colorado Department of Agriculture, to include, a minimum:
  - 3.3.1. Colorado laws including Colorado Revised Statutes Titles 18 and 35;
  - 3.3.2. An Agent's scope and range of authority; and
  - 3.3.3. Bureau of Animal Protection Rules 8 CCR 1201-18.
- 3.4. One year of experience in regulatory or code enforcement, animal care and control, or animal cruelty Investigations.

#### **Part 4. Continuing Education, Terms of Commissions and of Renewals, and Revocation**

- 4.1. Continuing Education: 32 hours of continuing education and training must be completed every 2 years. Continuing education must include at least 2 hours of Colorado Department of Agriculture provided training on program updates; 8 hours of investigations, search and seizure, report writing, or courtroom preparation; 4 hours of animal care, husbandry, handling, or body condition scoring. For equine-endorsed agents, each such agent must also complete 4 hours of equine husbandry, handling, or body condition scoring.
  - 4.1.1. An agent's two year continuing education accrual cycle that includes the calendar year 2020 is extended by one year.
  - 4.1.12. Continuing education course information must be submitted to the Colorado Department of Agriculture for approval and must be submitted and approved prior to a training course being offered as continuing education.
  - 4.1.23. No training course submitted for approval will be considered valid until it receives the Commissioner's approval. A wide variety of training falls within the scope of BAP agent authority, and will be considered by the Commissioner.
- 4.2. Within six months of receiving a commission, any agent who has not been previously commissioned within the past two years must conduct and coordinate at least one investigation with the Department. Such coordination includes, but is not limited to: notifying the Department of

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the planned investigation before it begins; weekly updates to the Department on the status of the investigation and any actions taken or planned to be taken; and a final meeting after the investigation to discuss and analyze the investigation and its outcome.

- 4.32. Term of Commission: Each commission shall remain valid for the period of ~~two~~one calendar years from the date it is issued unless revoked by the Commissioner prior to expiration.
- 4.33. Renewal of Commission: A commissioned agent who desires to continue as a commissioned agent must apply for renewal every two years annually, providing with such application for renewal, at a minimum:
  - 4.33.1. Employment Information: Current employer name, address, phone, category, and supervisor information;
  - 4.33.2. Continuing Education: Evidence of completed, approved, continuing education credits, if applicable;
  - 4.33.3. Statistics: Fully submitted statistics for the agent's previous year's activities; and
  - 4.33.4. Additional Requirements of Commissioner: Any additional requirements or information that the Commissioner may request must be provided.
- 4.33.5. Term of Renewal: Recommissioned agents will be recommissioned for ~~two~~one years, subject to any subsequent determination by the Commissioner to revoke an agent's commission.
- 4.34. Change or Termination of Employment
  - 4.34.1. Any agent who changes employers and who desires that his or her commission continue to the new employer must, within 14 days of the change of employment, update the Commissioner with: 1) the date of the change of employment; 2) the name of the new employer; 3) a copy of the certificate of liability insurance if the agent is moving to a non-profit agency; 4) a letter from the new employer affirming that the agent is authorized to act as a commissioned agent for the new employer; and 5) any other information as identified by the Commissioner in a change-of-employment form.
  - 4.34.2. Any agent who terminates his or her employment and who does not transition to a different employer with the authority to employ commissioned agents may request that the Commissioner place the agent's commission in an inactive status for the remainder of the unexpired term of the agent's commission.
  - 4.34.3. The Commissioner may reinstate the commission of any agent who requested that his or her commission be placed in an inactive status and whose commission has not yet expired if such agent accepts employment with an employer authorized to employ commissioned agents.
  - 4.34.4. In no circumstance may the Commissioner renew an agent's inactive commission.
  - 4.34.5. The Commissioner may revoke the commission of any agent who does not report to the Commissioner such change in employment within 14 days.
  - 4.34.6. The Commissioner may deny a request that a commission be placed in an inactive status if the agent does not make such request within 14 days of leaving the employ of an employer authorized to employ commissioned agents.

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## **Part 5. Statistics and Reporting**

- 5.1. Each agency must designate at least one representative to submit statistics to the Bureau of Animal Protection.
- 5.2. Statistics for each commissioned agent must be compiled and reported as part of the agency statistics.
- 5.3. Statistics for any given month are due on the 15th day of each subsequent month.
- 5.4. Statistics to be reported for the month must include:
  - 5.4.1. Total number of investigations conducted pursuant to Parts 2.1 and 2.2 above;
  - 5.4.2. Total number of summons and complaints issued for a misdemeanor violation of part 2 of article 9 of title 18;
  - 5.4.3. Total number of investigations conducted for a charge of Unlawful Ownership of Dangerous Dog;
  - 5.4.4. Total number of summons and complaints issued for a charge of Unlawful Ownership of Dangerous Dog;
  - 5.4.5. Total number of dogs seized and impounded as a result of an agent's issuing a summons and complaint for a charge of Unlawful Ownership of Dangerous Dog;
  - 5.4.6. Total number of premises an agent or agents entered to supply any animal or animals with adequate food or water; and
  - 5.4.7. Total number of entries described in 5.4.6 in which the agent or agents entered to supply livestock with adequate food and water.
- 5.4.8. For each investigation an agent conducts pursuant to Part 2.1 above, the agent, or the agent's designated representative, must submit a case report for each such investigation to the Department within a month after closing the case. The report must include a description of the complaint and the type of alleged mistreatment, what was observed during the investigation, the species being investigated, the outcomes of the investigation, and the date the case was closed.

## **Parts 6-8. Reserved**

## **Part 9. Statements of Basis, Specific Statutory Authority and Purpose**

- 9.1. Adopted April 4, 2003 – Effective June 30, 2003

The Colorado State Agricultural Commission adopts these rules pursuant to Section C.R.S. 35-42-106.

The purpose of rule 1 is to inform the State Veterinarian's Office before any animal is impounded, and to protect the owner from having his animal(s) unnecessarily impounded, or to require an owner to post bond for an unnecessary impoundment.

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The purpose of rule 2 is to have minimum education/experience requirements for BAP commission applicants.

The purpose of rule 3 is to provide choices in disciplinary action, other than commission revocation, for any problem that may arise regarding legal authority.

9.2. Adopted March 5, 2007 – Effective May 1, 2007

The Commissioner of Agriculture adopts these rules pursuant to § 35-42-106, C.R.S.

The purpose of rule 4 is to establish reporting requirements to aid the Bureau of Animal Protection in compiling accurate statistics to be reported to the Commissioner of Agriculture and other entities as requested. These statistics reflect work done by all agents of the Bureau as commissioned law enforcement officers as defined in § 35-42-107, C.R.S.

9.3. Adopted November 9, 2016- Effective December 30, 2016

The Commissioner of Agriculture adopts these Rules pursuant to the authorities located at § 35-42-106, C.R.S.

The purpose of these Rules is to identify and articulate the Commissioner's authority with regard to administration of the Animal Protection Act. This Rule establishes how the Commissioner's authority is to be exercised with regard to assessment, inspection, and investigation of companion animals and of livestock. This Rule further establishes the processes and procedures in place for such inspections and investigations related to potential violations of the Animal Protection Act. Additionally, this Rule sets forth the training requirements and continuing education for individuals who desire to be agents and who are currently agents of the Bureau of Animal Protection. Finally, this Rule establishes the statistics that the Commissioner requires be kept with regard to enforcement of this Animal Protection Act and the manner by which those statistics must be reported to the Commissioner.

The Rules previously adopted pursuant to the Animal Protection Act had not been revised or updated since 2007. This rule-making completely replaces those Rules with updated, more user-friendly, and expanded Rules for enforcement of the Animal Protection Act.

9.4. Adopted April 11, 2018 – Effective May 30, 2018

The Commissioner of Agriculture adopts these Rules pursuant to the authorities located at §35-42-106, C.R.S.

The purpose of this Rule is to make the statistics required for submission by Part 5 consistent with the definition of statistics as set forth in Part 1. This remedy not only streamlines reporting, but will more accurately capture how each unique agency utilizes the Commissioner's authority. In addition, because there is no substantive need for agents to return expired BAP commission cards to CDA that requirement is eliminated.

9.5. Adopted November 12, 2020 – Effective December 30, 2020

The Commissioner of Agriculture adopts these Rules pursuant to the authorities located at §35-42-106, C.R.S.

The purpose of this rulemaking is to update the rule and to harmonize it with statutory amendments made to section 35-42-107(4), C.R.S., during the 2020 legislative session (SB 20-104).

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The changes to the rule define the investigative authorities of commissioned agents and remove distinctions related to inspections and assessments that had become unnecessary. The revisions to the rule remove unnecessary definitions, highlight the primary authorities of commissioned agents, distinguish which agents may investigate cases related to livestock consistent with the statutory restrictions, and clarify investigative authorities. Because revisions to 35-42-107(4), C.R.S., clarify that commissioned agents may investigate and issue misdemeanor summons and complaints to enforce the provisions of 18-9-201, et seq., the Department removed reference to unlawful ownership of a dangerous dog to avoid any appearance that the Department was selecting or limiting what provisions of 18-9-201, et seq., the agents could investigate for purposes of issuing misdemeanor summons and complaints.

The agency has also adjusted the statistics that the Commissioner will require agencies that employ agents report to the Commissioner. The revised statistics will inform the Commissioner's understanding of the work BAP agents are doing in the field as agents of the Commissioner. In addition, this rule now identifies specific training necessary for an agent to receive an equine endorsement.

Changes to this rule provide specificity related to the Commissioner's authority to place a commission in an inactive status, to reinstate a commission, and to revoke a commission should an agent fail to update the Commissioner with information related to a change in employment. Finally, due to limited training opportunities during the 2020 calendar year as a result of COVID-19, this Rule exempts the 2020 calendar year from an agent's two-year continuing education accrual cycle.

#### 9.6. Adopted December 14, 2022 – Effective February 15, 2023

The Commissioner of Agriculture adopts these Rules pursuant to the authorities located at §35-42-106, C.R.S.

The purpose of this rulemaking is to streamline the training, continuing education, renewal process, and statistics reporting for BAP agents.

This rule change extends the period that a commission is valid from one to two years, which coincides with the two-year period for continuing education. While the statute prescribes that a commission shall expire on the anniversary date of issuance, there is no statutory requirement that this be on the annual anniversary of the commission. The Department's analysis concluded that extending a commission from one to two years will also result in a cost savings to the Department and commissioned agents.

This rule change also introduces a new requirement for first-time agents and agents who have not been commissioned during the previous two years. The rule will now require that such agents coordinate with the Department prior to and during at least one investigation during the first six months of a new commission. The Department, in consultation with stakeholders, determined that this coordination would enhance communication, build a working relationship between the Department and agents in the field, provide hands-on mentorship and guidance to new agents, and provide the Department with a better understanding of challenges agents face and how the Department can best support them.

This rule change also identifies specific training that the Department will require as part of the 32 hours of continuing education. With input from industry and stakeholders, the Department concluded that identifying specific areas of training would enhance agents' overall knowledge, competence, and efficacy in the field.

Finally, the Department has also expanded the statistics that agents are required to report to the Commissioner to include that agents must submit a case report for each investigation conducted pursuant to part 2.1 of this rule set – civil investigations of allegations of mistreatment, neglect, or abandonment.

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Such a report must be made within one month after an agent closes any such case. This additional information will inform the Department's understanding of the work agents are doing in the field as the Commissioner's commissioned agents.